



Common Sense Initiative

Mike DeWine, Governor
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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 Applicators

Rule Number(s): 901:5-4-01 through 07

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/ 6 rules (FYR? yes)

Amended/ 1 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Rescinded/ rules (FYR?)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 901:5-4 of the Ohio Administrative Code establishes a fertilizer certification program, which requires training, certification, and record keeping for individuals who apply fertilizer to over 50 acres of land for agricultural production. The rules drafted in this package focus on science-based practices which support responsible agriculture practices while allowing Ohio to continue to grow its vital agriculture industry. The rules have been reviewed pursuant to a five-year rule review and are being proposed as follows:

OAC 901:5-4-01 outlines the definitions as used in the chapter. ODA is proposing this rule with no changes made.

OAC 901:5-4-02 outlines requirements for obtaining a fertilizer certificate from the Department. The rule is being amended to remove language “Beginning September 30, 2017” because this date is no longer applicable and adds that the date of birth may be collected instead of social security number on the application.

OAC 901:5-4-03 sets forth the education requirements for obtaining a fertilizer certificate. ODA is proposing this rule with no changes made.

OAC 901:5-4-04 outlines record keeping requirements. ODA is proposing this rule with no changes made.

OAC 901:5-4-05 sets forth criteria for decision making that the Director of Agriculture may use to suspend, revoke, or deny an individual's fertilizer certificate. The rule is being proposed with no changes made.

OAC 901:5-4-06 states that all licensees and distributors who sell fertilizer in the state of Ohio must file their annual tonnage report on or before November 30 of each calendar year. The tonnage report indicates to the Department of Agriculture how much fertilizer that the licensees and distributors sold in the past year. The rule is being proposed with no changes made.

OAC 901:5-4-07 establishes the civil penalties that may be imposed for applying fertilizer in the western basin on frozen ground, saturated soil, and during certain weather conditions. The rule is being proposed with no changes made.

- 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 905.321, 905.322, 905.327, 905.36

- 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 has been statutorily tasked under Chapter 905 of the Revised Code with regulating fertilizer application in the state of Ohio. These rules provide training, education, and oversight of fertilizer applicators throughout the state to ensure both the safe use of fertilizer as well as preventing their misuse or mishandling.

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

The Department inspects and investigates complaints regarding the fertilizer application and misuse. The rules are judged as being successful when inspections and investigations find few violations, when applicators are registered with the Department, and when there is no increase in the number of complaints 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.

The following stakeholders were contacted via email on October 25, 2024, for a public comment period which remained open until November 8, 2024.

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| 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 |

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| 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 underlying statute was developed after years of examination and research of the algae bloom found in Grand Lake St. Mary's and Lake Erie. The education training requirements

and certification are based on best industry practices for the efficient and safe application of fertilizers.

- 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 lack of stakeholder participation in reviewing the rules in this package has indicated to the Department that this is the best regulatory scheme at this time. For that reason, 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 through Revised Code 905.321 and 905.322 to certify fertilizer applicators in the state.

- 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.**

These rules are already implemented within the industry and the Department works with all fertilizer applicators to educate and inform them on the regulations. The staff members of the Plant Health Division ensure that all fertilizer manufacturers 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 person who applies fertilizer for the purposes of agricultural production on more than fifty acres.

- 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.

Applicants for certification must complete a formal application with the information provided in the rule. This requires time for compliance. Individuals must pay a \$30 application fee for certification. Individuals who have either a private or a commercial pesticide applicator license are exempt from the fee requirement.

Applicants for certification and applicants for a renewal of their certification must attend and satisfy requirements for agricultural nutrient training. OSU charges \$35 for the certification program and the training manual is \$12.75. Applicants who have either a private or a commercial pesticide applicator license are required to take two hours of agricultural nutrient training. Applicants who do not have a pesticide applicator license are required to take three hours of agricultural nutrient training. All individuals seeking to renew their certificate must take two hour of agricultural nutrient training. This requires time for compliance as well as any fees associated with the course itself. There is no test associated with this training. Individuals who are certified crop advisors or certified livestock managers are exempt from this training requirement.

All fertilizer certificate holders must maintain a fertilizer application record. Statute requires certificate holders to maintain these records for a period of three years. The application records require time for compliance as well as storage. These records do not need to be submitted to the Department for approval, however, must be available for inspection upon the Department's request. The application record must contain specific information as indicated in rule 901:5-4-04.

- 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 rules found in this package create a certification program which supports responsible agriculture practices while allowing Ohio to continue to grow its vital agricultural industry. Further, the rules help to promote the 4-R program which encourages applicators to use the Right fertilizer source, the Right rate, the Right time and the Right place. The adverse impacts found in these rules are derived from statutory requirements. The Department has worked to minimize the adverse impact to businesses while balancing the need to protect Ohio's waterways, citizens, and agricultural industry.

Regulatory Flexibility

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

Due to the potential environmental impact of the over application of fertilizer of the state's watersheds and lakes, the Department did not create any exemptions or alternative means of compliance. However, the underlying statute, and therefore the program itself, exempts farms with less than fifty acres of land used for agricultural production.

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 plans to encourage voluntary compliance with first time offenders in order to educate the regulated community. In similar programs, the Division of Plant Health works with individuals who commit paperwork violations so long as the individual is willing to correct the violation and has no history of prior violations. First-time offenders are also routinely offered settlements that are appropriate to the circumstances of the violation.

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. Training and seminars are also available.