



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

Rule Number(s): 901:5-3-01 through 14

Date of Submission for CSI Review: 12/6/24

Public Comment Period End Date: 12/30/24

Rule Type/Number of Rules:

New/ rules

No Change/ 6 rules (FYR? yes)

Amended/ 8 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Rescinded/ rules (FYR?)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.

Chapter 901:5-3 regulates anhydrous ammonia systems being used for agricultural purposes only. The regulation includes the design specifications of ammonia systems, including piping and safety equipment. The rules also regulate the methods of transfer to systems and the use of mobile systems on farm equipment. The rules have been reviewed pursuant to a five-year rule review and are being proposed as follows:

OAC 901:5-3-01 This rule outlines the definitions to be used in Ohio Administrative Code Chapter 901:5-3. This rule is being amended to revise edition dates of standards used throughout the chapter, updates the standard regarding gas masks to the “National Institute for Occupational Safety and Health” and fixes punctuation errors.

OAC 901:5-3-02 This rule sets out the requirements for approving a stationary ammonia system. This rule is being amended to add that each applicant shall submit a detailed plumbing diagram of the stationary ammonia system and removes that the director shall assign a permanent registration number to each system.

OAC 901:5-3-03 sets out the requirements for the new construction and original test of containers. This rule is being amended to remove the “latest edition” of the Nation Board of Unfired Vessels because the edition date is defined in 901:5-3-01 and corrects punctuation errors.

OAC 901:5-3-04 sets out the requirements for markings on containers and systems. This rule is being submitted with no changes made.

OAC 901:5-3-05 outlines the requirements for the location of containers. This rule is being submitted with no changes made.

OAC 901:5-3-06 outlines the requirements regarding container appurtenances. This rule is being submitted with no changes made.

OAC 901:5-3-07 outlines the requirements regarding piping, tubing and fittings suitable for anhydrous ammonia. This rule is being submitted with no changes made.

OAC 901:5-3-08 outlines the requirements regarding hose specifications that are used in ammonia services. This rule is being amended to correct errors based on the Legislative Service Commission's (LSC) rule making guidelines and updates the requirement of when a hose shall be replaced from every five years to "as recommended by the manufacturer" or if the hose is not stamped with manufacturer recommendation, within five years after date of manufacture.

OAC 901:5-3-09 outlines the requirements for safety relief devices on every container. This rule is being submitted with no changes made.

OAC 901:5-3-10 sets for the safety requirements for personnel required to handle ammonia, when leaks occur, and the minimum equipment required. This rule is being amended to correct errors based on LSC's rule making guidelines and corrects grammar to improve readability.

OAC 901:5-3-11 sets for the requirements for filling and transfer into systems. This rule is being proposed with no changes made.

OAC 901:5-3-12 sets for the requirements for the systems utilizing stationary, pier-mounted or skid-mounted storage. This rule is being amended to correct errors based on LSC's rule making guidelines, revises the height of the letters that mark the containers from four inches high to three inches high and removes the requirement that a plant registration number assigned by the Department shall be displayed on the container.

OAC 901:5-3-13 sets out the requirement for systems mounted on farm equipment used for the delivery of ammonia. This rule is being amended to correct errors based on LSC's rule making guidelines and revises the height of the letters that mark the containers from four inches high to three inches high.

OAC 901:5-3-14 sets out the requirements for systems mounted on farm equipment for the application of ammonia. This rule is being amended to correct errors based on LSC's rule making guidelines and revises the height of the letters that mark the containers from four inches high to three inches high.

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. 905.40, 905.41, 905.411

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 anhydrous ammonia in Ohio.

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 industry. The rules are judged as being successful when inspections and investigations regarding anhydrous ammonia find few violations 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.

AmericanHort	Meagan Nace
AmericanHort	Craig Regelbrugge
Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Ice Miller	Samuel Porter

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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 storage systems of anhydrous ammonia 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), 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 anhydrous ammonia user and the 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 storage of bulk anhydrous ammonia 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

All anhydrous ammonia storage facilities operating within or selling into the state of 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 build systems for the storage of anhydrous ammonia for agricultural use must follow the design, maintenance, inspection, safety and labeling 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 ammonia 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 anhydrous ammonia systems far outweighs the cost associated with improper storage. Accidental releases of these materials can harm the

environment and people. Anhydrous ammonia in particular can be deadly with only slight exposure and can be blown by winds across large areas. The state and the industry have an interest in insuring accidents caused by faulty equipment or improper labeling never occur.

Regulatory Flexibility

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

Due to the health and safety nature of the rule, different standards based on the size of the business would be inappropriate.

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 penalties for paperwork violations. If a manufacturer or distributor were to incorrectly fill out their licensing paperwork the Department would work with them to correct the paperwork.

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.