



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. 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):

Soil and Water Conservation Prevention

Rule Number(s): 901:13-1-01 to 20; 901:13-1-99

Date of Submission for CSI Review: 2/27/2024

Public Comment Period End Date: 3/19/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 3 rules (FYR? yes)

Amended/ 16 rules (FYR? yes)

Rescinded/ 2 rules (FYR? yes)

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 901:13-1 of the Ohio Administrative Code (OAC) establishes state standards for a level of management and conservation practices to farming and animal feeding operations on farms in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment including pollutants attached to the sediment and animal manure.

This chapter further defines Ohio's pollution abatement grant program for landowners or operators to voluntarily install conservation practices. The rules have been reviewed and amended pursuant to Chapter 119 of the Ohio Revised Code (ORC). The rules and the proposed amendments are as follows:

OAC 901:13-1-01 outlines the purpose of the Chapter and the definitions used within it. The rule has been amended to delete definitions of terms that are not used in the chapter and amend certain definitions to ensure that consistent terminology is being used throughout the chapter. Further, definitions were amended to ensure that these terms match the statutory definitions found in Chapter 939 of the Revised Code.

OAC 901:13-1-02 states that owners, operators, or persons responsible for an animal feeding operation (hereinafter “operator”) shall prevent pollution by operating and maintaining their facilities so that overflow or discharge of manure into waters of the state is prevented. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-03 states that operators shall prevent pollution by designing, constructing, operating, and maintaining their operations to prevent seepage. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-04 states that operators shall prevent pollution from discharge of manure contaminated runoff from animal feedlots and manure management facilities. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The rule continues to refer to the Field Office Technical guide for the recommended best management practices and has been revised to remove the list of best practices from the rule. The amendments do not impact the substance of the rule.

OAC 901:13-1-05 states that operators shall prevent pollution from residual farm products and milking facility waste waters. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. Further, it replaces the term “other waste waters” with “milking facility waste waters” in order to better define the type of waters regulated by this rule.

OAC 901:13-1-06 states that operators shall prevent pollution caused from flooding of animal feeding operations. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-07 states that operators shall prevent pollution caused from sheet and rill erosion. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-08 states that operators shall prevent pollution caused from gully erosion. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-09 states that operators shall prevent pollution caused from wind erosion. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-10 outlines the requirements for exemption forms. The existing rule is proposed to be rescinded. The was created to allow farmers to come into compliance with the new law in 2017. We are past this time frame and the exemption is not needed anymore. Further, rescinding this rule removes regulatory restrictions according to Senate Bill 9.

OAC 901:13-1-11 outlines the requirements for the land application of animal manure. No changes have been made to this rule.

OAC 901:13-1-12 states that operators shall prevent pollution caused by placing soil directly into or in such a position that it may readily erode or slough into waters of the state. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-13 states that operators shall prevent pollution caused from composting dead animals. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

OAC 901:13-1-14 outlines the cost sharing program established pursuant to ORC 939.02(F). The amendments proposed add language to further clarify the best management practices applicable in this rule and increase the cost share that the department may offer from thirty thousand dollars to fifty thousand dollars per person per year. Further, the amendments alter the structure of the rule which should allow for easier reading comprehension.

OAC 901:13-1-15 outlines administrative procedures for the chapter. The existing rule is proposed to be rescinded. Further, rescinding this rule removes regulatory restrictions according to Senate Bill 9.

OAC 901:13-1-16 outlines the operating procedures of the Department and the local soil and water districts in administering ORC Chapter 939 and OAC Chapter 901:13-1. The proposed amendments remove regulatory restrictive language as required by Senate Bill 9.

OAC 901:13-1-17 outlines the operating procedures of the Department and the local soil and water districts in administering ORC Chapter 939 and OAC Chapter 901:13-1. The proposed amendments remove regulatory restrictive language as required by Senate Bill 9.

OAC 901:13-1-18 outlines the Department's authority to enter into agreements with soil and water districts. No changes have been proposed to this rule.

OAC 901:13-1-19 outlines the nutrient management planning requirements for watersheds in distress. The rule has been amended to reduce the frequency of review of these plans. The Soil and Water Districts along with the Department assess the contents and the feasibility of the nutrient management plans on a yearly basis with the producers. Because of this yearly assessment the Department found that performing a review on the nutrient management plan every three years is excessive and costly. To reduce the time commitment, cost to the producer for soil samples and other requirements for nutrient management plans, the Department has proposed to review them every five years rather than three. Further, the rule makes stylistic changes according to the LSC rule drafting manual.

OAC 901:13-1-20 states that the director may designate watersheds in distress. The amendments proposed alter the structure of the rule which should allow for easier reading comprehension. Further, the rule makes stylistic changes according to the LSC rule drafting manual. The amendments do not impact the substance of the rule.

OAC 901:13-1-99 outlines the requirements and procedures for administering civil penalties. No changes have been made to these 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.

R.C. 939.02; 939.08; 939.09; 121.22; 940.02; 940.04

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)?**

Under ORC Chapter 939, the Department is required to establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate wind or water erosion of the soil and abate the degradation of the waters of the state by residual farm products, manure, or soil sediment. The establishment of these standards, as well as the enforcement mechanisms outlined in these rules, enables Ohioans to conserve, protect, and enhance soil, water, and land resources.

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

Any complaints regarding unsafe operations and/or discharges are investigated. The rules are judged as being successful when inspections and investigations find few violations and when there is no increase in the number of discharge reports 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.

Pursuant to ORC 939.02(E), the Ohio Department of Agriculture is to promulgate rules upon the advice and consent of the Ohio Soil & Water Conservation Commission. Further, the Commission is statutorily created to provide support and advice to the Ohio Department of Agriculture and the 88 soil and water conservation districts in the state.

During a Commission meeting held on August 8, 2023, the Department discussed the draft rules and the proposed process with the Commission.

On November 1, 2023, these rules were submitted to the Ohio Soil & Water Conservation Commission. The Commission reviewed the rules and approved submitting the rules for stakeholder outreach and the filing of these rules with the Common Sense Initiative. The composition of the Commission at the time of the meeting was:

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| Jennifer Bowman | Represents Rural Interests |
| Kate Bartter Arnold | Knowledge or Interest |
| Etta Reed | Knowledge or Interest, Chair |
| Fran Buchholzer | Knowledge or Interest |
| David Hanselmann | Represents Urban Interests |
| Jerry McBride | Designated by OFSWCD, Vice Chair |
| Anthony Debevc | Knowledge of Interest in Ag Production |
| Director Ann Vogel | Ex Officio, Director of Environmental Protection |
| Director Mary Mertz | Ex Officio, Director of Natural Resources |
| Cathann Kress | Ex Officio, Vice President of Agricultural Administration of OSU |
| Jeff Duling | Ex Officio, Officer of the Ohio Federation of SWCD |
| Kirk Hines | Designated Executive Secretary |

On November 27, 2023, the Department sent via email the proposed rules to a large list of stakeholder groups.

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| Alliance for the Great Lakes | Crystal Davis |
| Black Swamp | Rob Krain |
| Capital Advocates | Kurt Leib |
| Capitol Advocates | Rob Eshenbaugh |
| CCAO | Cheryl Subler |
| Ducks Unlimited | Russ Terry |
| Grand St Marys Restoration Commission | Keith Westrick |
| Lake Erie Foundation | Matt Fisher |
| National Wildlife Federation | Gail Hesse |
| Ohio Agribusiness Assoc. | Chris Henney |
| Ohio Beef Council/Ohio Cattlemen’s Association | Elizabeth Harsh |
| Ohio Corn & Wheat | Tadd Nicholson |
| Ohio Dairy Producers | Scott Higgins |
| Ohio Ecological Food and Farm Association | Amalie Lipstreu |
| Ohio Environmental Council | Trent Dougherty |
| Ohio Environmental Stewardship Alliance | Vickie Askins |
| Ohio Farm Bureau | Adam Sharp |

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| Ohio Farm Bureau | Jack Irvin |
| Ohio Farm Bureau | Larry Antosh |
| Ohio Farm Bureau | Leah Curtis |
| Ohio Farm Bureau | Roger High |
| Ohio Farm Bureau | Tony Seegers |
| Ohio Farmers Union | Joe Logan |
| Ohio Federation of Soil and Water Conservation Districts | Janelle Mead |
| Ohio Municipal League | Kent Scarlett |
| Ohio Pork Producers Council | Cheryl Day |
| Ohio Poultry Association | Jim Chakeres |
| Ohio Seed Improvement Assoc | John Armstrong |
| Ohio Soil and Water Conservation Commission | Fran Buchholzer |
| Ohio Soil and Water Conservation Commission | Etta Reed |
| Ohio Soil and Water Conservation Commission | Jerry McBride |
| Ohio Soil and Water Conservation Commission | Kate Bartter Arnold |
| Ohio Soil and Water Conservation Commission | Jen Bowman |
| Ohio Soil and Water Conservation Commission | Tony Debevec |
| Ohio Soybean Association | Brandon Kern |
| Ohio Soybean Council | Kirk Merritt |
| Ohio State University | Adam Ward |
| Ohio Township Association | Heidi Fought |
| Ohio Turf Association | Brian Laurent |
| Ohio's Lake Erie Shores and Islands | Larry Fletcher |
| Partners for Clean Streams | Kris Patterson |
| Pheasants Forever | Jim Inglis |
| Sierra Club, Ohio Chapter | Adam Rissien |
| The Nature Conservancy | Jessica D'Ambrosio |
| The Ohio State University | Peggy Hall |
| Toledo Metropolitan Area Council of Governments | Sandy Spang |
| Toledo Metropolitan Area Council of Governments | Kari Gerwin |
| The Nature Conservancy | Bill Stanley |
| The Nature Conservancy | Jessica D'Ambrosio |

In addition to emailing the proposed rules to individual stakeholders, the Department conducted several outreach events to explain the revisions. The events included an in-person event held at ODA on December 8th, 2023, and a Microsoft Teams Live Event on December 14, 2023. A meeting was also held with Mercer Soil and Water Conservation District on December 20, 2023, to explain the revisions. Comments were received from attendees and the comments were addressed as described below in paragraph #10.

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

During the stakeholder outreach comment period, the Department received several comments regarding rescinding 901:13-1-16 and 901:13-1-17. The stakeholders believe that rescinding these two sections would remove important information that farmers need and deprive farmers of due process rights. In 901:13-1-14 there is concern removing “settling basins and filter strips” as eligible practices for cost sharing. In 901:13-1-19 there was concern that the revisions removed the requirement to submit a nutrient management plan and removed the deadline for submission. One comment suggested that more clarity is needed regarding the review of operating records by the Director. Another comment expressed concern over increasing the time between nutrient management plan updates from three to five years.

In response to the comments received, the Department amended the rules by not rescinding Chapter 901:13-1-16 and 901:13-1-17, language was updated in the rules to make sure important information about due process was left in the document.

In response to the comments received about the concern removing “settling basins and filter strips” as eligible practices for cost sharing in 901:13-1-14, it was determined that settling basins and filter strips are earth moving projects and cause more concern due to run off when done incorrectly. The rule will remain as revised.

In response to the concerns about nutrients plan updates from three to five years in 901:13-1-19 it was determined that modern nutrient management plans are written on a 6 year basis, however producers will be contacted by the local soil and water conservation district on a yearly basis to make sure soil and manure samples are taken on a yearly or every other year. The district staff are in close contact with the producers to make sure the plans are being followed and met. The rule will remain as revised.

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 of this chapter are primarily based off the Natural Resources Conservation Services (NRCS) Field Office Technical Guide. The Field Office Technical Guide (FOTG) is the primary technical reference for NRCS. It contains technical information about the conservation of soil, water, air, plant, and animal resources. The FOTG is managed by NRCS state technical specialists, but contains technical knowledge and standards used by field conservationists at the local level. These standards are based off years of scientific research and study.

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 Department is statutorily tasked with regulating soil and water conservation. Stakeholder comments regarding this rule package have indicated to the Department that this is the best regulatory scheme currently. 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 this matter in ORC 939.02.

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.

Additional education and outreach will be performed with the affected communities of the changes with this rule. The staff members of the Division of Soil and Water ensure that all Ohioans 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

All animal feeding operations which are not subject to the licensing requirements of the Ohio Department of Agriculture, Livestock Environmental Permitting Program or subject to an NPDES permit through the United States Environmental Protection Agency.

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.

Operations must invest time and resources in implementing the best management practices outlined by the rules of this chapter. Individuals who violate a provision of ORC Chapter 939 and OAC Chapter 901:13-1 may be subject to civil penalties or be required to take corrective actions as outlined in these rules.

There is no quantifiable impact for those individuals who remain in compliance with the standards in ORC Chapter 939 and OAC Chapter 901:13-1. However, individuals who do commit a violation of these rules may be subject to civil fines in amounts from \$250 to \$10,000. The amount of the violation depends on the particular rule violated, the severity of the violation, and any history of non-compliance. Further, the quantified impact of corrective actions will depend entirely on the violation and the means to correct that violation. Further, implementation of these best management practices could result in

overall cost savings through more efficient nutrient use and higher yields in their agricultural practices.

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?

OAC Chapter 901:13-1 is to ensure protection of Ohio's natural resources by establishing best management practices and other technical guidance for Ohio's agricultural community to follow. Failure to follow these practices may result in a degradation of Ohio's natural resources thought pollution and erosion. Civil penalties are enforcement tools which help to ensure that these practices are maintained. Therefore, the adverse impact is considered to be justified.

Regulatory Flexibility

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

As the regulatory intent of this rule is to ensure protection of Ohio's natural resources, no exemptions or alternative means of compliance are provided.

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 is primarily concerned with protecting public safety and the environment through compliance with these rules. Whenever possible, the Department will treat administrative violations that do not involve environmental damage as opportunities for improvement through warning notices and solicitation of corrective actions. Harsher enforcement options will be reserved for offenders who do not cooperate or those that have repeated violations.

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

Soil and Water Conservation Districts are present in every Ohio County to provide technical assistance to landowners. The Ohio Department of Agriculture can also provide financial assistance through the Agricultural Pollution Abatement Program's cost share fund for the installation of structural practices to achieve compliance with the regulation.