

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Pesticide – Wood Destroying Insect Recordkeeping

Rule Number(s): 901:5-11-13

Date: September 20, 2019

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☐ Rescinded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.

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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 Ohio Department of Agriculture is responsible for regulating wood destroying insect diagnostic inspections (WDI) for real estate transactions in the state of Ohio. These rules protect the citizens of Ohio by training and regulating WDI inspectors in proper pest inspection techniques. Through proper inspections, prospective real estate purchasers can make sound decisions based on the information provided by the WDI inspector. The rules below have been reviewed 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.

OAC 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. The National Pest Management Association (NPMA) is a national, non-profit organization established in 1933 to support the pest management industry. Today, the United States Department of Housing and Urban Development (HUD) requires that the NPMA-33 form be completed on all HUD or VA property transactions. The form has been the nationwide standard for wood destroying insect inspections. In December 2019, an updated NPMA-33 form is being released. The rule is being amended to update the instructions on how to complete the form.

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. This rule is not federally required, however, the United States Department of Housing and Urban Development (HUD) requires that the NPMA-33 form be completed on all HUD or VA property transactions.

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 WDI inspections in the state of Ohio. These rules provide training and testing of pest inspectors throughout the state to ensure proper disclosure regarding pest infestations for real estate transactions in Ohio.

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

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The Department inspects and investigates complaints regarding WDI inspections. 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
Patrick Jacomet, Ohio Aggregates & Industrial Minerals Association
Chris Henney – Ohio Agribusiness Association
Janice Welsheimer – Ohio Agribusiness Association
Andrew Allman – Ohio Agribusiness Association
Valerie Graham – Ohio Christmas Tree Association
Tadd Nicholson – Ohio Corn & Wheat Growers Association
John Torres – Ohio Corn & Wheat Growers Association
Scott Lucas – Ohio Department of Transportation
Terri Barnhart – Ohio Department of Transportation
Amalie Lipstreu – Ohio Ecological Food & Farm Association
Pete Bucher – Ohio Environmental Council
Chris Tavenor – Ohio Environmental Council
Jack Irvin- Ohio Farm Bureau
Larry Antosch – Ohio Farm Bureau
Adam Sharp – Ohio Farm Bureau
Joe Logan – Ohio Farmers Union
Brad Perkins – Ohio Forestry Association
Mark Bennett – Ohio Lawn Care
Ken Fisher – Ohio Nursery and Landscaping Association
Brian Alonso – Ohio Pest Management Association
Melinda Howells – Ohio Pest Management Association
Valerie Graham – 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?

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On July 11, 2019, the Ohio Pest Management Association (OPMA) submitted comments. OPMA is an organization dedicated to promoting education and ethics for the pest control industry. OPMA stated that they accept the changes proposed in this rule amendment. No other comments were received.

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 WDI inspections 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, applicators and inspectors 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 perform wood destroying insect inspections.

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

No person may conduct diagnostic inspections for wood destroying insects regarding real estate transactions unless they have been licensed by the Department as a

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commercial applicator. Commercial 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.

Individuals which perform wood destroying insect inspections must complete the NPMA-33 form to document their inspection. This requirement requires employer time for compliance as well as record storage.

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.

Commercial applicators and businesses must pay a licensing fee of \$35. Commercial applicators and businesses must renew annually.

All initial applicants are required to take 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 available, many of which are offered for free, however some courses may have a fee of up to \$85 for all five hours.

The time for compliance with completing the NPMA-33 form is minimal. Further, the NPMA-33 Form 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 is to ensure that commercial applicators conducting diagnostic inspections for wood destroying insects are licensed and have the education necessary to ensure that competent inspection and documentation is completed. This ensures that individuals seeking to purchase real estate can do so with proper disclosure of the current condition of the structure.

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 protection, 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?

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Paperwork violations rarely reach the enforcement stage so long as the inspector 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 to provide assistance. Training and seminars are also available.