

**Rule Summary and Fiscal Analysis (Part A)****Department of Agriculture**

Agency Name

Division

**David E Miran**

Contact

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**901:5-4-04**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Recordkeeping.****RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **SB150**General Assembly: **130**Sponsor: **Hite and Peterson**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **905.321, 905.322**5. Statute(s) the rule, as filed, amplifies or implements: **905.321, 905.322**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The rules contained in this chapter are in response to the enactment of Senate Bill 150, which was signed by Governor Kasich in May of this year. Senate Bill 150 gave the Ohio Department of Agriculture (#Department#) regulatory authority over the application of fertilizer by farmers on more than fifty acres used for agricultural production. The rules drafted in this package focus on science-based practices which support responsible agriculture practices while allowing Ohio to continue to

grow its vital agriculture industry.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule 901:5-4-04 sets forth recordkeeping requirements of certificate holders.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

Pursuant to section 121.76 of the Revised Code, the code sections incorporated into this rule are exempt from compliance with sections 121.71 to 121.74 of the Revised Code.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the

scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

All fertilizer certificate holders must maintain a fertilizer application record. Statute requires certificate holders to maintain these records for a period of three years. The application records require time for compliance as well as storage. These records do not need to be submitted to the Department for approval, however, must be available for inspection upon the Department's request. The application record must contain specific information as indicated in rule 901:5-4-04.

The quantified impact of the record keeping requirements in this package is minimal. Depending on the sophistication of the applicators equipment, records may be generated automatically by their fertilizer spreaders. Regardless, the time required for record keeping is minimal and varies depending on the size of the property, the amount of fertilizer used, and the different analyses of the fertilizer used.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

These rules only apply to those who have been issued a fertilizer applicator certificate.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

No, however the statute lays out penalties for failing to maintain records.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

Fertilizer application records are not required to be submitted to the Department. However, the Department can request them from the applicator.

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Rule Number: 901:5-4-04

**Environmental Rule Adoption/Amendment Form**

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
  - (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
  - (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
  - (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.
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(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

Abbruzzese, Chris Ohio EPA

Abele, Jerry Lake Erie Charter Boat Association

Adkins, Matt ODNR SWR

Aichele, Nathan ODA

Alvey, Ken Lake Erie Marine Trades Assoc

Amin, Dr. Mohammed ODA

Anderson, Tony Farmer/County Commissioner

Antosch, Larry Ohio Farm Bureau

Arnold, Glen OSU Extension

Ashworth, David Novozymes BioAg, Inc.  
Bailey, Mike ODA  
Baker, Dr. David Heidelberg University  
Bankey, Mindy OFSWCD  
Baumgardner, Gene Ohio Corn & Wheat Growers  
Beal, Matt ODA  
Beiler, Joe VanTilburg Farms  
Benner, Steve S & D Application  
Berning, Tim Ohio CCA Board  
Black, Rocky ODA Bray, Kellie CropLifeAmerica  
Breece, Dr. Donald OSU - Extension  
Broering, Paul ODP  
Brookes, Cindy Sandusky River Watershed Coalition  
Brown, Ed Crop Production Services  
Brown, Larry OSU - Food, Ag & Bio Eng.  
Burkett, Frank Ohio Farm Bureau  
Busdeker, Douglas The Andersons, Inc.  
Byrum, Dr. Bev ODA  
Chakeres, Jim Ohio Poultry Association  
Chapman, Karen Environmental Defense Fund  
Cobb, Glen ODNR  
Coleman, Jennifer Ohio Soybean Council  
Coulon, Chris USDA Cross, Brenna Blue Stone Solutions, Ltd.  
Cross, Diane Blue Stone Solutions, Ltd.  
Cross, Ed Blue Stone Solutions, Ltd.

Davis, Bret Ohio Soybean Association  
Davis, Steve NRCS  
Dayton, Libby OSU-SENR  
Dudley, Dan Ohio EPA  
Elder, Kevin ODA  
Fausey, Norm USDA-ARS  
Fontana, Tom Ohio Soybean Council  
Forshey, Dr. Tony ODA, Interim Director  
Gates, Brett ODA  
Gates, Daryl Morral Companies  
Gebhardt, Karl ODNR -DSWR  
Gibson, Russ OEPA - Surface Water  
Graham, Adam Ohio Soybean Council  
Grimes, John OSU Extension  
Hammon, Fred ODNR - DSWR  
Harsh, Elizabeth Ohio Cattlemen's Assoc.  
Hendrick, Ron OSU  
Henney, Chris Ohio AgriBusiness Association  
Hess, Carl Farm Credit Services  
Hesse, Gail Ohio Lake Erie Commission  
Higgins, Scott Ohio Dairy Producers Association  
High, Roger Ohio Sheep Improvement Association  
Hines, Kirk ODNR-DSWR  
Homan, Eugene OSGMP  
Hoorman, Jim OSUE - Mercer

Hostetler, Brent Ohio Corn & Wheat Growers

Irvin, Jack Ohio Corn & Wheat Growers

Isler, Dick Ohio Pork Producers J

ones, Belinda OPARR

Jones, Laura ODNR

Keller, Steve Morral Companies

Kessler, John ODNR - DSWR

King, Kevin USDA-ARS

Knapke, William Ohio Pork Producers

Koehler, Brandi Ohio FSA State Office

LaBarge, Greg OSU Extension

Linebaugh, Neal DFA Mideast

Logan, Joe The Ohio Environmental Council

Lohstroh, Michelle USDA-NRCS

Lozier, Ted ODNR

Lust, Tina Certified Crop Advisors

McClure, Terry Ohio Soybean Council

McCoy, Denise ODNR

McDevitt, Steve NRCS

Mead, Janelle ODA

Menke, Tom Menke Consulting

Merritt, Kirk Ohio Soybean Council

Moore, Richard OSU-SENR

Morris, James Ohio Water Science Center

Moser, Dr. Bobby OSU



Motter, John Ohio Soybean Council  
Nally, Scott Ohio EPA, Director  
Nicholson, Tadd Ohio Corn and Wheat Growers  
Pennell, Gary Farmers Elevator Grain & Supply  
Phelps, Frank Farmer/County Commissioner  
Pitchford, Erica ODA Rausch, Jon OSU Extension  
Renner, Nick Mercer County SWCD  
Reutter, Dr. Jeff OSU-Sea Grant and Stone Laboratory  
Richards, Dr. R. Peter Heidelberg University  
Ricker, Dale OSU Extension  
Rockhold, Ronald Ohio Corn & Wheat Growers  
Russell, Dave Brownfield Ag Network  
Sasson, Anthony The Nature Conservancy  
Scarpitti, Mark USDA NRCS  
Schmidt, Stacy The Andersons, Inc.  
Schrumpf, Paul Croplife Magazine  
Schwartz, Dan Ohio Soybean Council  
Sharp, Adam Ohio Farm Bureau  
Shearer, Scott OSU Shimp, Fred ODNR  
Sloan, Dale CAA Board - Channel Bio  
Smith, Mark NRCS  
Stanley, Bill The Nature Conservancy  
Stark, John The Nature Conservancy  
Stimpert, Keith Ohio Farm Bureau  
Strait, David Mercer Landmark

Stuckey, Kent OFSWCD

Sunderman, Mark Deshler Farms

Sundermeier, Lee Morral Companies

Sutton, Don OPARR/Ohio Turfgrass Foundation

Swartz, Kris OFSWCD

Swartz, Nate CCA Board

Unger, Rick Lake Erie Charter Boat Association

Vollmer-Sanders, Carrie The Nature Conservancy

Ward, Adam Ohio Soybean Council

Ward, Andy OSU

Ware, Andy ODNR

Watters, Harold OSU Extension

Weaver, Chris Bridgewater Dairy

White, David Ohio Livestock Coalition

Wible, Chris Scotts-OPARR

Wilson, Mark Land Stewards, LLC

Wilson, Rick Ohio EPA

Wise, Howard ODA

Wise, Roger Ohio Farmers Union

Witter, Jon OSU Wyss, Ronald Hardin County

Zehringer, James

(Director) ODNR

Zody, Scott ODNR

(B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological

feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

The Department of Agriculture with the help of the Department of Natural Resources and the Ohio Environmental Protection Agency created a working group to study the impact of agricultural nutrients on water quality. The results of this group impacted the proposed rules. The study can be found here:  
[http://www.agri.ohio.gov/topnews/waterquality/docs/FINAL\\_REPORT\\_03-09-12.pdf](http://www.agri.ohio.gov/topnews/waterquality/docs/FINAL_REPORT_03-09-12.pdf)

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ? **No**

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **Not Applicable**

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **Yes**

Please explain why?

The proposed rules are slightly more stringent than the statute's created in Senate Bill 150. Namely, the proposed rules create additional record keeping requirements. The statute specifically grants the Department of Agriculture the authority to create additional record keeping requirements.