



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

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Regulation/Package Title (a general description of the rules' substantive content):

Livestock Environmental Permitting- Five Year Review

Rule Number(s): OAC 901:10-1-(01, 04, 06, 11); 901:10-2-(03, 07, 15, 16, 17, 18);

901:10-3-(02, 03, 05, 06, 10, 11); 901:10-4-(01, 03, 04); 901:10-5-(01, 02, 03, 04);
901:10-6-(05, 06)

Date of Submission for CSI Review: 1/30/2024

Public Comment Period End Date: 2/21/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 1 rules (FYR? yes)

Amended/ 22 rules (FYR? yes)

Rescinded/ 2 rules (FYR? yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. 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 contained in this package are overseen by the Division of Livestock Environmental Permitting. In December 2000, the state legislature gave the Ohio Department of Agriculture the responsibility for overseeing and permitting Ohio's largest livestock and poultry farms. Program staff is responsible for regulating how Ohio's largest livestock and poultry farms handle manure and wastewater, as well as manage flies, rodents, and other pests. In addition, program staff review construction and engineering plans for these facilities to help ensure that manure and other wastewater are properly contained within the facility and to protect Ohio's waterways and environment.

The rules have been reviewed by the Department and key stakeholders in order to comply with the five-year rule review process. More specific information regarding the rules and their proposed amendments, if any, can be found below:

OAC 901:10-1-01 Definitions outlines the definitions as used in Division 901:10 of the Ohio Administrative Code. The rule is being amended to revise language to further clarify definitions: revised the definition "Agricultural Stormwater Discharge" to remove the term "runoff" and the phrase "drains over terrain" as they limit manure application scenarios that could be considered agricultural stormwater discharges; adds "permit transfer" and "permit modification" to the definition "Applicant"; adds the website where the Ohio Natural Resource Conservation Service, Conservation Practice Standards may be found to the

definition “Buffer Strip”; updates the edition year of the standards to the definition “Buffer Strip”; changes the word “operation” to “facility” where applicable; replaces the word “site” with “area” to describe land where manure is applied where applicable; changes the word “lagoon” to “anaerobic digesters”; the definition of “manure storage or treatment facility” has been further described by adding “treatment, energy recovery, nutrient recovery”; the definition of “Overflow” has been revised to mean spillage instead of discharge; the definition of “Point source” has been simplified; and changes the word “embayments” to “embankments” to correct a misspelling. The rule revision makes stylistic changes according to the Legislative Service Commission’s rule drafting requirements.

OAC 901:10-1-04 *Fees* sets forth the fees for the permit and certification applications as administered by the Division of Livestock Environmental Permitting. The rule is being amended to reflect an increase in fees and removes the collection of a fee for stormwater construction permit applications.

OAC 901:10-1-06 *Certified livestock managers* sets forth the purpose, application procedures, enforcement, and training of Certified Livestock Managers. The rule is being amended to add the word “solid” in front of manure for clarification where applicable, replaces or strikes pronouns, adds the word “dry” in front of “ton” for further description, reformats the livestock manager’s appeal rights according to Chapter 119 of the Revised Code, adds a reference to 903.10 of the Revised Code regarding revocation of a livestock manager certification and further describes how the director may assess penalties when a violation has occurred.

OAC 901:10-1-11 *Exclusions* outlines discharge exclusions which do not require an NPDES permit. The rule is being submitted as part of a five-year rule review with no changes.

OAC 901:10-2-03 *Geological Explorations* sets forth standards for geological subsurface explorations required under this chapter. Specifically, the rule requires that these subsurface tests be completed to evaluate the suitability of the soil and ground strength in supporting both fabricated structures and manure lagoons/ponds. The rule is being amended to: add additional criteria that the director may require on-site subsurface geological exploration based on height of the proposed walls for storing solid manure; adds language to clarify that planned bottom means lowest elevation of manure placement; instead of referring to the existing appendix of the rule regarding the classification of soil material, a reference to an ASTM standard (ASTM D2487 or D488) has been added which details the unified soil classification system; replaces “ground water pollution potential (DRASTIC) maps” with “groundwater vulnerability map of Ohio”; removes the requirement that the report of the subsurface geological explorations has to be prepared by a professional geologist or a professional engineer; and increases the requirement regarding water well logs that are located within a minimum of one thousand feet to two thousand feet from a planned manure storage or treatment facility. The rule is revised to further detail the laboratory testing and analysis by adding the word “in-situ” to the word “hydraulic”, adds soil particle size, revises “standard compaction with recompaction” to “compactive effort”, and removes regulatory restrictive words as required by Senate Bill 9.

OAC 901:10-2-07 *Contents of a permit to operate and NPDES applications* outlines the application requirements for a permit to operate. The rule has been amended to remove the national pollutant discharge elimination system permit (NPDES) requirements. The rule is revised to include a reference to section 903.082 of the Revised Code regarding an animal feeding operation that is required to receive a permit to operate and removes regulatory restrictive words as required by Senate Bill 9.

OAC 901:10-2-15 *Manure management plan and the plan for the disposal of dead livestock* outlines requirements for plans for the disposal of dead livestock. The title of the rule has been amended to “Mortality management plan” to describe the rule more accurately. The rule has been revised to change the phrase “manure management plan” to “permit to operate”, adds “mortality management” to accurately describe the plan, adds reference 939.04 and removes reference to 953.26 and 1511.022 of the Revised Code, and adds the option for the director to approve methods of mortality management not identified in a permit to operate in the event of catastrophic mortality losses.

OAC 901:10-2-16 *Permit to operate and operating record requirements* details operating record requirements for concentrated animal feeding facilities and certified livestock managers. The rule has been amended to: include the reference to 901:10-2-05 of the Administrative Code; adds language to clarify the rule for ease of reading; adds the requirement that records shall include volume of solids accumulation, design treatment volume, total design storage volume and approximate number of days remaining until manure reaches maximum operating level as specified in the manure management plan; removes the requirement to keep records documenting the current design of the manure storage or treatment facility; adds the requirement that land application records shall include land application equipment records being routinely monitored; adds that the land application areas identified in the manure management plan shall be accompanied by a map; adds the requirement that the owner shall identify appropriate site-specific conservation practices that will be implemented on the land application area; adds the requirement that the observation frequency of subsurface drain outlets and concentration surface flow areas during application of liquid manure shall be based on site specific conditions; adds the requirement that when liquid manure is applied that visual monitoring of subsurface drain outlets and concentrated surface flow areas shall occur immediately following land application; removes the statement “Land application areas as described on a soil survey map”; removes the statement “The number of years needed to reach one hundred fifty parts per million Bray P1 or equivalent if manure application rates exceed the phosphorus crop removal rates”; changes “phosphorous” to “phosphate”; further defines weather conditions to include temperature, precipitation and wind speed and direction; adds that land application records shall include forecasted chance and amount of precipitation for a twenty-four hour period following land application; adds that the records for implementation of distribution and utilization methods shall include an acknowledgment between the owner and operator and the manure recipient pursuant to rule 901:10-2-11 of the Administrative Code; adds the requirement that records shall be maintained documenting the implementation of best management practices used to ensure that

confined animals will not have direct contact with waters of the state; further details that certified livestock managers shall describe the acres of land application of manure by adding that maps identifying the land application area; adds the requirement that records shall be kept of the nitrogen leaching risk assessment procedure and the phosphorus soil test risk assessment procedure and an explanation of the basis for determining manure application rates adding the reference of 901:10-2-14; and changes “nitrogen and phosphorus” to “nutrient.”

OAC 901:10-2-17 *Emergency response plan* sets forth the requirements for emergency response plans. The rule has been amended to: replace “owner or operator” with “facility”; adds that the procedures for reporting may also be done by text message and electronic mail; adds that when reporting the name or the location and description of the waters shall be included; clarifies who to contact when an emergency requiring immediate reporting occurs; and reformats parts of the rule for easier understanding.

OAC 901:10-2-18 *Closure plan requirements* outlines the requirements and procedures for when a facility no longer seeks a permit to operate from the Department. The rule has been amended to add that the holders of NPDES permits and permit to operate holders to the list of permittees who must submit a closure plan when ending permit coverage, replaces “all of” with “the entire”, adds “the timing and description of methods to be used” to the items that must be submitted when ending coverage, and reformats parts of the rule for easier understanding.

OAC 901:10-3-02 *Effluent limitations definitions and applicability* outlines effluent limitations definitions and applicability for NPDES permitted concentrated animal feeding operations. The rule has been amended to replace the word “facility” with “operation” and removes regulatory restrictive words as required by Senate Bill 9. No substantive changes have been made to this rule.

OAC 901:10-3-03 *Horses and sheep* applies to discharges resulting from the production areas at horse and sheep concentrated animal feeding operations. The rule states that there shall be no discharge of such manures to the waters of the state. The rule has been amended to correct spelling errors and update references that have changed due to reformatting the rule. No substantive changes have been made to this rule.

OAC 901:10-3-05 *Effluent limitations for ducks category of feedlots* applies to discharges resulting from the production areas at duck concentrated animal feeding operations. The rule states that there shall be no discharge of such manures to the waters of the state. The rule has been amended to update references that have changed due to reformatting the rule and removes regulatory restrictive words as required by Senate Bill 9. No substantive changes have been made to this rule.

OAC 901:10-3-06 *Swine, poultry, and veal calves* applies to discharges resulting from the production areas at swine, poultry, and veal calves concentrated animal feeding operations.

The rule states that there shall be no discharge of such manures to the waters of the state. The rule has been amended to update references that have changed due to reformatting the rule and replaces “owner or operator” with “permittee.” No substantive changes have been made to this rule.

OAC 901:10-3-10 *Standard permit terms and conditions* outlines the standard permit terms and conditions. This rule has been amended to: replace “owner or operator” with “permittee”; adds revocation and reissuance and termination to further describe permit actions and duty to comply; in addition to practices the revision adds the word “operations” to describe what is regulated under the permit; adds the word “waste” to water; changes “department” to “director”; adds “individual who performed the analyses” as information to include in the records of monitoring; and revises the division’s name to Division of Livestock Environmental Permitting.

OAC 901:10-3-11 *Stormwater permits general and individual* outlines the process for obtaining a stormwater permit. This rule will be rescinded.

OAC 901:10-4-01 *General permit to operate requirements* outlines the requirements for a general permit to operate. The rule is being amended to: remove “general permit” leaving “general permit to operate”; adds “concentrated animal feeding” to the word “facility” for further description; removes references and requirements of facilities with NPDES permits; removes construction stormwater sources and a facility that requires NPDES from the list of facilities that are eligible for a general permit to operate; adds “deny, modify, revoke and reissue, or terminate” to items that the director will follow the public notice procedures in 901:10-6 and adds the director will afford the affected parties the opportunity to request a hearing under Chapter 119; adds the reference of Chapter 901:10 of the Administrative Code for noncompliance; and adds that when a general permit to operate is revoked and reissued, the entire permit is reopened and subject to review and the permit will be reissued for a new term.

OAC 901:10-4-03 *Notification of coverage* sets forth the notice requirements for those desiring to be covered by a general permit to operate. If all the information is present, the director will notify the public and provide a thirty-day window to submit public comments regarding the prospective permit. The rule has been amended to: revise the title to “General permit to operate, notification of coverage” to better reflect the rules in the chapter; the words “concentrated animal feeding facility” has been added to better describe who the rules apply to; adds the deadline is specified in the general permit to operate; removes facilities that are regulated by a NPDES permit; fixes grammatical errors; adds a reference of 901:10-2-11 of the Administrative Code; removes that the identification of the permit to install number should be included on the notice of intent; removes the reference to 901:10-3-02 to 901:10-3-11 of the Administrative Code; adds that the hydrologic unit code should be included on the notice of intent as established by the United States geological survey; changes “owner/applicant/person” to “owner or operator”; and removes regulatory restrictive words as required by Senate Bill 9.

OAC 901:10-4-04 *Criteria for issuing and renewing NPDES general permit to operate* outlines the criteria for issuing and renewing NPDES general permits to operate. This rule will be rescinded.

OAC 901:10-5-01 *Complaints* outlines the procedure for complaints. The rule has been amended to: add that a complaint may be submitted to the director about a certified livestock manager; removes the reference to 40 CFR 122.23; adds that a return address must be provided when a complaint is made in writing; adds “concentrated animal feeding” to “facility” for further description; adds that the location of the activities that led to the complaint should be included when a complaint is made; adds “with enforcement” to describe what the director may notify a complainant of; adds details regarding when and how the director will conduct an investigation of a complaint; adds the reference of chapter 903 of Revised Code; adds that the director will provide a written response to all complainants concerning any alleged violation of Chapter 903 of the Revised code and any rules adopted thereunder; and removes the reference to NPDES permits.

OAC 901:10-5-02 *Right to enter property for investigations and inspections* outlines the procedure regarding the right to enter property for investigations and inspections. The rule is being amended to: separate the requirements for “inspections” from “investigations”; adds that the director has the authority to enter on any public or private property to conduct investigations in response to complaints according to chapter 903 of the Revised Code; adds certificate in conjunction with permit; changes court from “common pleas” to one of “competent” jurisdiction; corrects grammatical errors; adds details of how inspections will be completed by the director when a complaint has been filed; and revises language to clarify the rule.

OAC 901:10-5-03 *Enforcement procedures* outlines the enforcement procedures for violations of Chapter 903 of the Revised Code or the rules in Chapter 901:10 of the Administrative Code. The rule is being amended to: replace the term “agent or employee of the department” with “director”; removes and adds references to the Ohio Revised Code; removes the reference to NPDES permits; adds the term “concentrated animal feeding facility or certified livestock manager” to further describe who the rule applies to; adds or revises language to clarify the rule; removes regulatory restrictive words as required by Senate Bill 9; and adds references of 903.16 and 903.17 of the Revised Code.

OAC 901:10-5-04 *Civil penalties* sets forth the civil penalty procedures and the penalty matrix for violations of this chapter. The rule is being amended to: clarify who the rules apply to; adds “concentrated animal feeding facility or certified livestock manager” to further describe who the rule applies to; reformats the rule for ease of readability; changes “director’s designated representatives” to “director”; removes the term “review compliance certificate”; removes regulatory restrictive words as required by Senate Bill 9; and adds a reference to section 903.07 and 903.16 of the Revised Code.

OAC 901:10-6-05 NPDES fact sheets sets forth the requirements for a fact sheet that must be prepared and mailed to all those interested. The rule has been amended to: remove NPDES both in the title and any reference within the rule; adds descriptive language of “to install, draft permit to operate and draft permit to operate renewal” to further describe what permits a fact sheet will be prepared for; adds and revises references to the Revised Code; changes “specified proceedings” to “action taken by the director”; removes regulatory restrictive words as required by Senate Bill 9; and adds that public notices will be electronically mailed to persons subscribed to the mailing list maintained by the department.

OAC 901:10-6-06 Public information requires ODA to maintain a mailing list for interested persons. Removes regulatory restrictive words as required by Senate Bill 9. No substantive changes have been made to this rule.

- 3. Please list the Ohio statute(s) that authorize the agency, board, or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

O.R.C. 903.08; 903.10, 903.01, 903.02, 903.03, 903.04, 903.05, 903.07, 903.08, 903.081, 903.082, 903.09, 903.10, 903.12, 903.15, 903.17, 903.20

- 4. 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?**
If yes, please briefly explain the source and substance of the federal requirement.

No

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

- 6. 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)?**

Under Chapter 903 of the Revised Code, the Department is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs) and must establish a permitting system for such regulation. These regulations ensure the state's largest livestock operations follow science-based guidelines that protect the environment and the public while allowing the facility to be productive.

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

All CAFOs and CAFFs covered by these rules are inspected and any complaints regarding unsafe operations and/or discharges are investigated. The rules are judged as being successful when inspections and investigations find few to no violations or structural failures, and when there is no increase in the number of discharge reports filed with the Department.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. 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.

These rules were reviewed and amended by the Concentrated Animal Feeding Facility Advisory Committee (CAFF Advisory Committee.) The Committee met multiple times to discuss the content of the rules up for review and the suggested revisions.

The current composition of the committee is:

David Neef – Ohio Pork Producers Council
Chris Weaver – Ohio Dairy Producers Association
Franklin Phelps – Ohio Cattlemen’s Association
Tom Hertzfeld, Jr. – Ohio Poultry Association
Roger High – Ohio Sheep Improvement Association
Todd Price, DVM – Ohio Veterinary Medical Association
Tony Anderson – Ohio County Commissioners Association of Ohio
Eric Dresbach – Ohio Water Environment Association
Pete Bucher – Ohio Environmental Council
Dick Lorenz – Water Management Association of Ohio
Jason Menchofer – Ohio Environmental Health Association
Jessica D’Ambrosio – Statewide Environmental Advocacy (TNC)
Mike Monnin – Public Representative
Lori Scott Martensen – Public Representative
Doug Billman – Public Representative
David Quallen – Public Representative
Brad Lodge – Ohio Department of Natural Resources
Rick Wilson – Ohio EPA
Maurice Eastridge, PhD – The Ohio State University
Sam Mullins – Ohio Department of Agriculture

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

OAC 901:10-1-06 and 901:10-2-16

On August 17, 2021, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. As part of this meeting, the CAFF Advisory Committee discussed and reviewed proposed

revisions to OAC 901:10-1-06 and 901:10-2-16. Both rules and the proposed revisions were discussed in great length. Ultimately, rule OAC 901:10-1-06 was tabled for discussion at future meetings and rule OAC 901:10-2-16 was accepted by the committee as presented.

On November 9, 2021, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. During the meeting, the discussion continued on rule OAC 901:10-1-06. Again, the discussion was lengthy and ultimately the rule was tabled for discussion at future meetings. However, the CAFF Advisory Committee agreed to form a subcommittee of 7 individuals to take a closer look at the proposed revisions to the rule and carry on the discussion in non-regularly scheduled subcommittee meetings. During the February 1, 2022, regularly scheduled CAFF Advisory Committee meeting, the CAFF Advisory Committee formed the subcommittee to review OAC 901:10-1-06. No discussion on the rule occurred during the February 1, 2022, CAFF Advisory Committee meeting.

On March 10, 2022, and April 7, 2022, the subcommittee to discuss and review OAC 901:10-1-06 held meetings. During the March 10, 2022, subcommittee meeting, the subcommittee accepted proposed revisions for portions of OAC 901:10-1-06. Specifically, the subcommittee approved revisions made to paragraph (C) and paragraph (D). Further discussion was held on three provisions proposed by ODA to paragraph (A). The rule was once again tabled for discussion, which continued during the April 7, 2022, subcommittee meeting. During the April 7, 2022, subcommittee meeting, the subcommittee voted to remove the three provisions in paragraph (A) proposed by ODA and accept all other proposed revisions. On February 16, 2023, during the CAFF Advisory Committee's regularly scheduled quarterly meeting, the CAFF Advisory Committee moved to accept the revised OAC 901:10-1-06 as presented by the subcommittee.

OAC 901:10-1-04, 901:10-5-01, and 901:10-5-02

On February 1, 2022, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. As part of the meeting, the CAFF Advisory Committee discussed and reviewed proposed revisions to OAC 901:10-1-04, 901:10-5-01, and 901:10-5-02. For OAC 901:10-1-04, ODA proposed fee increases for all permits administered by the Division of Livestock Environmental Permitting and justified these increases with financial and budgetary information. During the meeting, the CAFF Advisory Committee voted to accept the fee increases as proposed by ODA. After discussing rules OAC 901:10-5-01 and 901:10-5-02, the CAFF Advisory Committee decided to table the rules for further discussion at future meetings.

On February 16, 2023, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. Rules OAC 901:10-5-01 and 901:10-5-02 were discussed in length, but were eventually tabled for discussion at future meetings again. These discussions were held on June 20, 2023, August 22, 2023, and November 14, 2023, all during the CAFF Advisory Committee's regularly

scheduled quarterly meetings. After several different iterations and proposals, the revised versions of OAC 901:10-5-01 and 901:10-5-02 were approved by the CAFF Advisory Committee on November 14, 2023.

OAC 901:10-2-03, 901:10-2-15, 901:10-2-17, 901:10-2-18, and 901:10-6-06

On June 20, 2023, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. During the meeting, the CAFF Advisory Committee reviewed and discussed rules OAC 901:10-2-03, 901:10-2-15, 901:10-2-17, 901:10-2-18, and 901:10-6-06. Other than minor changes made at the direction of the CAFF Advisory Committee, all revisions to each of these rules were voted on and approved by the committee during this meeting.

OAC 901:10-1-01, 901:10-1-11, 901:10-3-02, 901:10-3-03, 901:10-3-05, 901:10-3-06, and 901:10-3-10

On August 22, 2023, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. During the meeting, the CAFF Advisory Committee reviewed and discussed rules OAC 901:10-1-01, 901:10-1-11, 901:10-3-02, 901:10-3-03, 901:10-3-05, 901:10-3-06, and 901:10-3-10. Most of the discussion revolved around OAC 901:10-1-01 *Definitions*. All revised definitions were approved by the committee except for the revised definition to *Agricultural Stormwater Discharge*. As a result, the rule was tabled for discussion at a future meeting. Other than minor changes made at the direction of the CAFF Advisory Committee, all revisions to the other rules mentioned above were voted on and approved by the committee during this meeting.

Rule OAC 901:10-1-01 was reviewed and discussed by the CAFF Advisory Committee for a second time during the regularly scheduled CAFF Advisory Committee meeting on November 14, 2023. The CAFF Advisory Committee voted on and approved the revised rule during this meeting.

OAC 901:10-2-07, 901:10-3-11, 901:10-4-01, 901:10-4-03, 901:10-4-04, 901:10-5-03, 901:10-5-04, and 901:10-6-05

On November 14, 2023, the CAFF Advisory Committee held its regularly scheduled quarterly meeting to discuss topics related to the administration of Chapter 903 of the Revised Code. During the meeting, the CAFF Advisory Committee reviewed and discussed rules OAC 901:10-2-07, 901:10-3-11, 901:10-4-01, 901:10-4-03, 901:10-4-04, 901:10-5-03, 901:10-5-04, and 901:10-6-05. Other than minor changes made at the direction of the CAFF Advisory Committee, all revisions to each of these rules were voted on and approved by the committee during this meeting.

11. 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 rules are based on scientific manuals for best management practices where applicable, including but not limited to "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" and "Agricultural Waste Management Field Handbook," June 1999.

12. 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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

As noted in question 10, the rules were changed as input was received from the various stakeholder groups and committees. Alternatives proposed at the meetings were analyzed, discussed, and often accepted. These alternatives were considered and parts adopted through interaction with the stakeholder community on what was appropriate and needed, and why some of these alternatives were not necessary and were too expensive to implement. The current rules were proposed as a result of consideration of these alternatives and will ensure public safety and environmental protection. For Chapter 901:10-3, these regulations implement federal regulations, and as the state regulations must be the same or equal to the federal regulations, no alternative regulations were considered.

13. 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 over this matter in R.C. 903.

14. 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 rules are already implemented without the above-mentioned amendments and are communicated to the affected communities. Additional education and outreach will be performed with the affected communities of the changes by the DLEP, as well as with the committee that meets up to four times a year. Permit holders and applicants will have educational materials made available to them, and Department staff will assist with identifying infrastructure and operational needs of permit holders. The staff members of the DLEP ensure that all permit holders in Ohio are treated in a similar manner.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:
a. Identify the scope of the impacted business community, and

Any livestock and poultry farms that are considered CAFOs and/or CAFFs as they are defined under the statute are required to comply with these rules.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

As currently implemented, the rules require each facility to be permitted and require time and cost to comply with the regulations, including the engineering and sanitary regulations affecting each facility. These rule amendments are not expected to have any new significant adverse impact.

The rules require soil and water testing depending on the facility. In addition, the rules require records to be generated and maintained, certain plans to be developed and adhered to, and to prevent any manure discharges into the waters of the State. Further, permit holders may be subject to fines and other enforcement actions for violations to ORC Chapter 903 or the rules adopted thereunder.

Each CAFO/CAFF must obtain either a permit to install, or a permit to operate, and other permits depending on the location and size of the facility. The fees for these permits can be found in OAC 10-1-04 and vary from \$500 to \$3,000, as proposed.

All manure storage structures at the applicant's property must be built in compliance with the standards set forth in rule. The Department's engineers and inspectors review and inspect these facilities to ensure compliance. In addition, depending on the location of the facility the applicant may need to conduct water testing in order to determine the ground water quality characteristics. These tests are done to determine the soil and water characteristics of the site in order to provide the applicant the information necessary to most efficiently plan the facility's manure storage locations and operations.

The cost of the plans required by these rules varies widely based on the location of the facility, the size of the facility, and if an independent contractor is selected to complete these plans.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No.

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

The regulatory intent of the rules is to ensure public safety and environmental protection of Ohio's waterways and groundwater by regulating how Ohio's largest livestock and poultry farms handle and store manure. These rules achieve this protection by requiring standards that permit Ohio's farms affected by this regulation to still operate cost-effectively. Therefore, the adverse impact is considered to be justified.

Regulatory Flexibility

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

The regulations have different requirements depending on the size of the animal feeding facility. Major concentrated animal feeding facilities, those CAFFs that are 10 times larger than the Large CAFF threshold (i.e., 7,000 mature dairy cows, 25,000 swine, etc.), are required to be sited at greater distances from surface water sources than large concentrated animal feeding facilities. The difference in requirements reflects additional safety requirements due to the increased amount of liquid or solid manure stored at the facility and the possible risk of contamination. Small and Medium facilities, if they have no discharges, are not regulated by these rules.

19. 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 is primarily concerned with protecting public safety and the environment through compliance with these rules. Whenever possible, the Department will treat administrative violations that do not involve environmental damage as opportunities for improvement through warning notices and solicitation of corrective actions. Harsher enforcement options will be reserved for offenders who do not cooperate or those that have repeated violations.

20. 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.