



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

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Grain Warehouse Rule Package

Rule Number(s): 901:7-2-01, 901:7-2-02, 901:7-2-03, 901:7-2-04, 901:7-2-05, 901:7-2-06, 901:7-2-07, 901:7-2-08, 901:7-2-09, 901:7-2-10, 901:7-2-11, and 901:7-2-12.

Date of Submission for CSI Review: November 10, 2021

Public Comment Period End Date: December 3, 2021

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ 10 rules (FYR? 10)

Rescinded/ 2 rules (FYR? 2)

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.

This chapter implements and amplifies Chapter 926 of the Revised Code, Agricultural Commodity Handlers.

Rule 901:7-2-01 sets the license, examination, and renewal fees for agricultural commodity handlers. This rule has been amended to increase the fee for over ten million bushels and other structural amendments.

Rule 901:7-2-02 requires that as part of the license application or renewal, each handler must submit a schedule of commodities handled in the twelve months prior. This rule has been amended to better clarify the submittal of the annual commodity statement.

Rule 901:7-2-03 sets forth the format and content of sale tickets to be used by commodity handlers. This rule has been amended to add language for handled but not physically delivered agricultural commodities. This rule also has been amended to account for electronic copies in addition to paper.

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Rule 901:7-2-04 provides the procedure for notice and appeal of agricultural commodity handler license suspensions. This rule is proposed as rescinded.

Rule 901:7-2-05 sets forth what is a suitable warehouse for the storing of agricultural commodities and what can be licensed as such by the Department. This rule has been amended to require shipping scales to be tested and sealed annually, includes additional language for safety, and LSC stylistic changes.

Rule 901:7-2-06 sets forth the conditions under which additional examinations of the warehouse may take place. This rule has been amended to clarify existing requirements and includes LSC stylistic changes.

Rule 901:7-2-07 sets forth the form and schedule for remittance of the per-bushel fee required by statute. This rule is proposed as rescinded.

Rule 901:7-2-08 sets forth the assets to be excluded in calculating the net worth of a licensee. This rule has been amended for LSC stylistic changes.

Rule 901:7-2-09 sets forth the form for delayed pricing agreements. This rule has been amended to include electronic copies in addition to paper.

Rule 901:7-2-10 sets forth the required training for agricultural commodity tester training and to allow testers to opt out of renewal examinations. This rule has been amended to clarify existing requirements, update incorporated materials, and includes LSC stylistic changes.

Rule 901:7-2-11 sets forth the requirements for the application for commodity tester certificate, including the passing requirements for the exam. This rule has been amended to address new applicants or expired certificates, expiration date of the certification, and including fine information.

Rule 901:7-2-12 sets forth which agricultural commodity buyers are exempt from licensing. This rule has been amended to further clarify those exempt from the requirement to license.

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.

Section 926.02 of the Revised Code.

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

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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)?

These regulations protect the farmers of Ohio, who entrust their product to agricultural commodity handlers for storage, sale, and all other marketing transactions.

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

The Department will measure the success of the regulation by continuing to audit and examine licensed handlers, which prevents grain warehouse insolvencies or minimizes the impact to the farming community when grain warehouse do become insolvent.

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 5, 2021 regarding a stakeholder outreach comment period held open until October 20, 2021:

- Chris Henney – Ohio AgriBusiness Association
- Ohio Farm Bureau:
 - Jack Irvin
 - Adam Sharp
 - Larry Antosh
- Ohio Farmers Union:
 - Joe Logan
 - Ron Sylvester
- Kirk Merritt – Ohio Soybean Council
- Ohio Commodity Advisory Commission:

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- Tony Anderson
- Ron Burns
- Gary Luginbill
- Kent Kramer
- Scott Thibaut
- George Secor
- Jack Groselle
- Holly Scoggins – AmericanHort
- Patrick Jacomet – Ohio Aggregates & Industrial Minerals
- Valerie Graham – Ohio Christmas Tree Association
- Ohio Corn and Wheat Growers Association:
 - Tadd Nicholson
 - Luke Crumley
- Ohio Department of Transportation:
 - Robin Chambers-Dersoon
 - Pamela Vest Boratyn
- Amalie Lipstreu – Ohio Ecological Food & Farm Association
- Ohio Environmental Council:
 - Pete Bucher
 - Chris Tavenor
- Brad Perkins – Ohio Forestry Association
- Mark Bennett – Ohio Lawn Care Association
- Ohio Nursery & Landscape Association:
 - Ken Fisher
 - Roni Peterson
- Ohio Pest Management Association:
 - Melinda Howells
 - Molly Mash

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- Valerie Graham – Ohio Produce Growers & Marketers
- John Armstrong – Ohio Seed Improvement Association
- Peggy Garnes – Ohio State Beekeepers Association
- Mark Bennett – Ohio Turfgrass Foundation
- Pesticide Applicator for Responsible Regulations:
 - Belinda Jones
 - Mike Grace
- Ohio Nursery and Landscape Association:
 - Tom Bemaline
 - Kyle Natorp
- Troy Judy – Ohio Turfgrass Foundation
- Ann Aquillo – The Scotts Miracle-Gro Company
- Jennifer Windus – Ohio Invasive Plants Council

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

The department received one comment from Chris Henney at Ohio AgriBusiness Association supporting the rule package as proposed.

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?

Not Applicable.

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 are not appropriate in lieu of this Chapter. Ohio's grain farmers entrust commodity handlers with the storage and purchase of their product and the rules in this Chapter are written to provide for the protection of the farmer's livelihood.

13. 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.*

Not applicable, the process for licensing and examining commodity handlers needs to be uniform.

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

The Ohio Department of Agriculture is the sole state agency with regulatory authority in this area.

15. 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 rules in this Chapter have already been implemented. Grain handlers regulated by Chapter 926 of the Revised Code must continue to be licensed and examined by the Department. The Department will continue to enforce delayed pricing agreements and work with farmers when issues arise with commodity handlers not honoring those agreements.

Adverse Impact to Business

16. 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; and

Any person or business who falls under the definitions for agricultural commodity handling found in paragraphs (A) and (B) of section 926.01 of the Revised Code; generally, this is any business that acts as a grain warehouse or purchases over thirty thousand bushels annually.

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

Any commodity handler, as defined by Revised Code, must pay a license fee as set forth in section 926.05 of the Revised Code and an examination fee for the examination of warehouses. The Department can fail all of or a portion of examined facilities, declaring them unsafe and suitable for grain storage until improvements are made. The Department can also suspend commodity handler licenses for failure to comply with Chapter 926 of the Revised Code.

c. Quantify the expected adverse impact from the regulation.

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 direct adverse impact for the rules is the examination fee set forth in rule 901:7-2-01 of the Administrative Code. The fees vary depending on the volume the commodity handler deals in.

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Those wishing to be certified as commodity testers will incur the expense of the training required in rule 901:7-2-10 and the application fee set forth in 901:7-2-11 of the Administrative Code. This certification need only be renewed once every three years.

Beyond these expenditures, the remaining rules in this Chapter implement the statutory requirements of Chapter 926 of the Revised Code and commodity handlers will incur some minor expenses related to recordkeeping and bookkeeping.

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

While businesses acting as agricultural commodity handlers will incur some administrative overhead due to these rules, the grain warehouse program is vital to protecting Ohio's agricultural industry. The features of the commodity handler statute and rules insulate, to a degree, farmers from the risks inherent in the grain warehouse industry and the fluctuations of the commodities markets. Farmers are able to store their grain with commodity handlers using delayed pricing agreements and sell their product at a time when profits can be maximized. Additionally, the statute and rules protect the industry from unscrupulous and unskilled handlers.

Regulatory Flexibility

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

Smaller commodity handlers pay lower examinations fees and warehouse examinations in rule 901:7-2-05 of the Administrative Code allow for discretion in terms of business size.

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 continuously works with business to return to compliance and provide education when necessary.

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

The Department can provide educational help to any business through online resources.