

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Pesticide – Five Year Rule Review – Amended Rules

Rule Number(s): 901:5-11-02, 04, 05, 08, 09, 11, 12, 13, 14, 15, 19 and 99.

Date: July 21, 2015

Rule Type:

☐ New

☒ 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☐ Rescinded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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

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 chapter 901:5-11 of the Administrative Code regulate pesticide application in the state of Ohio. These rules protect the citizens of Ohio by training and regulating pesticide applicators on proper pesticide use and application. The rules below have been review by the Department of Agriculture (“Department”) and industry stakeholders pursuant to Revised Code 119.32, and have been found to need the changes as outlined.

901:5-11-02 sets forth standards for the training of servicepersons. The rule establishes prohibitions regarding the use and application of pesticides. The amendments to this rule ensure that the rule is in compliance with incorporation by reference guidelines. Further, the rule has been amended to require pesticide applicators, if request, to provide the resident of the applied property a document with information regarding the pesticide application. Additionally, there are stylistic amendments which allow the regulated community to better understand their responsibilities.

901:5-11-04 outlines the licensure process for commercial applicators. The rule states the licensure fee of thirty-five dollars, the licensing period, and the application requirements. The rule is being amended to clarify the section on non-resident commercial applicators. The rule removes the reciprocal agreement requirement and allows the Department more flexibility in accepting commercial applicator from other states.

901:5-11-05 sets forth the licensure process for private applicators. The rule states the licensure fee of thirty dollars, the licensing period, and the application requirements. The rule is being amended to correct a grammar issue.

901:5-11-08 outlines the education and examination process for all pesticide applicators. Each applicator must successfully pas a general core examination and an additional examination for each applicable pesticide use category. The rule is being amended to clarify ambiguities currently present in the law.

901:5-11-09 sets forth notification requirements for pesticide applicators. The rule’s proposed amendment ensures that the public is properly notified and warned by not allowing obstructed sightlines to the lawn chemical application sign.

901:5-11-11 sets forth regulations on the storage, disposal, and handling of pesticides. The amendments to this rule ensure that the rule is in compliance with incorporation by reference guidelines.

901:5-11-12 outlines the requirements for registering pesticides which are distributed for use and sale in the state. The amendments to this rule ensure that the rule is in compliance with incorporation by reference guidelines.

901:5-11-13 states recordkeeping requirements for wood-destroying insect diagnostic inspections. The rule specifically states how the NPMA-33 form is to be filled out by inspectors. It is being amended to make stylistic changes to the rule which allow the reader to understand the rule more clearly.

901:5-11-14 sets forth the integrated pest management standard. This rule applies to individuals involved in implementing pest management activities for non-agricultural uses. It is being amended to make stylistic changes to the rule which allow the reader to understand the rule more clearly.

901:5-11-15 sets forth the requirements for the use of pesticides in schools and on their campuses. The rule is being amended to make stylistic changes as well as outline the time in which pesticides are permitted to be applied.

901:5-11-19 adopts the Agricultural Worker Protection standard as the pesticide safety standard in Ohio. This rule is being amended to clarify the rule.

901:5-11-99 outlines the civil penalties which may be assessed for violations of this chapter and to chapter 921 of the Revised Code. It is being amended to clarify the rule.

Please note that 901:5-11-07 which contains financial responsibility requirements is also being reviewed by the Department. The Department and interested stakeholders have been working together to develop insurance requirements which protects consumers and does not place significant burdens on the industry.

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?
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)?

The Department is statutorily tasked under Chapter 921 of the Revised Code with regulating pesticide use in the state of Ohio. These rules provide training and testing of pesticide applicators throughout the state to ensure both the safe use of pesticides as well as preventing their misuse or mishandling

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

The Department inspects and investigates complaints regarding pesticide application and misuse. The rules are judged as being successful when inspections and investigations find few violations, when pesticide applicators are registered with the Department, and when there is no increase in the number of complaints filed with the Department.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. Each stakeholder was given a copy of the rules contained in this package and asked to submit comments to the Department.

Michael Geary – American Hort
Chris Henney – Ohio Agribusiness Association
Scott Lucas – Ohio Department of Transportation
Jack Fisher- Ohio Farm Bureau
Chris Endsley – Ohio Farm Bureau
Adam Sharp – Ohio Farm Bureau
Roger Wise – Ohio Farmers Union
John Dorka – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care
Kevin Thompson – Ohio Nursery and Landscaping Association
Steve Carver – Ohio Produce Growers Marketing Association
Lisa Schatt – Ohio Produce Growers Marketing Association
Hank Althaus – Ohio Produce Growers Marketing Association
Lonnie Alonso – Ohio Professional Applicators for Responsible Regulation
John Armstrong – Ohio Seed Improvement Association
Kirk Merritt – Ohio Soybean Council
Adam Ward – Ohio Soybean Council
John Grafton – Ohio State Bee Keepers Association
Brian Laurent - Ohio Turfgrass Foundation

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

The stakeholders have indicated that the rules as currently instituted represent the best regulatory scheme at this time. During the review of the rules, the stakeholders and the Department have both agreed that the change in 901:5-11-09 ensures homeowners and their neighbors are properly alerted to the presence of potentially dangerous chemicals.

The Ohio Pest Management Association through Mr. Lonnie Alonso submitted comments regarding rule 901:5-11-02 and 901:5-11-04. Specifically, in regards to 901:5-11-02, Mr. Alonso recommended that the words “air gap device” be added as an acceptable means of protecting against backflow. Working with Mr. Alonso, the Department educated him that

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

the rules as already existing cover his concerns. Specifically, “air-siphon device” is already defined in 901:5-11-01 to include “a mechanism used to protect against back flow.” After this explanation, Mr. Alonso was satisfied with the Department’s explanation.

Further, Mr. Alonso was concerned with amendments made to 901:5-11-04(D)(2). Specifically, Mr. Alonso believed that the amendment eliminated reciprocity agreements with other states. The Department corrected Mr. Alonso’s belief and stated that the rule gives the Department more flexibility in allowing out of state pesticide applicators to engage in business within the state. The amendment removed the necessity of a reciprocity agreement and rather placed the discretion in the hands of the Department.

Finally, Mr. Alonso made comments on additional rules which are not contained in this rule package. The Department is continuing to look into his comments and will, if necessary, bring about an additional rule package in the near future.

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?

The rules in this package are administrative in nature. Therefore, limited scientific data was used in the development of these rules.

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?

Stakeholder participation in reviewing the rules in this package has indicated to the Department that this is the best regulatory scheme at this team. For that reason, no other regulatory alternatives 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.

The rules contained in this chapter are performance-based regulations.

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

Under Chapter 921. of the Revised Code, the Department has the sole regulatory authority to regulate the application and use of pesticides within the state.

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.

These rules are already implemented within the industry and the Department works with all pesticide businesses and applicators to educate and inform them on the requirements of these rules. Additional education and outreach will be performed with the affected communities of the changes by the Department.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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;

All individuals and businesses that apply pesticides in a commercial setting or apply restricted use pesticides in the state of Ohio.

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

No person can apply pesticides in the state of Ohio unless they have either been licensed by the Department or are acting as a trained serviceperson. In order to be a trained serviceperson, individuals must either read the Department manual on safety and or complete an employer sponsored training program. This requires time for employer compliance.

Commercial applicators and private applicators must pay a licensing fee, submit an application, and demonstrate that they possess the adequate knowledge and competence to apply pesticides. All initial applicants are required to taken an examination proving this competence. Renewal applicants may retake the examination or take a minimum of five hours of continuing education.

After application of lawn pesticides to residential lawns, all applicators must place the warning sign contained in 901:5-11-09. This sign alerts the residents of the municipality that lawn pesticides have been recently applied. Additionally, they must provide pesticide information to the owner and the resident of the property to which the pesticide has been applied.

All pesticide businesses and dealers must be registered with the Department on an annual basis. Both pesticide businesses and dealers must pay a fee for each license and expend negligible time while completing the application for renewal. In addition to the cost of the license, pesticide businesses are responsible for providing the Department proof of financial responsibility on an annual basis.

All pesticides must be stored in accordance with the requirements on 901:5-11-11. Depending on the facility which stores the pesticides, this could result in a separate storage unit within a room or a separate room within the facility. Containers used to store pesticides must prevent the result of contamination of animal feeds or commercial fertilizers.

All schools subject to 901:5-11-15 must develop a policy which notifies parents, guardians, faculty, and staff about scheduled pesticide applications.

All wood destroying insect inspections must be completed using a form called NPMA-33.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

No person can apply pesticides in the state of Ohio unless they have either been licensed by the Department or are acting as a trained serviceperson. Commercial applicators and private applicators must pay a licensing fee of \$35 and \$30 respectively. Commercial applicators must renew annually where private applicators license is valid for a period of three years. Additionally, all pesticide businesses and dealers must be registered with the Department on an annual basis. This registration fee is \$35 annually.

All initial applicants are required to taken an examination for which there is no examination fee. Renewal applicants may retake the examination or take a minimum of five hours of continuing education. There are several courses which are offered for free but some courses may have a fee of up to \$85 for all five hours.

Pesticide applicators must place the warning sign contained in 901:5-11-09. This sign can be printed at home for less than 10 cents or can be purchased in bulk by an outside company for an even cheaper price. Further, the NPMA-33 Form used for wood destroying insect inspections may be purchased at forty cents per form.

Pesticide may be stored in a variety of capacities in any building, including cabinets and shelving units. So long as the pesticides do not contaminate animal feed the storage unit is likely viable.

Schools pesticide policy can be created with minimal time and may utilize schools existing email software to disseminate the information.

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

The regulatory intent of this rule is to ensure the health and safety of the citizens of Ohio by training and registering individuals who apply pesticides. As the potential for human illness is great with the misuse or mishandling of pesticides, the adverse business impact is considered justified.

Regulatory Flexibility

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

As the primary purpose of this rule is public health, exemptions for small businesses would not be applicable.

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?

Paperwork violations rarely reach the enforcement stage so long as the manufacturer is willing to correct the violation and has no history of prior violations. First-time offenders are also routinely offered settlements that are appropriate to the circumstances of the violation.

18. 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.