

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Fertilizer Update 2017

Rule Number(s): 901:5-4-02, 03, and 04

Date: May 9, 2017

Rule Type:

☐ New
☒ Amended

☐ 5-Year Review
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in this package were originally enacted pursuant to Senate Bill 150 of the 130th General Assembly. The rules established a fertilizers certification program, which required training, certification, and record keeping for individuals who apply fertilizer to over 50 acres of land for agricultural production. The amendments found in this chapter have been proposed to fine tune the certification program after its first two years.

Rules 901:5-4-02 outlines requirements for obtaining a fertilizer certificate from the Department. The rule is being amended to clarify the definition of a person acting “under the instructions and control” of a certificate holder. Further, the rule adds a 180-day grace period for those who have completed their educational requirements but have failed to submit a timely application.

Rules 901:5-4-03 sets forth the education requirements for obtaining a fertilizer certificate. The rule is amended to clarify the education requirements for initial and renewal applicants. Additionally, the rule establishes an exam, which individuals may elect to take, rather than attend a course.

Rule 901:5-4-04 outlines record keeping requirements. The rule is proposed to add “number of acres” and “total amount of fertilizer, by weight or volume” to the list of received information to be documented.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Revised Code 905.321 and 905.322.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

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The Department, with the passage of Senate Bill 150, is statutorily tasked under Chapter 905 of the Revised Code with regulating fertilizer application in the state of Ohio. These rules provide training, education, and oversight of fertilizer applicators throughout the state to ensure both the safe use of fertilizer as well as preventing their misuse or mishandling.

This program educates the agriculture community as to the safe and appropriate use of fertilizers and addresses the agriculture nutrient runoff into Ohio waterways and algae problems in Grand Lake St. Mary's and Lake Erie.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The rules will be judged as being successful when inspections and investigations find few violations and when there is no increase in the number of complaints filed with the Department.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department.

Ginz Zirkle – American Hort
Craig Regelbrugge – American Hort
Chris Henney – Ohio Agribusiness Association
Margo Long – Ohio Agribusiness Association
Andrew Allman – Ohio Agribusiness Association
Tadd Nicholson – Ohio Corn & Wheat Growers Association
John Torress – Ohio Corn & Wheat Growers Association
Scott Lucas – Ohio Department of Transportation
Terri Barnhart – Ohio Department of Transportation
Amalie Lipstreu – Ohio Ecological Food & Farm Association
Adam Rissien – Ohio Environmental Council
Jack Shaner – Ohio Environmental Council
Jack Irvin- Ohio Farm Bureau
Larry Antosch – Ohio Farm Bureau
Adam Sharp – Ohio Farm Bureau
Joe Logan – Ohio Farmers Union
Linda Borton – Ohio Farmers Union
John Dorka – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care

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Roni Peterson – Ohio Nursery and Landscaping Association
Lonnie Alonso – Ohio Pest Management Association
Karen Holt – Ohio Produce Growers Marketing Association
John Armstrong – Ohio Seed Improvement Association
Kirk Merritt – Ohio Soybean Council
Tim Arheit – Ohio State Bee Keepers Association
Brian Laurent – Ohio Turfgrass Foundation
Lonnie Alonso – Pesticide Applicators for Responsible Regulation
Belinda Jones – Pesticide Applicators for Responsible Regulation

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Department has maintained an active and open line of communication with the stakeholder group listed above. Thus far, the stakeholders have been very supportive of the program as operated by the Department.

The Ohio State Beekeeper Association submitted comments regarding an expansion of the individuals required to obtain a fertilizer certificate. Currently, the underlying statute requires only individuals who apply fertilizer on more than fifty acres of land used for agricultural product to obtain a certificate. Any amendment to this requirement must occur in the general assembly and cannot be done via rule.

Further, Mr. Greg LaBarge, a Field Specialist at the Ohio State University recommended that the educational requirements for initial applicants be simplified. The Department incorporated his change by standardizing the number of hours required for initial training.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The underlying statute was developed after years of examination and research of the algae bloom found in Grand Lake St. Mary's and Lake Erie. The education training requirements and certification will be based on best industry practices for the efficient and safe application of fertilizers.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Stakeholder participation in reviewing the rules in this package has indicated to the Department that this is the best regulatory scheme at this time. For that reason, no other regulatory alternatives were considered.

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11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The rules contained in this package are administrative in nature and therefore are performance based. The rules state that all applicators must be certified and lays out the requirements for receiving a certificate. It is up to the individual applicant to determine how and when he will fulfill these requirements.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department is given the sole regulatory authority through Revised Code 905.321 and 905.322 to certify fertilizer applicators in the state. The proposed rules in this package are the first Ohio regulations drafted which address fertilizer application.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Department has maintained a constant line of communication with key constituent groups regarding the implementation of this program. The Department works with all pesticide businesses and applicators to educate and inform them on the requirements of these rules. Additional education and outreach will be performed with the affected communities of the changes by the Department.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Any person who applies fertilizer for the purposes of agricultural production on more than fifty acres.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Applicants for certification must complete a formal application with the information provided in the rule. This requires time for compliance. Individuals must pay an application fee for certification. Individuals who have either a private or a commercial pesticide applicator license are exempt from the fee requirement.

Applicants for certification and applicants for a renewal of their certification must attend and satisfy requirements for agricultural nutrient training. All initial applicants must either complete three hours of agricultural nutrient training or demonstrate that

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they have adequate knowledge of fertilizer application by successfully passing a fertilizer examination. All individuals seeking to renew their certificate must take one hour of agricultural nutrient training or pass the examination discussed above. This requires time for compliance as well as any fees associated with the course itself. There is no cost for the examination. Individuals who are certified crop advisors or certified livestock managers are exempt from this training requirement.

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.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The certificate application fee is \$30. The time required to complete the application is negligible.

There is no cost for the examination. The cost for the agricultural nutrient training is around \$30 to \$40 per course for the initial training, and less for the renewal courses.

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 recordkeeping is minimal and varies depending on the size of the property, the amount of fertilizer used, and the different analyses of the fertilizer used.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules found in this package create a certification program which supports responsible agriculture practices while allowing Ohio to continue to grow its vital agricultural industry. Further, the rules help to promote the 4-R program which encourages applicators to use the Right fertilizer source, the Right rate, the Right time and the Right place. The adverse impacts found in these rules are derived from statutory requirements. The Department has

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worked to minimize the adverse impact to businesses while balancing the need to protect Ohio's waterways, citizens, and agricultural industry.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Due to the potential environmental impact of the over application of fertilizer of the state's watersheds and lakes, the Department did not create any exemptions or alternative means of compliance. However, the underlying statute, and therefore the program itself, exempts farms with less than fifty acres of land used for agricultural production.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Department plans to encourage voluntary compliance with first time offenders in order to educate the regulated community. In similar programs, the Division of Plant Health works with individuals who commit paperwork violations so long as the individual is willing to correct the violation and has no history of prior violations. First-time offenders are also routinely offered settlements that are appropriate to the circumstances of the violation.

18. What resources are available to assist small businesses with compliance of the regulation?

The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.