



Common Sense Initiative

Mike DeWine, 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):

Livestock Environmental Permitting 5-year Rule Review

Rule Number(s): 901:10-1-02, 901:10-1-03, 901:10-1-05, 901:10-1-06, 901:10-1-08, 901:10-1-09, 901:10-1-10, 901:10-2-01, 901:10-2-02, 901:10-2-04, 901:10-2-05, 901:10-2-06, 901:10-2-08, 901:10-2-09, 901:10-2-10, 901:10-2-11, 901:10-2-12, 901:10-2-13, 901:10-2-14, 901:10-2-16, 901:10-2-19, 901:10-2-20, 901:10-3-01, 901:10-3-04, 901:10-3-07, 901:10-3-08, 901:10-3-09, 901:10-4-02, 901:10-4-05, 901:10-5-05, 901:10-6-01, 901:10-6-02, 901:10-6-03, 901:10-6-04

Date of Submission for CSI Review: July 23, 2020

Public Comment Period End Date: August 14, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/ 34 rules (FYR? 34)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R5-05.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common

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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.

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.

Rule 901:10-1-02 sets forth the general administrative requirements for permits.

Rule 901:10-1-03 sets forth the criteria for the Director to approve, deny, or revoke a permit under DLEP.

Rule 901:10-1-05 sets forth the criteria for establishing a trade secret under this section.

Rule 901:10-1-06 sets forth the standards and application procedures of a certified livestock manager.

Rule 901:10-1-08 sets forth the process of transferring permits for concentrated animal feeding facilities and concentrated animal feeding operations.

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Rule 901:10-1-09 sets forth the criteria for modifying a permit under this chapter and is being amended to correct inappropriate formatting.

Rule 901:10-1-10 states the prohibitions under this chapter.

Rule 901:10-2-01 sets forth general administrative requirements for a permit to install a new concentrated animal feeding operation, concentrated animal facility, or a major concentrated animal feeding facility.

Rule 901:10-2-02 sets forth the siting criteria for a permit to install.

Rule 901:10-2-04 sets forth analysis and design consideration needed for a permit to install.

Rule 901:10-2-05 sets forth the requirements for fabricated structures which hold manure.

Rule 901:10-2-06 sets forth the requirements for manure storage ponds and manure treatment lagoons.

Rule 901:10-2-08 sets forth specific administrative requirements that are required in a manure management plan.

Rule 901:10-2-09 sets forth the information required to be disclosed in a nutrient budget within the manure management plan.

Rule 901:10-2-10 sets forth the information required to be disclosed in the manure characterization portion of the manure management plan.

Rule 901:10-2-11 sets forth the information required in a manure management plan with regards to distribution and utilization of the manure.

Rule 901:10-2-12 sets forth the information required in a manure management plan to minimize odors.

Rule 901:10-2-13 sets forth the information required to be disclosed in the soil characterization portion of the manure management plan.

Rule 901:10-2-14 establishes best management practices that govern land application of manure on land application areas.

Rule 901:10-2-16 sets forth the administrative requirements of the operating record.

Rule 901:10-2-19 sets forth the requirements of an insect and rodent control plan and the standards for its acceptance.

Rule 901:10-2-20 sets forth the information required to be submitted in the owner or operator's annual report to the director of agriculture. Owners/operators are required to document in the operating record an estimate of the amount of manure transferred during each transfer.

Rule 901:10-3-01 sets forth additional requirements for the NPDES permit application.

Rule 901:10-3-04 sets forth specific requirements for concentrated animal feeding operations that house dairy cows and cattle other than veal calves.

Rule 901:10-3-07 sets forth the criteria for the designation of a concentrated animal feeding operation by the director.

Rule 901:10-3-08 sets forth the criteria for the applicability and application of a variance in accordance with section 301 or 302 of the Federal Water Pollution Control Act.

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Rule 901:10-3-09 states that separate appeals of variances are possible and the order in which they are heard.

Rule 901:10-4-02 sets forth the coverage for a general permit to operate.

Rule 901:10-4-05 sets forth the requirements holders of general operating permits must comply with.

Rule 901:10-5-05 sets forth the procedures for emergency enforcement.

Rule 901:10-6-01 sets forth the notice requirements as required when the director of agriculture issues a draft permit.

Rule 901:10-6-02 sets forth the required contents of the public notices in 901:10-6-01.

Rule 901:10-6-03 sets forth the coordination of the Federal Water Pollution Control Act permit program with other agencies of the United States.

Rule 901:10-6-04 sets forth the administrative process of a public meeting requested as a result of a draft permit, draft permit modification or proposed action to deny, suspend, or revoke a permit.

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.

Revised Code 903.10.

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.

Generally, the regulations do not implement a federal requirement; however, Chapter 901:10-3 of the Administrative Code implements the federal regulations for a National Pollutant Discharge Elimination System (NPDES) permit under 40 C.F.R. 122.23 for those facilities which experience a discharge of pollutants.

5. If the regulation 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 Chapter 903 of the Revised Code, the department is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs) and must establish a permitting system for such regulation. Additionally, these regulations implement permitting guidelines for the issuance of NPDES permits under the Federal Water Pollution Control Act. These regulations ensure the state's largest operations follow science-

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based guidelines that protect the environment and the public while allowing the facility to be productive.

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

All CAFOs and CAFFs covered by these rules are inspected and any complaints regarding noncompliance, structural deficiencies, and/or discharges to waters of the state are investigated. The rules are judged as being successful when inspections and investigations find few violations or structural deficiencies, 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.

The Concentrated Animal Feeding Facility Advisory Committee was notified of a two-week comment period on June 26, 2020 via email. The stakeholders were as follows:

Tony Anderson – Chair of CAFF Advisory Committee

Anne Kaup-Fett – Ohio Environmental Health Association

Anthony Bornhorst – County Commissioners Association of Ohio

Brad Lodge – Ohio Department of Natural Resources

Bryan Humphreys – Ohio Pork Producers Council

Dr. Chanhee Lee – The Ohio State University

David Frash – Ohio Veterinary Medical Association

David Neef – Ohio Pork Producers Council

Doug Billman – Public Representative

Trent Dougherty – Ohio Environmental Council

Eric Dresbach – Ohio Water Environment Association

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Maurice Eastridge, PhD – The Ohio State University
Elizabeth Harsh – Ohio Cattlemen’s Association
Glen Feichtner – Ohio Cattlemen’s Association
Frank Phelps – Ohio Cattlemen’s Association
Garrett Guillozet – Franklin County Public Health
Jack Rohrbach – Public Representative
James Gellner – Hazen and Sawyer
Jason Menchhofer – Ohio Environmental Health Association
Jim Chakeres – Ohio Poultry Association
Carl Link – Ohio Pork Producers Council
Lou Brown – Ohio Dairy Producers Association
Matt Andreas – Ohio Dairy Producers Association
Michelle Holdgreve- Ohio Veterinary Medical Association
Mike Monnin – Public Representative
Michael Mull, DVM – Ohio Veterinary Medical Association
Nick Sallas – Ohio Poultry Association
Pete Bucher – Ohio Environmental Council
Richard Lorenz – Water Management Association of Ohio
Rick Wilson – Ohio Environmental Protection Agency
Rod Dunn – Water Management Association of Ohio
Roger High – Ohio Sheep Improvement Association
Ron Wyss – Public Representative
Scott Higgins – Ohio Dairy Producers Association
Susan Dulaney – County Commissioners Association of Ohio
Tiffani Kavalec – Ohio Environmental Protection Agency
Todd Price, DVM – Ohio Veterinary Medical Association
Tom Hertzfeld, Jr. – Ohio Poultry Association
Kelly McCloud – Ohio Department of Agriculture

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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 stakeholder comment during the open comment period. The commenter has been contacted regarding the Department's intent to file the rules as no change at this time and intent to address the commenter's suggestions at a later time. The Department also discussed filing the rules as no change during the recent Concentrated Animal Feeding Facility Advisory Committee meeting.

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 are based on scientific manuals for best management practices where applicable, including but not limited to "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" and "NRCS Part 651 - Agricultural Waste Management Field Handbook," June 1999.

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?

There are no alternative regulations to consider for this program. The department is filing the rules as no change, therefore alternative regulations are not being considered at this time.

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.*

As these regulations set minimum safety standards to protect the environment and the public, performance-based regulations are not appropriate.

14. 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 Revised Code 903.10.

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 are already implemented and are communicated to the affected communities. Education, training programs, and outreach on the status of the regulations and any proposed changes are performed with the affected communities by the DLEP, as well as with the Concentrated Animal Feeding Facility Committee that meets three to four times a year. Also, the DLEP assists permit holders with identifying infrastructure and operational deficiencies

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in need of correction during routine compliance inspections and complaint investigations, and regularly provides guidance to permit holders on achieving and maintaining compliance with regulatory requirements. The DLEP ensures that all permit holders and other persons subject to regulation under Chapter 903 of the Revised Code are treated in a similar manner.

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 livestock and poultry farms that are considered CAFOs and/or CAFFs as they are defined under the statute are required to comply with these rules.

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

Permits are required by statute and the fees are established in the administrative rule. Those failing to meet the requirements of the regulation are subject to administrative or civil penalties and the possible revocation or denial of their permit.

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.

Applicants for a permit to install are assessed a fee of two-thousand and two-hundred fifty dollars. Applications for a permit to operate are assessed a fee of one-thousand dollars. All other fees can be found in rule 901:10-1-04 of the Ohio Administrative Code.

During calendar year 2019, the Department received two-thousand dollars in administrative penalties and one-thousand six-hundred dollars in civil penalties.

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

The regulatory intent of the rules is to ensure public safety and environmental protection of Ohio’s waterways and groundwater by regulating the manner in which Ohio’s largest livestock and poultry operations store and handle manure at their facilities. These rules are intended to achieve a high level of environmental and natural resource protection by obligating Ohio’s largest concentrated animal feeding facilities to comply with regulations, standards, and permitting requirements in Chapter 903 of the Revised Code and the adopted rules, and operate in a cost-effective manner.

Regulatory Flexibility

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

The regulations have different regulatory requirements depending on the size of the animal feeding facility. For instance, major concentrated animal feeding facilities (MCAFF) are required to be at greater distances from water sources than large concentrated animal feeding facilities and require certified livestock managers to handle manure produced at the MCAFF. The difference in requirements reflects additional public safety, operational, and environmental protection objectives due to the increase in the number of animals housed at the facility, the amount of liquid or solid manure stored at the facility, and the potential risk of environmental harm present if the facility is not constructed or operated in compliance with Chapter 903 of the Revised Code. Small and Medium sized animal feeding facilities, if they have no discharges, are not regulated by these rules.

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 harm as opportunities to educate first-time offenders and assist these individuals with re-evaluating operating practices and procedures. In most cases, the Department will issue warning notices to first-time offenders that identifies deficiencies and noncompliance, proposed corrective actions and best management practices to return to compliance, and provides instruction on the applicable laws and rules instead of levying monetary fines. Severe enforcement options are reserved for offenders who fail to respond to the Department, fail to correct violations or resolve deficiencies, or those that have repeat violations.

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

The Department has online resources and has field staff available through a 24-hour helpline to provide assistance. Training and seminars are also available. The Department performs routine inspections to ensure continuous compliance with the regulations.