

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture\_\_\_\_\_

Regulation/Package Title: Pesticides FYR Spring 2013\_\_\_\_\_

Rule Number(s): 901:5-11-01 and 901:5-11-10\_\_\_\_\_

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\_\_\_\_\_

Date: 3/22/2013

**Rule Type:**

☐ New

☒ 5-Year Review

☐ Amended

☐ Rescinded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.

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901:5-11-01 sets forth the definitions to be used in the pesticides chapter of the Administrative Code.

901:5-11-10 sets the recordkeeping requirements for commercial pesticide applicators, pesticide dealers, and private applicators.

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

R.C. 921.16

**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.**

Not applicable.

**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)?**

Pesticide use is regulated by statute and administrative rule to protect public health, safety and the environment.

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

The Department will measure the success of these rules through the availability of the required records during the retention period.

**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.**

The Department has an ongoing dialogue with the Ohio Pesticide Applicators for Responsible Regulations (OPARR) and the Ohio Pest Control Association (OPCA). Neither trade group has indicated that there is a need for changes to these rules at this time.

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

**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?**

Not applicable.

**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?**

Applicators are allowed to keep the records in their possession. Alternatively, the Department could require that all or part of the required records be provided to the Department for retention. However, this would be too burdensome to the industry.

**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.***

The rule is performance based.

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

**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 rules for recordkeeping have been in place for several decades, with minor changes. The rule is applied to all pesticide applicators and businesses, and failure to comply can result in suspension or loss of license.

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

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**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.**

a. The pesticide application industry, including individual applicators and businesses as defined by rule.

b. Failure to follow recordkeeping requirements can result in the suspension and loss of the pesticide license, which can prevent the license holder from engaging in their chosen line of work.

c. Recordkeeping expenses are generally minimal and the required paperwork is conducted as part of the pesticide application visits.

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

Pesticides can carry health risks to humans and animals if improperly applied. Proper recordkeeping of the work conducted by applicators and businesses is essential to identifying problems in application and with particular products.

**Regulatory Flexibility**

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

No, the rules are the same whether you are the sole proprietor or you are incorporated and have several employees. The same human health, safety and environmental concerns are there for all businesses.

**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?**

The Department typically waives penalties for first-time offenders unless circumstances warrant otherwise.

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

Inspectors and Supervisors will help them determine what they need to do during routine inspections or phone calls.

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