



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):

Plant Health- Fertilizer Storage

Rule Number(s): 901:5-2-01 through 11

Date of Submission for CSI Review: 12/6/2024

Public Comment Period End Date: 12/30/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 4 rules (FYR? yes)

Amended/ 7 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Rescinded/ rules (FYR?)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.

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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 in chapter 901:5-2 of the Ohio Administrative Code Fertilizer Storage and Handling, regulate the storage and operations of storage units of liquid fertilizer in amounts exceeding five thousand gallons at any one location. The rules have been reviewed pursuant to a five-year rule review and are being proposed as follows:

901:5-2-01 sets for the definitions used in rules 901:5-2-01 through 11. The rule is being amended to reformat the rule for easier readability, updates the references to the ASTM and API standards as well as the effective dates, adds the NIST website where information is available, updates and corrects errors based on the Legislative Service Commission's (LSC) guide on writing rules.

901:5-2-02 requires that all storage facilities and vessels meet design requirements as set forth in other rules. The rule is being amended to removes all language regarding the rule being effective after a specific date because this is no longer applicable and corrects errors based on the Legislative Service Commission's (LSC) guide on writing rules.

901:5-2-03 sets forth the design requirements for bulk liquid fertilizer storage. The rule is being amended to remove the requirement that the stencils in letters shall be no less than four inches in height and removes the language regarding the specific date individuals shall come into compliance with these requirements because this is no longer applicable

901:5-2-04 sets the inspection, maintenance and repair standards for permanent storage vessels used to store liquid fertilizer. The rule is being amended to remove all language regarding the rule being effective after a specific date because this is no longer applicable and rewords the rule for easier readability.

901:5-2-05 regulates the operations of storage facilities. ODA is proposing this rule with no changes made.

901:5-2-06 sets forth the requirements for control and recovery of discharges. ODA is proposing this rule with no changes made.

901:5-2-07 sets forth the required records that shall be prepared and maintained. ODA is proposing this rule with no changes made.

901:5-2-08 sets forth requirements for the storage and handling of dry fertilizer. ODA is proposing this rule with no changes made.

901:5-2-09 sets standards for existing permanent storage vessels which have been erected on site. The rule is being amended to remove all language regarding the rule being effective after a specific date because this is no longer applicable, adds that the baseline inspection report shall be kept at the existing permanent storage site and to provide the Department with a copy of this report. In addition, the rule has been revised to improve readability.

901:5-2-10 sets the requirements to build permanent storage vessels on site. Since 2002 all new permanent storage vessels must have been built to meet or exceed API 650 standard. The rule is being amended to remove language regarding the rule being effective after a specific date because this is no longer applicable and to correct grammatical errors.

901:5-2-11 sets for the requirements for underground piping systems for loading and unloading liquid fertilizer. The rule is being amended to remove language regarding the rule being effective after a specific date because this is no longer applicable, updates the references to the ASTM standards and corrects errors based on the Legislative Service Commission's (LSC) guide on writing rules

- 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. 905.31, 905.44

- 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)?

The Department is authorized to promulgate these rules to ensure safety for the environment and citizens of Ohio when storing and handling fertilizers in Ohio.

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

The rules are judged as being successful when reported fertilizer releases, damages associated with the releases and complaints filed with the Department are not increasing.

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 on October 25, 2024, for a public comment period which remained open until November 8, 2024.

AmericanHort	Meagan Nace
AmericanHort	Craig Regelbrugge
Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Ice Miller	Samuel Porter
Nation Farmers Organization	Alva Heiss
Nation Farmers Organization	Tony Bensman
Nation Farmers Organization	Bill Stachler
NPMA SPAR	Kurt Scherzinger
Ohio Ag Council	Janice Welsheimer
Ohio Aggregates & Industrial Minerals	Patrick Jacomet
Ohio Agribusiness Assoc.	Aaron Heilers
Ohio Agribusiness Assoc.	Janice Welsheimer
Ohio Agribusiness Assoc.	Lauren Prettyman
Ohio Agribusiness Assoc.	Melinda Witten
Ohio Association of Meat Processors	Valerie Parks Graham

Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Christmas Tree Association	Valerie Graham
Ohio Christmas Tree Association	Roger Koch
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	Kimberly Shriver
Ohio Corn & Wheat Growers Assoc.	Luke Crumley
Ohio Dairy Producers	Scott Higgins
Ohio Environmental Council	Trent Dougherty
Ohio Environmental Council (OEC)	Pete Bucher
Ohio Environmental Council (OEC)	Chris Tavenor
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau	Jordan Hoewischer
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Jenna Reese
Ohio State Grange	Mike Russell
Ohio Green Industry Association	Tracy Schiefferle
Ohio Green Industry Association	Roni Peterson
Ohio Invasive Plants Council	Jennifer Windus
Ohio Invasive Plants Council	Gary Conley
Ohio Lawn Care Association	Mark Bennett
Ohio P.L.A.N.T.	Tony Seegars
Ohio Pest Management Association	Melinda Howells
Ohio Pest Management Association	Molly Mash
Ohio Pork Producers Council	Cheryl Day
Ohio Poultry Association	Jim Chakeres
Ohio Produce Growers & Marketers	Valerie Graham
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Association	Brandon Kern
Ohio Soybean Council	Kirk Merritt
Ohio State Beekeepers Assoc. (OSBA)	Jamie Walters
Ohio State grange	Mike Russell
Ohio State University	Adam Ward
Ohio Turfgrass Foundation	Troy Judy
Ohio Turfgrass Foundation	Mark Bennett
The Nature Conservancy	Jessica D'Ambrosio
The Nature Conservancy	Bill Stanley

The Ohio State University	Peggy Hall
Plant Health- Invasive Plant Advisory Board	Dr. Theresa Culley
Plant Health- Invasive Plant Advisory Board	Thomas Macy
Plant Health- Invasive Plant Advisory Board	Kyle Natorp
Plant Health- Invasive Plant Advisory Board	Matthew Lamoreaux

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

The Department did not receive any stakeholder comments during the open comment period.

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 regulating fertilizer storage and handling are based on several industry standards, including model rules created by the American Association of Plant Food Control Officers (AAPFCO), the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), American Society for Testing Materials (ASTM), American Petroleum Institute (API) and working members of the agricultural industry.

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

The primary purpose of the rules in this package is the protection of the fertilizer user and the general public, as a result the rules are a minimum safety standard and alternatives are not appropriate. However, in many instances the regulated entities have adopted more stringent standards to ensure profitability and safety for their own employees.

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

The use, transport and storage of fertilizer can cross several regulatory jurisdictions. ODA uses open communication lines and cooperation with OEPA, ODNR and ODOC to ensure that each agency regulates only the specific area it has been granted statutory authority to act in.

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.

Continue to conduct routine and complaint initiated investigations and provide outreach and compliance assistance.

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

Fertilizer Retailers/Distributors and Farmers that operate or distribute in Ohio.

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.

Those persons wishing to market fertilizer or build systems for the storage of bulk fertilizer for agricultural use must follow the design, maintenance, inspection, and marking requirements contained in the rules in this package. This will add some periodic maintenance costs to replace worn parts or reapply markings. However, the standards for building both the fertilizer systems in these rules are industry standard and a new system would not be built purposely to lower standards even in the absence of these rules. The Department's role in regulating is to prevent accidental substandard work.

The Department can refuse, suspend, or revoke an existing registration or license for failing to comply with these rules.

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 value of properly built and maintained fertilizer systems far outweighs the any extra cost associated with such techniques. Accidental releases of these materials can harm the environment and people. The state and the industry have an interest in insuring accidents caused by faulty equipment or improper labeling never occur.

Additionally, the proper labeling of fertilizer is a consumer protection issue that reaches all parts of the agriculture industry. Proper labeling of these products ensures that farmers are able to produce their products in an efficient and cost-effective manner.

Regulatory Flexibility

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

No, whether they are a small business or a large business if they meet the definitions that require compliance then there are no exemptions.

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, as a matter of policy, does not impose fines or penalties for paperwork violations and first-time offenders.

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

These rules are already implemented within the industry and the Department works with all stakeholders in order to educate and inform them on the regulations.