

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Natural Resources

Regulation/Package Title: Ohio Forest Tax Law

Rule Number(s): 1501:3-10-01, 1501:3-10-02, 1501:3-10-03, 1501:3-10-04

1501:3-10-05, 1501:3-10-06, 1501:3-10-07

Date: August 14, 2018

Rule Type:

☐ New

☒ X Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. 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 this package establish the eligibility requirements for the Ohio Forest Tax Law program, the application process, violations of program provisions and the process for their resolution.

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OAC § 1501:3-10-01 defines the terms related to the Ohio Forest Tax Law that are used throughout the code section. This rule is being amended to revise the requirements needed for an application, incorporate a formal definition of “certified forest land” and “family member,” narrow the exclusions in the definition of “forest land” to land with easements or deed restrictions that prohibit the purposes of program, and allow the chief to certify professional foresters to implement these program rules. The remaining amendments provide clarifying language that does not change the intent or meaning of the rule.

OAC § 1501:3-10-02 establishes landowner eligibility requirements for lands certified as eligible after July 1, 1993. The amendments to the rule include broadening the ten-acre minimum requirement to include individual as well as contiguous acres, and rescind language that required non-forested strips larger than 120 feet in length for separate eligibility. Instead, these non-forested strips would have the same deduction as other acreage contained in streams, rivers, and roads. Amendments are also proposed to broaden the property boundary marking materials to include plastic or metal signs, and to increase the distance that marking materials are to be posted between one another from sixty-six to one hundred feet. Additional amendments rescind the requirement that harvesting that occurred within three years prior to applying the land for certification will be approved if the harvesting was part of a forest management plan. Instead, the revised rule will make landowners eligible if the division determines the harvest to be acceptable silviculturally or if not, the landowner implements practices established by the Division to remedy an improper harvest. The amended rule also rescinds the requirement of completing a prescribed silvicultural activity and proposes to further clarify “management” as it relates to eligible land. Finally, the amended rules rescind the requirement that landowners must complete a training course to be eligible for the program.

OAC § 1501:3-10-03 establishes the application process and fees for the Program. The proposed amendments would increase the application fee from \$50 to \$75, and provide the chief the option to waive the fee. The \$50 application fee has not changed since it was instituted in 1993. Additional proposed amendments also include clarifying language for defining a completed application packet, and replacing all references to tract or lot with “parcel.” Finally, these amendments clarify the implementation of the tax reduction by county auditors to be consistent with AG Opinion 65-226.

OAC § 1501:3-10-04 establishes the requirements for a forest management plan and the specific items that must be included on the required maps and listing of forest management areas. The proposed amendments will broaden the timeline in which work schedules and activities must be completed. These amendments will also require that the landowner consult with a professional forester on cutting recommendations and broadens the chief’s ability to waive the master logger requirement.

OAC § 1501:3-10-05 establishes the notice and review process for alleged violations and instructions on how to withdrawal from the Program. These amendments will also rescind the education component, and further explain the requirements that the owner complete commercial and non-commercial activities in accordance with their management plan. A landowner not marking their boundary lines between classified and non-classified lands was added to the list of violations. Finally, these amendments describe the process for voluntary withdrawal from the Program.

OAC § 1501:3-10-06 establishes the requirements for any conversions or modifications of certified forest land. These amendments require that any land use conversions other than production of merchantable forest products will require an amended management plan and revised certification for the parcels not being converted. These amendments will allow for new owner affirmation which will not cancel the certification in the transfer of the property to a new owner. This will require the new owner to provide a revised management plan, accompanied by a non-refundable \$75 fee (which is waived for transfer to family members) for chief approval. These amendments also permit the certification to stand if the split of certified land is to a family member.

OAC § 1501:3-10-07 establishes the special requirements for the program for certified lands that were certified prior to July 1, 1993. These amendments incorporate the same changes to family members as in 1501:3-10-01 and the split of certified land as in 1501:3-10-06.

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

1503.01 and 5713.24

3. 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.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

N/A

5. 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 Ohio Forest Tax Law program encourages the retention of Ohio's forested lands and the multiple benefits they provide to the landowner (e.g., income, recreation), the local economy (from forest products like timber and maple syrup), and the public (clean air and water, wildlife habitat). Additionally, the landowners receive a tax incentive for participating in the program.

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

Service Foresters from the ODNR Division of Forestry will conduct periodic inspections of program participants to ensure compliance with all applicable rules and laws. Information from periodic forest inventories will be used to monitor the quality and quantity of private forest land in Ohio. It is anticipated that the rules will promote private forest land ownership so that quality and quantity of these forested acres is maintained or increased.

Development of the Regulation

7. 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.

Division of Forestry met in-person with the following stakeholders (dates in parentheses):

Ohio Forestry Association (1/7/15, 2/18/16), Ohio Dept. of Taxation (2/19/15, 12/2017), County Auditors (5/28/15, 1/30/17 (phone)), Ohio Society of American Foresters (3/11/15), Ohio Tree Farm Committee (4/9/15), Association of Consulting Foresters (4/7/15, 5/20/15), Ohio Farm Bureau (4/3/15, 2/16/17), Buckeye Association of School Administrators (8/12/15), and Ohio School Boards Association (8/12/15).

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

Much of the proposed amendments are the result of ongoing conversations with the preceding stakeholders (in question 7) and others about improving efficiency and effectiveness of the program. Most of the input from stakeholders at the stakeholder meetings was positive and in support of the proposed amendments with no suggested changes to OAC. Stakeholder input resulted in the following modification to the proposed amendments: clarification that a professional forester should be used for commercial cuttings (in OAC § 1501:3-10-04); in current rules, participants must follow a plan written by a professional forester, so in practice this change is minor. A proposed amendment was removed that would have reduced the minimum acreage deduction for homesites (OAC § 1501:3-10-02) in response to comments from county auditors.

9. 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?

On private lands in Ohio, diameter-limit and high-grade cuts are the most common harvest method when landowners sell timber without the input/guidance of a forester/forestry professional. Multiple scientific publications report the negative impacts on future revenue, timber production/yield, and quality of timber from poor harvesting methods including,

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diameter-limit or high grading cuts (a good summary article that cites various studies is Kenefic and Nyland 2005). Research has also shown that incentive programs, including property tax reduction programs like Ohio Forest Tax Law, significantly increase the use of sustainable forest management practices and timber harvests by woodland owners (Kilgore et al. 2008; Maker et al. 2014). The preceding articles (and many others) discuss how sustainable forest management practices increase current and future benefits to the landowners (financial and others) and result in the sustainable production of higher quality wood products that support Ohio's \$22 billion forest industry. These regulations relate to the administration of the Ohio Forest Tax Law program, which is a voluntary program that encourages sustainable forest management on private woodlands through reduced property taxes. The cited articles share scientific data that demonstrate the effectiveness of property tax programs and other incentives in maintaining these forest benefits.

Citations:

Kenefic, L.S and R.D. Nyland. 2005. Diameter-limit cutting and silviculture in northeastern forests: a primer for landowners, practitioners, and policymakers. USDA Forest Service Paper NA-TP-02-05, Northeastern Area State & Private Forestry, Newtown Square, PA. 18 p.

Kilgore, M.A., S. Snyder, S. Taff, and J. Schertz. 2008. Family forest stewardship: do owners need a financial incentive? *Journal of Forestry* 106(7):357-362.

Maker, N.F., R. Germain, and N.M. Anderson. 2014. Working woods: a case study of sustainable forest management on Vermont family forests. *Journal of Forestry* 112(4):371-380.

10. 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?

Since the Ohio Forest Tax Law program is a voluntary program, no alternative regulations were considered.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

N/A- Program is performance based.

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

ORC 5713.23 states that the Chief of the Division of Forestry must approve and certify any lands within this Program. Since this statute is in place, only the Division of Forestry may implement this Program.

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13. 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.

The proposed changes to these rules ensure consistency and predictably for the regulated community. For example, in paragraph (E) of Rule 1501:3-10-03, a new sentence is being proposed to clarify the time schedule in which tax reductions should occur. Furthermore, the implementation of this plan will follow the current procedures and policies of the Program. For instance, all Service Foresters use a checklist to ensure that the application process is completed in a timely and regular fashion. Additionally, the application for the Program has an in-depth breakdown of eligibility and additional requirements for participants. By using these forms, communicating information, and implementing program polices we establish a standardization among applicants, participants, consulting foresters, and the ODNR Division of Forestry.

Adverse Impact to Business

14. 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;

Landowners, consulting foresters, ODNR Service Foresters, and TCI vendors would be the extent of the business community that would be impacted by these rules.

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

The landowners will need to provide an application fee of \$75 (which the Chief may waive under certain circumstances -i.e. transfer of land to a family member) to apply for the Program.

Landowners in the program are required to follow a woodland management plan that could recommend forestry practices that require time and/or money to complete. Examples of these practices include thinning (cutting of undesirable trees) to release preferred/valuable trees, treatment (cutting and/or spraying with herbicide) non-native invasive plants that prevent desirable trees from growing, and cutting vines that are damaging desirable trees.

If landowners are found in violation of the Program, and the landowner does not come into compliance within 180 days, the land will be withdrawn from the Program. This voluntary program does not impose any fines associated with any violations.

c. Quantify the expected adverse impact from the regulation.

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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.

The woodland management practices described in (b) above require time and may require money to complete. However, there are incentive programs through the federal government (USDA) available to landowners that, if funded, cover most or all the costs for completing these practices. Estimates of costs come from the current payment schedule for one of those USDA programs, called the Environmental Quality Incentive Program (EQIP). Forest stand improvement (e.g., thinning) costs \$85-\$132 per acre and invasive plant control or vine control costs \$35-\$226 per acre. The costs vary significantly based on the condition of the woods (as ranked by the USDA from light to heavy).

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

The regulations of this voluntary program are being reviewed and revised to provide more flexibility to the landowner. Furthermore, the program is a benefit to business by encouraging production and sale of quality forest products that benefit other businesses along the supply chain, and the program benefits the landowner by reducing property taxes for eligible forest land. Additionally, these regulations govern the process for obtaining and keeping these tax reduction benefits.

Regulatory Flexibility

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

Due to the nature of the program, the regulations were created with small businesses in mind since most landowners would be closely aligned with “small businesses.” Rule 1501:3-10-03 also allows the chief to waive the \$75 application fee in certain circumstances. Additionally, if the landowner’s certification was cancelled due to a violation, the landowner may reapply for the program immediately (unless the violation was a result of an improper timber harvest).

17. 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?

This voluntary program does not impose any fines associated with any violations. The only “penalty” would be the landowner reapplying for the program should their certification be cancelled.

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

The ODNR Division of Forestry is available to provide technical assistance to landowners through the Service Forestry program. For-hire consulting foresters are also able to assist landowners in the enrollment and compliance process.