



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

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Regulation/Package Title (a general description of the rules' substantive content):

Pesticides

Rule Number(s): 901:5-11-01 to 15; 19 and 99

Date of Submission for CSI Review: 8/14/2024

Public Comment Period End Date: 8/29/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 10 rules (FYR? 10)

Amended/ 7 rules (FYR? 7)

Rescinded/ rules (FYR?)

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

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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.

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.

901:5-11-01 outlines the definitions as used in the chapter. The proposed rule is being amended to update the edition of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), adds definitions for Title 21 and Title 40 of the C.F.R. and updates references to paragraphs. No substantive changes have been made to this rule.

901:5-11-02 sets forth standards for the training of servicepersons. The proposed rule is being amended to strike the edition of FIFRA because it is now defined in 901:5-11-01, update the term “migrant labor camp” to “agricultural labor camp” and update the references to paragraphs. No substantive changes have been made to this rule.

901:5-11-03 outlines the licensure process for pesticide business and registered locations. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-04 outlines the licensure process for commercial applicators. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-05 sets forth the licensure process for private applicators. This rule is being amended to delete 921.08 as a rule that amplifies 901:5-11-05 because 921.08 has been repealed. No substantive changes have been made to this rule.

901:5-11-06 sets forth the licensure process for pesticide dealers. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-07 sets forth the financial responsibility requirements of pesticide businesses and applicators. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-08 outlines the education and examination process for all pesticide applicators. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-09 sets forth notification requirements for pesticide applicators. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-10 sets forth the recordkeeping requirements for all licensed applicators. This rule is being amended to update the references to paragraphs. No substantive changes have been made to this rule.

901:5-11-11 sets forth regulations on the storage, disposal, and handling of pesticides. The proposed rule is being amended to reference the rule in the Administrative Code that incorporates by reference the National Bureau of Standards Handbook 44 and strikes the edition of Title 21 and Title 40 of the C.F.R. because it is now defined in 901:5-11-01. No substantive changes have been made to this rule.

901:5-11-12 outlines the requirements for registering pesticides which are distributed for use and sale in the state. The proposed rule is being amended to define the abbreviation EPA and strikes the edition of FIFRA since it is now defined in 901:5-11-01. No substantive changes have been made to this rule.

901:5-11-13 states recordkeeping requirements for wood-destroying insect diagnostic inspections. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-14 sets forth the integrated pest management standard. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-15 sets forth the requirements for the use of pesticides in schools and on their campuses. This rule is being proposed according to a five-year rule review with no changes made.

901:5-11-19 adopts the Agricultural Worker Protection standard as the pesticide safety standard in Ohio. The proposed rule is being amended to strike the edition of Title 40 of the C.F.R. since it is now defined in 901:5-11-01 and makes stylistic changes to comply with the Legislative Service Commission (LSC) guidelines for rule drafting. No substantive changes have been made to this 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. This rule is being proposed according to a five-year rule review with no changes made.

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.

ORC 921.01, 921.02, 921.06, 921.07, 921.09, 921.10, 921.11, 921.12, 921.13, 921.14, 921.15, 921.16, 921.18, 921.22, 921.25

- 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.

Yes, this rule implements aspects of federal law governing pesticides. ODA is the US EPA designated State Lead Agency that is solely responsible for regulating pesticides under the Federal Insecticide, Fungicide and Rodenticide Act.

- 5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This rule implements federal standards and state of Ohio specific standards pursuant to RC 921. These requirements protect Ohioans rights to responsibly use pesticide products, that they also lay out safety standards for pesticides with regard for human health, environmental impacts and property/crop protection.

- 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)?**

The Department is statutorily tasked under Chapter 921 of the Revised Code with regulating pesticide use in the state of Ohio. This rule promotes consumer confidence and ensures protection for all individuals who utilize a pesticide applicator business in the state. In some instances, pesticide applicators misapply pesticides causing damage to the property to which they applied (as well as neighboring properties). By ensuring that all pesticide applicators and businesses maintain insurance policies, endorsements, and minimum coverage limits helps to ensure that this damage will be covered. Additionally, financial responsibility requirements promote consumer confidence in utilizing the pesticide industry which will, in turn, cause the pesticide industry to grow. A series of uncovered events will result in a loss of consumer confidence therefore likely causing less people to utilize this industry potentially resulting in the loss of profits and jobs. Further, this rule does not require coverage for any intentional damage caused by the applicators. In the end, this rule protects consumers, applicators, and insurance companies.

- 7. 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 will be judged as being successful when there is adequate ability of the department to successfully investigate and mitigate instances of pesticide misuse, or when pesticides are suspected in instances of property damage, adverse health effects, water pollution, wildlife poisoning, etc. Additionally these rules will be successful if trained pesticide applicators have a clear statewide set of standards that will allow them to safely make applications to protect people, pets and livestock from vector borne diseases (i.e. mosquitos,

fleas, ticks); protect our food supply from yield destroying pests; and protect our natural and managed greenspaces from invasive species and weeds.

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 following stakeholders comprise a list of the leaders of several agricultural organizations found within the state of Ohio. The following stakeholders were contacted via email on February 9, 2024, for a public comment period open until February 23, 2024.

AmericanHort	Meagan Nace
AmericanHort	Craig Regelbrugge
Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Ice Miller	Samuel Porter
Nation Farmers Organization	Alva Heiss
NPMA SPAR	Kurt Scherzinger
Ohio Ag Council	Janice Welsheimer
Ohio Aggregates & Industrial Minerals	Patrick Jacomet
Ohio Agribusiness Assoc.	Aaron Heilers
Ohio Association of Meat Processors	Valerie Parks Graham
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Christmas Tree Association	Valerie Graham
Ohio Corn & Wheat	Tadd Nicholson
Ohio Corn & Wheat	Kimberly Shriver
Ohio Corn & Wheat Growers Assoc.	Luke Crumley
Ohio Dairy Producers	Scott Higgins
Ohio Environmental Council	Trent Dougherty
Ohio Environmental Council (OEC)	Pete Bucher
Ohio Environmental Council (OEC)	Chris Tavenor
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau Federation (OFBF)	Adam Sharp

Ohio Farm Bureau Federation (OFBF)	Jack Irvin
Ohio Farmers Union	Joe Logan
Ohio Forestry Association	Jenna Reese
Ohio Green Industry Association	Tracy Schiefferle
Ohio Green Industry Association	Roni Peterson
Ohio Invasive Plants Council	Jennifer Windus
Ohio Invasive Plants Council	Gary Conley
Ohio Lawn Care Association	Mark Bennett
Ohio P.L.A.N.T.	Tony Seegars
Ohio Pest Management Association	Melinda Howells
Ohio Pest Mgmt Assoc. (OPMA)	Molly Mash
Ohio Pest Mgmt. Assoc. (OPMA)	Sheri Maskow
Ohio Pork Producers Council	Cheryl Day
Ohio Poultry Association	Jim Chakeres
Ohio Produce Growers & Marketers	Valerie Graham
Ohio Seed Improvement Assoc	John Armstrong
Ohio Soybean Association	Brandon Kern
Ohio Soybean Council	Kirk Merritt
Ohio State Beekeepers Assoc. (OSBA)	Jamie Walters
Ohio State Grange	Mike Russell
Ohio State University	Adam Ward
Ohio Turfgrass Foundation	Mark Bennett
Ohio Turfgrass Foundation	Troy Judy
Ohio Turfgrass Foundation	Mark Bennett
Pesticide Applicator for Responsible Reg	Mike Grace
The Nature Conservancy	Jessica D'Ambrosio
The Nature Conservancy	Bill Stanley
The Ohio State University	Peggy Hall
Plant Health- Invasive Plant Advisory Board	Dr. Theresa Culley
Plant Health- Invasive Plant Advisory Board	Thomas Macy
Plant Health- Invasive Plant Advisory Board	Kyle Natorp
Plant Health- Invasive Plant Advisory Board	Matthew Lamoreaux

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

No comments were received during the stakeholder outreach comment period.

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?

US EPA has rigorous scientific evaluation standards for approval of individual chemistries. ODA leverages federal resources and US EPA vetted scientific opinions in developing rules related to pesticides.

- 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?**
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

The lack of 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.

- 13. 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.

- 14. 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 when applicable.

Adverse Impact to Business

- 15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**

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

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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 for hire 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 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 \$140 for all five hours.

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 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 with proof of financial responsibility on an annual basis.

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. The sign can be printed at home for less than 15 cents or can be purchased in bulk by an outside company for an even cheaper price.

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

All wood destroying insect inspections must be completed using a form called NPMA-33. The NPMA-33 Form used for wood destroying insect inspections may be purchased at forty cents per form.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No

- 17. 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 and the safe and responsible use of pesticides in Ohio. As the potential for harm is great with the misuse or mishandling of pesticides, the adverse business impact is considered justified. Additionally, the regulation of pesticides is required by federal law.

Regulatory Flexibility

- 18. 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.

- 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?**

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 violators are also routinely offered settlements that are appropriate to the circumstances of the violation.

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

The Department has online resources and staff available for assistance to small business. Training and seminars are also widely available through US EPA, USDA, OSU Extension and other outlets.