

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Pesticide – 2017 Update

Rule Number(s): 901:5-11-02, 09, and 19.

Date: April 26, 2017

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☐ Rescinded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.

Regulatory Intent

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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 is being amended to clarify that trained servicepersons shall not apply pesticides for their employer unless their supervisor is within the allotted distance. The amendment replaces the word “apply pesticides for hire” with “for their employer.” This amendment was brought about by several applicators attempting to claim that the trained serviceperson was not hired but rather their employer was. The amendment closes this potential loophole. Further, OAC 901:5-11-02 is being amended to no longer require aerial applicators to pass a category exam for the pesticides they are spraying. This is due to a change in the industry for which the applicator themselves never get out of the aircraft. Rather, they land, an individual fills up his pesticide tank and the pilot is given the coordinates on where to fly. Since the pilot is not handling the pesticides a category examination is not necessary.

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.

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

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

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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.

Ginz Zirkle – American Hort
Craig Regelbrugge – American Hort
Chris Henney – Ohio Agribusiness Association
Margo Long – Ohio Agribusiness Association
Andrew Allman – Ohio Agribusiness Association
Tadd Nicholson – Ohio Corn & Wheat Growers Association
John Torress – Ohio Corn & Wheat Growers Association
Scott Lucas – Ohio Department of Transportation
Terri Barnhart – Ohio Department of Transportation
Amalie Lipstreu – Ohio Ecological Food & Farm Association
Adam Rissien – Ohio Environmental Council
Jack Shaner – Ohio Environmental Council
Jack Irvin- Ohio Farm Bureau
Larry Antosch – Ohio Farm Bureau
Adam Sharp – Ohio Farm Bureau
Joe Logan – Ohio Farmers Union
Linda Borton – Ohio Farmers Union
John Dorka – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care
Roni Peterson – Ohio Nursery and Landscaping Association
Lonnie Alonso – Ohio Pest Management Association
Karen Holt – Ohio Produce Growers Marketing Association
John Armstrong – Ohio Seed Improvement Association
Kirk Merritt – Ohio Soybean Council
Tim Arheit – Ohio State Bee Keepers Association
Brian Laurent – Ohio Turfgrass Foundation
Lonnie Alonso – Pesticide Applicators for Responsible Regulation
Belinda Jones – Pesticide Applicators for Responsible Regulation

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

The majority of 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 State Beekeeper Association submitted comments. Specifically, they made recommendations regarding the application of pesticides near registered apiaries. The Department believes that the rules as they currently exist, adequately notify and protect apiaries from pesticide applications without causing undue burden on the pesticide businesses themselves. Due to this, the Department believes that the rules, as they currently exist, are the best regulatory scheme at this time.

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 time. 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.

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 take 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.

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.

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.