



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

**Agency Name:** Department of Agriculture

**Rule Contact Name and Contact Information:** Kelly McCloud Kelly.McCloud@agri.ohio.gov

**Regulation/Package Title:** Soil & Water Conservation – Five Year Rule Review 2019

**Rule Number(s):** 901:13-2-(01-03) and 901:13-3-(01-05)

**Date of Submission for CSI Review:** October 24, 2019

**Public Comment Period End Date:** November 8, 2019

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended: 8 rules (FYR? 8)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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.**

The Ohio Department of Agriculture, Division of Soil and Water Conservation provides resources and support to local soil and water districts across the state of Ohio. Ohio Administrative Code Chapters 901:13-2 and 901:13-3 are administrative in nature and ensure compliance with the Ohio Open Meetings Act and provide a unified election process for local districts. The rules have been reviewed and amended pursuant to Chapter 119 of the Ohio Revised Code (ORC). The rules and the proposed amendments are as follows:

**OAC 901:13-2-01** sets for the notice requirements for promulgating rules by the Ohio soil and water commission. The rule has been amended to remove the newspaper reporting requirement.

**OAC 901:13-2-02** outlines the public meeting notice requirements of the Ohio soil and water conservation commission. This rule is consistent with the requirements of the Open Meetings Act. Further, the rule has been amended to include the Department's website in order to be compliant with the incorporation by reference rules.

**OAC 901:13-2-03** states that all meeting minutes of the Ohio soil and water conservation commission shall be promptly recorded and available for public inspection. The rule was amended to indicate that the meeting minutes are available for public records request at any time and not just during business hours.

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**OAC 901:13-3-01** outlines the nomination process for candidates to local soil and water districts. The rule has been amended to make clarifying changes which should assist in comprehension of the rule.

**OAC 901:13-3-02** sets out the eligibility requirements of both candidates and voters. The rule has been amended to remove language from this rule regarding voting and ballots. This language has been moved to rules 901:13-3-03 and 04.

**OAC 901:13-3-03** establishes the notice requirements for local soil and water district elections. The rule has been amended to make clarifying changes which should assist in comprehension of the rule. Further, the notice now requires that the local districts establish when absentee votes must be postmarked and received by. Additionally, the rule extends the notice period in order to give interested voters more time to become aware of the election.

**OAC 901:13-3-04** outlines the election process for local soil and water district elections. The rule has been amended to establish criteria for valid ballots and to make clarifying changes which should assist in comprehension of the rule.

**OAC 901:13-3-05** outlines the process of challenging an election. Originally, the rule required that all ballots and registration records be placed in the office of the local county sheriff. This has been amended to require storage of these records at the Department's office.

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

R.C. 940.02; 940.04

**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?**

No.

**5. If the regulation 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)?**

These rules are required in part by the Ohio Open Meetings Act in order to ensure proper notice of public meetings. Further, the rules establish a unified procedure for all local soil and water district elections. This unified process ensures that all are treated equitably.

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

The rules are measured by compliance with the notice requirements and level of complaints regarding the election process.

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.

Pursuant to ORC 940.02, the Ohio Soil and Water Commission may adopt appropriate rules governing the conduct of elections.

During a Commission meeting held on April 26, 2018, the Department discussed the draft rules and the proposed process with the Commission. The Commission preliminarily approved the draft version of the rules. The composition of the Commission at that time is as follows:

Tom Price	Chairperson
Fred Cash	Vice Chairperson
Bill Knapke	Member
Etta Reed	Member
Bill Tom	Member
Dennis Corcoran	Member
Kent Stuckey	OFSWCD Appointee
James Zehringer (Represented by Jim Raab)	Director, ODNR
Cathann (Represented by Scott Shearer),	Vice President, OSU CFAES
David Daniels (Represented by Kirk Hines)	Director, ODA
Craig W. Butler, (Represented by Russ Gibson),	Director, Ohio EPA
Harold Neuenschwander	OFSWCD Officer

On April 27, 2018, the Department sent via email the proposed rules to a large list of stakeholder groups. The stakeholders emailed were as follows:

Capitol Advocates	Rob Eshenbaugh
Capitol Consulting	Belinda Jones
Environmental Defense Fund	Katie Champan
Environmental Law & Policy Center	Madeline Fleisher
Lake Erie Charter Boat Association	Paul Pacholski
Lake Erie Foundation	Matt Fisher
Ohio Agribusiness Assoc.	Andrew Allman
Ohio Agribusiness Assoc.	Chris Henney
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Corn & Wheat	John Torres

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Ohio Corn & Wheat	Tadd Nicholson
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Environmental Stewardship Alliance	Vickie Askins
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Larry Antosh
Ohio Farm Bureau	Tony Seegers
Ohio Farm Bureau	Yvonne Lesicko
Ohio Farm Bureau	Leah Curtis
Ohio Farmers Union	Joe Logan
Ohio Farmers Union	Linda Borton
Ohio Federation of Soil and Water Conservation Districts	Mindy Bankey
Ohio Forestry Association	John Dorka
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soil and Water Conservation Commission	Tom Price
Ohio Soybean Council	Kirk Merritt
Ohio State University	Adam Ward
Ohio Turf Association	Brian Laurent
Ohio Wine Producers	Donniella Winchell

The Department received a large number of comments from the local soil and water districts regarding rule 901:13-3-03. Due to these comments, the Department amended the rule and sent the rules back to stakeholders on June 26, 2018.

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

As stated above, ODA received comments from the local soil and water districts concerning rule 901:13-3-03. This rule deals with the notice requirements of elections. Originally, the rule required that absentee votes must be postmarked and received five days after the conclusion of in-person voting. Many soil and water districts conduct the final day of in-person voting at an annual event where they also announce the winners of the elections. The original proposed rule would have prevented the districts from this tradition. Therefore, the rule was amended to allow the districts to establish the date by which absentee ballots must be postmarked and received. This allows districts the flexibility necessary to conduct their elections as they see fit.

**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?**

These rules are administrative in nature and therefore no scientific data was used.

**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?**

After discussion with the local soil and water districts, the rules as proposed represent the best regulatory system at this time.

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

The proposed rules establish a uniform set of election rules for all local soil and water districts to follow. These rules however provide enough flexibility for each district to define the process by which their district may follow.

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

The Department and the Commission are given the sole regulatory authority over this matter in ORC 940.02.

**15. 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.**

Additional education and outreach will be performed with the affected communities of the changes with this rule. The staff members of the Division of Soil and Water ensure that all Ohioans are treated in a similar manner.

**Adverse Impact to Business**

**16. 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;**

These rules impact the Ohio Soil and Water Conservation Commission, local soil and water districts, and the members and electorate of these districts.

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

Local soil and water districts must take time for compliance and post the requisite notices. Further, soil and water districts must be available for in-person voting and have the resources necessary to run an election.

**c. Quantify the expected adverse impact from the regulation.**

The quantified impact will depend on the method of notice which the local districts choose to utilize. The notice requirement allows districts to publicize these notices in a newspaper of general circulation or via the district's website. Newspaper advertisements will cost more for publication than posting to their own website. Costs will depend greatly on the newspaper that the district chooses to utilize.

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

As stated above, these rules are required in part by the Ohio Open Meetings Act in order to ensure proper notice of public meetings. Further, the rules establish a unified procedure for all local soil and water district elections. This unified process ensures that all are treated equitably. Therefore, the adverse impact is justified.

**Regulatory Flexibility**

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

As the regulatory intent of this rule is to ensure a unified process of election and notices, no alternative means for compliance was granted.

**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?**

There are no fines associated with these rules.

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

The Department has and will continue to provide assistance to the local soil and water districts.