



# Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Joseph Baker, Director

## Business Impact Analysis

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

Rule Contact Name and Contact Information: Renee Schmauch  
[Renee.Schmauch@agri.ohio.gov](mailto:Renee.Schmauch@agri.ohio.gov) 614-728-6295

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

Farmland Preservation

Rule Number(s): 901-2-01, 02, 04 through 14

Date of Submission for CSI Review: 5/22/2024

Public Comment Period End Date: 6/12/2024

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/ 1 rules (FYR? yes)

Amended/ 12 rules (FYR? yes)

Rescinded/\_\_\_ rules (FYR?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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

### **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 in Chapter 901-2 of the Ohio Administrative Code outline the Clean Ohio Local Agricultural Easement Purchase Program (LAEPP) as operated by the Ohio Department of Agriculture, Office of Farmland Preservation. This program preserves farmland the state of Ohio by working with landowners to place an agricultural easement on their property, guaranteeing that the land remains in agricultural use in perpetuity. In exchange for the agricultural easement, landowners are compensated through LAEPP funds.

**Rule 901-2-01** outlines the definitions as used in the chapter. The rule has been amended to a to clarify certain definitions and stylistic changes have been made to the rule to help with comprehension and understanding.

**Rule 901-2-02** sets forth the eligibility requirements for farmland to be considered for an agricultural easement within the program. Requirements include having the property valued, requiring that the application landowner have fee simple title in the land, and that the easement may not be subordinate to any other legal or equitable interest. The Department works with applicants to ensure that these requirements are met. The rule is being amended to make stylistic changes, revises language for clarification and adds a requirement that application property shall be zoned for agricultural use or a designation compatible with agricultural use.

**Rule 901-2-04** sets forth the landowner application procedure rules. The application requires basic information that the Department needs in order to evaluate all applicants. Additionally, the Department requires the identification of restrictive covenants and third party interests, as

well as, maps or aerial photographs depicting the property. The rule is being amended to make stylistic changes to the rule to help with comprehension and understanding.

**Rule 901-2-05** outlines the application ranking system used by the Department to determine which properties are best suited for an agricultural easement. The criteria includes the soil type and agricultural productivity, proximity to other protected areas, use of best management practices, proximity to development, and local comprehensive land use plans. The rule has been amended to make stylistic changes to help with comprehension and clarity.

**Rule 901-2-06** outlines the process at which properties are selected for an agricultural easement. The rule has been amended to make stylistic changes to help with comprehension and clarity. Further, removes the requirement that statements of no unsubordinated third party interests shall be included in the results of the title search, adds language to clarify what documents must be obtained and what conditions must be met by the landowner.

**Rule 901-2-07** sets forth the procedures for local sponsor certification. The rule has been amended to make stylistic changes to help with comprehension and clarity.

**Rule 901-2-08** sets forth the requirements for the present condition report as required in rule 901-2-06. The rule has been amended to make stylistic changes to help with comprehension and clarity.

**Rule 901-2-09** outlines how property appraisals are conducted under this chapter. The rule is being amended to make a stylistic change.

**Rule 901-2-10** requires certain language to be present on the deeds of agricultural easement. The rule is being amended to make a stylistic change.

**Rule 901-2-11** outlines the supervision and enforcement requirements of certified local sponsors. This supervision and monitoring ensure that the landowner abides by the terms of the easement. The rule is being amended to reduce regulatory restrictions according to Senate Bill 9 and makes stylistic changes for better comprehension and clarity of the rule. Further, when violations are not corrected by the landowner the amendment changes that the certified local sponsor, in consultation and approval by the department, **may** (changed from shall) initiate an action in the court of common pleas of the county in which the restricted land is located unless the deed of agricultural easement requires filing in another county which changes this rule from a requirement to an option.

**Rule 901-2-12** sets forth the procedure and requirements for the extinguishment of an agricultural easement. All agricultural easements obtained through this program are to be held in perpetuity. Should a situation arise that makes the easement impossible or impracticable to continue, the requirements of this rule must be followed. The rule is being amended to further define the agricultural easements that must be held in perpetuity and amends the rule to state that an easement can be extinguished only by a court proceeding determining agricultural use is no longer viable using the criteria specified in paragraphs A to G of this rule. Further, the rule has been amended to make stylistic changes to help with comprehension and clarity.

**Rule 901-2-13** outlines the process for the recoupment of funds used to purchase an agricultural easement. The rule is being proposed with no changes being made.

**Rule 901-2-14** sets forth the procedures for meetings of the Farmland Preservation Advisory Board. The rule is being amended to remove the option of publishing all meetings with Gongwer or Hannah news service, removes the option of obtaining prior notice of meetings by enrolling in the department's newsletter and replaces this option with requesting prior notification in writing either by emailing the Farmland Preservation department or writing to the Ohio Department of Agriculture.

- 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.**

ORC 901.22, 901.21, 901.23

- 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)?**

Agriculture is a land-based industry, and farmland preservation is a key component of the Ohio Department of Agriculture's work to maintain the state's farming heritage while positioning Ohio for agricultural growth. Food and agriculture together constitute the state's largest industry, contributing more than \$124 billion annually to the state's economy and providing jobs to one in seven Ohioans. The Department's Office of Farmland Preservation assists farmers, landowners, and local communities with their farmland preservation efforts.

Between 1950 and 2000, Ohio lost more than 6.9 million acres of farmland, representing nearly one-third of Ohio's agricultural land. To ameliorate this trend, the Ohio General Assembly created the Clean Ohio Easement Fund in 2001. The Director of the Ohio Department of Agriculture is authorized to use this fund to facilitate the acquisition of agricultural easements by making matching grants to eligible entities. Further, Ohio Revised Code 901.22 requires the Director to adopt rules that establish the procedures and eligibility criteria for making matching grants.

The clean Ohio easement fund has been used to preserve 602 farms in 62 counties totaling more than 97,762 acres (as of June 2023). These voluntary, legal agreements between the landowner, the local community, and the state ensure that farmland remains in agricultural use forever. Under an agricultural easement, the land itself stays under private ownership, but the easement prohibits any future non-agricultural development by landowners. Due to the importance of agriculture in this state, these rules help to protect Ohio's agriculture industry and preserve farmland from conversion to non-agricultural uses.

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

This rule is considered successful when there is continued interest in the program and when the program finds few violations of their agricultural easements.

**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.*

The following stakeholders were contacted via email in February of 2022. The comment period remained open for two weeks.

Chris Davis	Auglaize SWCD
Andy Dickerson	Cardinal Land Conservancy
Noelle O'Neal	Cardinal Land Conservancy
Amanda Tubaug	Carroll SWCD
Joe Mayle	Carroll SWCD
Melissa (Lee) Godsil	Champaign SWCD
Jason Sneed	Clinton SWCD
Christy Hardin	Clinton SWCD
Deb Bigelow	Coshocton SWCD
Zach Wallace	Coshocton SWCD
Jared Coppess	Darke SWCD
Elizabeth Farver	Darke SWCD
Scott Stephens	Delaware SWCD
Rebecca Longsmith	Delaware SWCD
Jonathan Ferbrache	Fairfield SWCD
Chet Murphy	Fayette SWCD
Malcolm Miller	Fayette SWCD
Eric Riefers	Fulton SWCD
Jackie Savage	Fulton SWCD
Amy Moore	Fulton SWCD
Carmella Shale	Geauga SWCD
Keila Telfer	Harrison SWCD
Stuart Heavilin	Harrison SWCD
Billy Wilson	Harrison SWCD
Kelly Kiener	Jefferson Township (Franklin Co.)

Janis Bowling	Jefferson Township (Franklin Co.)
Dan Donaldson	Lake SWCD
Caitlin Ormsby	Lake SWCD
Kristi Hawthorne	Licking SWCD
Briana Hodgson	Licking SWCD
Bob Stoll	Logan County Land Trust
Renee Winner	Logan (RE-AL Winner Farms, Ltd.)
Julia Cumming	Madison SWCD
Michelle Mattix	Marion SWCD
Kyle Loper	Marion SWCD
Kreig Smail	Miami SWCD
Linda Raterman	Miami SWCD
Holly Buchanan	Montgomery County SWCD
Cynthia Berk	Montgomery County SWCD
Ed Everman	Montgomery County SWCD
Matt Stooksbury	Morrow SWCD
Lisa Crock	Muskingum SWCD
Van Slack	Muskingum SWCD
Melissa Devore	Muskingum SWCD
Mike Libben	Ottawa SWCD
Becky Simpson	Ottawa SWCD
Earl (Ray) Heithaus	Owl Creek Conservancy
Richard Stallard	Owl Creek Conservancy
Vicki Kauffman	Owl Creek Conservancy
Lisa Schott	Philander Chase Conservancy
Amy Henricksen	Philander Chase Conservancy
Jill Shriver	Philander Chase Conservancy
Erica Thomas	Richland SWCD
Matt Wallace	Richland SWCD
Greg Rouse	Ross SWCD
Robert Neal	Ross SWCD
Beth Diesch	Seneca SWCD
Rick Hassinger	Seneca SWCD
Michele Burns	Tecumseh Land Trust
Lauren Gjessing	Tecumseh Land Trust
Randy Evans	Three Valley Conservation Trust
Maria Fagin	Three Valley Conservation Trust
Caitlin Brown	Three Valley Conservation Trust
Tim Hansley	Union County
Brent Nickel	Union SWCD
Cindy Meyer	Warren SWCD
Molly M. Conley	Warren SWCD

Jim Spurgat	West Central Ohio Land Conservancy
William Roshak	West Central Ohio Land Conservancy
Chris Szell	Western Reserve Land Conservancy
Alex Czayka	Western Reserve Land Conservancy
Sarah Blakely	Western Reserve Land Conservancy
Robin Christensen	Western Reserve Land Conservancy
Jeff Benton	Farmland Preservation Advisory Board 01
Timothy Lynch	Farmland Preservation Advisory Board 02
Peggy Kirk-Hall	Farmland Preservation Advisory Board 03
Brian Williams	FP Adv Board 04
Bill Goodman	FP Adv Board 05
Bill Westbrook	FP Adv Board 06
Bill Westbrook	FP Adv Board 06
Joe Logan	FP Adv Board 07
Shane Coleman	FP Adv Board 08
Lucille L. Hastings	FP Adv Board 09
Jay Rausch	FP Adv Board 10
P. Arthur Brill	FP Adv Board 11
Bruce Goodwin	FP Adv Board 12
Kirk Hines	Deputy Director, ODA Division of Soil and Water
Rob Hamilton	Asst. Chief, SWCDs
Emily Heppner	ODA - SWCD Office
Dale Patton	IT

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

Several stakeholders submitted comments during the stakeholder comment period. The comments included a variety of topics such as objections to the requirements that the property shall be zoned for agricultural use, objections to the application ranking system, approval of the revision to the local sponsor certification procedures, objection to local sponsors supervising and enforcing zoning or recent zoning changes, objections to the addition of the department to approve prosecuting the enforcement action in the court of common pleas when violations occur, objections to the director approving or rejecting a request from the landowner for an extinguishment of an agricultural easement, objection to revising the farmland preservation advisory board meeting notification to just email, a comment on revising the definition of “Homestead” to expand it to include “agriculture-related improvements,” a suggestion to further define “public roadway intersections” to have the definition relate to a map, a comment to revise the phases regarding the “purchase agreement/Contingency,” objection to increasing the requirements for a landowner who wishes to generously donate their land, a recommendation for the department to consider how it can facilitate the program in areas that do not have local sponsors available, a recommendation for the department to consider taking action to increase transparency and protection of farmland easements from



encroachment by utilities and other eminent domain actions, recommendation to add definitions for applicant, application and landowner.

The department took into consideration all the comments submitted and revisions to the rules were made based on the comments. The revisions include adding additional language regarding agricultural zoning to include “designation compatible with agricultural use” in order to not restrict the rule to only property zoned agriculture, the revision which increased the total score regarding the application process was stricken, deleted the revision regarding zoning or recent zoning changes, enrollment in an agricultural district, and current agricultural use value enrollment, revised the rule to remove the requirement that the director shall be consulted with and approve prosecuting a violation in the court of common pleas, removed the requirement that the director and the certified local sponsor must approve or reject for an extinguishment, regarding the Farmland Preservation advisory board an option was added to request prior notification by submitting a request to be added to an email distribution list, the definition of “Homestead” was not revised because the definition in statute needs to be followed, the rule was not revised to further define public roadway intersections, removed the requirement regarding donated land applications.

**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 describe an application and selection process. As such, no scientific data was used to develop the rules of this chapter.

**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 a general matter, stakeholder participation in this rule package has indicated to the Department that this is the best regulatory scheme at this time. For those reasons, no other regulatory alternatives 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 these regulations through R.C. 901.22.

**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.**

This rule is already implemented transparently within the industry and the Department works with all local sponsors, applicants, and prospective applicants to educate and inform them on the regulations. Additional education and outreach regarding the implementation of the



amendments will be performed with the affected communities by the Department. The Office of Farmland Preservation ensures that all individuals 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 local sponsor, as defined in 901-2-01 and any landowner interested in an agricultural easement.

**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.*

There is no cost to apply for an agricultural easement and no requirement to do so. However, should a Local Sponsor decide to apply on behalf of a landowner, they must spend time and resources ensuring that their application is correct. The amount of time varies dramatically between easements. Additionally, should issues arise during the application process, an attorney/title agent may need to be consulted to update title work, deed descriptions, or find and remove old interests that encumber the land. Again, the cost for these solutions varies widely from the condition of the deed and by individual attorney/title agent. The quantified impact of this rule is minimal.

**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*).**

Yes. Nearly every rule was amended to clarify certain definitions and stylistic changes have been made to the rule to help with comprehension and understanding. Moreover, some of the changes remove certain requirements that are no longer necessary, or the rules have been streamlined to take advantage of technology.

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

In exchange for the purchase of the agricultural easement and the requirements of the application process, applicants are compensated on average of \$1,300 per acre. Further, as outlined above in paragraph six, food and agriculture together constitute the state's largest industry, contributing more than \$124 billion annually to the state's economy and providing jobs to one in seven Ohioans. To use clean Ohio easement funds to protect Ohio's farmland, the director is required to promulgate these regulations. When compared to the important

public purpose of the rules, the compensation provided to farm owners, and combined with the voluntary nature of the program, any adverse impact is outweighed by the benefits to Ohio citizens.

### **Regulatory Flexibility**

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

In order to ensure that the application and award process for these agricultural easements is as equitable as possible, there are no exemptions for smaller operations.

**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 paperwork violations pursuant to this Chapter. Should an applicant have errors in paperwork during the application process, the Department works with the applicant to help correct those errors and provide the necessary information.

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

The Department has online resources and has staff available to provide assistance.