

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:13-1-19

Rule Type: Amendment

Rule Title/Tagline: Nutrient management planning requirements for watersheds in distress.

Agency Name: Department of Agriculture

Division: Soil and Water Conservation

Address: 8995 E. Main St. Reynoldsburg OH 43068

Contact: Renee Schmauch **Phone:** 614-728-6295

Email: renee.schmauch@agri.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 4/19/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 939.02
5. **What statute(s) does the rule implement or amplify?** 939.02
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable
7. **What are the reasons for proposing the rule?**

The rules in this package are being filed in accordance with the five year rule review process.
8. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

OAC 901:13-1-19 outlines the nutrient management planning requirements for watersheds in distress. The rule has been amended to reduce the frequency of review of these plans. The Soil and Water Districts along with the Department assess the contents and the feasibility of the nutrient management plans on a yearly basis with the producers. Because of this yearly assessment the Department found that performing a review on the nutrient management plan every three years is excessive and costly. To reduce the time commitment, cost to the producer for soil samples and other requirements for nutrient management plans, the Department has proposed to review them every five years rather than three. Further, the rule makes stylistic changes according to the LSC rule drafting manual.

9. **Does the rule incorporate material by reference? Yes**
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Pursuant to section 121.75 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. The Field Office Technical Guide that has been incorporated into this rule may be located at www.nrcs.usda.gov.

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

OAC 901:13-1-19 (B) has been revised to restore the stricken language of "The deadline will be no earlier than six months and no longer than two years once a watershed has been designated distressed."

OAC 901:13-1-19 (E) has been revised to help clarify the rule. Also, the revision restores the timeframe that records shall be made available for review by the director and in addition increases the time frame from 24 hours to no later than forty-eight hours.

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not Applicable

13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

Operations must invest time and resources in implementing the best management practices outlined by the rules of this chapter. Individuals who violate a provision of ORC Chapter 939 and OAC Chapter 901:13-1 may be subject to civil penalties or be required to take corrective actions as outlined in these rule. There is no quantifiable impact for those individuals who remain in compliance with the standards in ORC Chapter 939 and OAC Chapter 901:13-1. However, individuals who do commit a violation of these rules may be subject to civil fines in amounts from \$250 to \$10,000. The amount of the violation depends on the particular rule violated, the severity of the violation, and any past history of non-compliance. Further, the quantified impact of corrective actions will depend entirely on the violation and the means to correct that violation. Implementation of these best management practices could result in overall cost savings through more efficient nutrient use and higher yields in their agricultural practices.

14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes

16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not Applicable

III. Common Sense Initiative (CSI) Questions

17. Was this rule filed with the Common Sense Initiative Office? Yes

18. Does this rule have an adverse impact on business? Yes

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

The rule requires all owners, operators, or persons responsible for applying nutrients on more than fifty acres on an annual basis within a watershed in distress to develop a nutrient management plan in accordance with the

rule. Failure to have a nutrient management plan prior to applying manure or nutrients could result in a civil penalty being levied.

- 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? Yes**

Failure to comply with this rule could result in a civil penalty in accordance with OAC 901:13-1-99.

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

The rule requires all individuals required to have a nutrient management plan submit an attestation to the Department affirming that they have a completed nutrient management plan. Further, operating records must be kept and maintained however they do not need to be submitted as a condition of compliance.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

Operations must invest time and resources in implementing the nutrient management plan outlined by the rules of this chapter. Individuals who violate a provision of ORC Chapter 939 and OAC Chapter 901:13-1 may be subject to civil penalties or be required to take corrective actions as outlined in these rules. Implementation of the nutrient management plans could result in overall cost savings through more efficient nutrient use and higher yields in their agricultural practices.

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No**

- A. How many new regulatory restrictions do you propose adding to this rule?**

Not Applicable

- B. How many existing regulatory restrictions do you propose removing from this rule?**

Not Applicable

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable

- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable

Rule Summary and Fiscal Analysis

Part C - Environmental Rule Questions

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.

(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.

Jennifer Bowman Represents Rural Interests
Kate Bartter Arnold Knowledge or Interest
Etta Reed Knowledge or Interest, Chair
Fran Buchholzer Knowledge or Interest
David Hanselmann Represents Urban Interests
Jerry McBride Designated by OFSWCD, Vice Chair
Anthony Debevc Knowledge of Interest in Ag Production
Director Ann Vogel Ex Officio, Director of Environmental Protection
Director Mary Mertz Ex Officio, Director of Natural Resources
Cathann Kress Ex Officio, Vice President of Agricultural Administration of OSU
Jeff Duling Ex Officio, Officer of the Ohio Federation of SWCD
Kirk Hines Designated Executive Secretary
Crystal Davis Alliance for the Great Lakes
Rob Krain Black Swamp
Kurt Leib Capital Advocates
Rob Eshenbaugh Capitol Advocates

Cheryl Subler CCAO
Russ Terry Ducks Unlimited
Keith Westrick Grand St Marys Restoration Commission
Matt Fisher Lake Erie Foundation
Gail Hesse National Wildlife Federation
Chris Henney Ohio Agribusiness Assoc.
Elizabeth Harsh Ohio Beef Council/Ohio Cattlemen's Association
Tadd Nicholson Ohio Corn & Wheat
Scott Higgins Ohio Dairy Producers
Amalie Lipstreu Ohio Ecological Food and Farm Association
Trent Dougherty Ohio Environmental Council
Vickie Askins Ohio Environmental Stewardship Alliance
Adam Sharp Ohio Farm Bureau
Jack Irvin Ohio Farm Bureau
Larry Antosh Ohio Farm Bureau
Leah Curtis Ohio Farm Bureau
Roger High Ohio Farm Bureau
Tony Seegers Ohio Farm Bureau
Joe Logan Ohio Farmers Union
Janelle Mead Ohio Federation of Soil and Water Conservation Districts
Kent Scarlett Ohio Municipal League
Cheryl Day Ohio Pork Producers Council
Jim Chakeres Ohio Poultry Association
John Armstrong Ohio Seed Improvement Assoc
Fran Buchholzer Ohio Soil and Water Conservation Commission
Etta Reed Ohio Soil and Water Conservation Commission
Jerry McBride Ohio Soil and Water Conservation Commission
Kate Bartter Arnold Ohio Soil and Water Conservation Commission
Jen Bowman Ohio Soil and Water Conservation Commission
Tony Debevec Ohio Soil and Water Conservation Commission
Brandon Kern Ohio Soybean Association
Kirk Merritt Ohio Soybean Council
Adam Ward Ohio State University
Heidi Fought Ohio Township Association
Brian Laurent Ohio Turf Association
Larry Fletcher Ohio's Lake Erie Shores and Islands
Kris Patterson Partners for Clean Streams
Jim Inglis Pheasants Forever
Adam Rissien Sierra Club, Ohio Chapter
Jessica D'Ambrosio The Nature Conservancy
Peggy Hall The Ohio State University
Sandy Spang Toledo Metropolitan Area Council of Governments

Kari Gerwin Toledo Metropolitan Area Council of Governments
Bill Stanley The Nature Conservancy
Jessica D'Ambrosio The Nature Conservancy

- (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? No**

Please indicate the reasons for not providing the information.

Natural Resources Conservation Service (NRCS) Conservation Practice Standard, Nutrient Management, Code 590. A copy of which may be found here: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1192371.pdf NRCS,

Field Office Technical Guide (FOTG). A copy of which may be found here: <https://efotg.sc.egov.usda.gov/>

- (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? No**