



MEMORANDUM

TO: David E. Miran, Jr., Ohio Department of Agriculture

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: September 25, 2014

RE: **CSI Review – Fertilizer Applicator Certification Program (OAC §§ 901:5-4-01; 901:5-4-02; 901:5-4-03; 901:5-4-04 and 901:5-4-05)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

On August 22, 2014, the Ohio Department of Agriculture (ODA) submitted a rule package containing five (5) new rules. The rules outline the certification process for fertilizer applicators conducting certain agricultural businesses. ODA cites R.C. §§ 905.321 and 905.322 – both of which were newly created in Senate Bill 150 – as authority to establish these rules. The official comment period ended September 12, 2014. Six (6) stakeholder comments were submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

As stated by ODA in the BIA, the scope of the impacted business community is comprised of “[a]ny person who applies fertilizer for the purposes of agricultural production on more than fifty acres.”¹

¹ Rule 901:5-4-01 further clarifies that agricultural production is the cultivation of plants primarily for sale.

The rules prohibit any business from applying fertilizer without being issued a fertilizer applicator certification by ODA. This new prohibition takes effect September 30, 2017.

The rules require the business to submit to ODA an initial application for fertilizer applicator certification, and a renewal of that applicator certification every three (3) years unless one of the few statutory exemptions enumerated in the rules applies. The rules require an initial and renewal application fee of \$30. Each initial applicant must show ODA that they have successfully completed a three (3) hour agricultural nutrient training course. Individuals with a pesticide applicator license, which is regulated elsewhere, and individuals who are renewing their fertilizer applicator certificate both only need show completion of two (2) hours of agricultural nutrient training. ODA explained to CSI, through discussions and a review of the BIA, that the education courses approved by the Department will be administered by higher education institutions which possess specialized knowledge in agricultural science (e.g., The Ohio State University, College of Food, Agricultural and Environmental Sciences).

The rules also require certificate holders to record and maintain certain information each time they apply fertilizer, such as date, place, application rate, soil conditions, weather conditions, etc. This information must be maintained by the certificate holder for three (3) years and must be made available to ODA upon request.

Finally, the rules provide that ODA may revoke a certificate for a number of specifically enumerated circumstances, all which relate to violations on the part of the certificate holder.

The above provisions require prior authorization of the Department through an application process, fees, reports of information to the Department through recordkeeping requirements and possible punitive measures which could be taken by ODA against certificate holders. These kinds of provisions are enumerated in R.C. § 107.52(C), and therefore, are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

As explained by ODA, the regulatory scheme requiring certification for fertilizer application is the first of its kind in the country. The statutory mandate for this certification program originated, in part, as the result of a clear need for closer management of fertilizer application on agricultural land to help combat toxic algal blooms and other environmental problems in Ohio's waterways.

Through a review of the BIA, and discussions with ODA, CSI understands the certification program in the proposed rules to accomplish this statutory charge by requiring nutrient education of fertilizer applicators on current nationwide best practices developed by the agricultural science

community. More specifically, as expressed by ODA and enumerated in statute, the education course is intended equip the applicator with the knowledge to apply fertilizer from the right source, at the right rate, at the right time and in the right place depending on the circumstances of the application. The ultimate intended purpose for such an educational focus is to allow the business owners to continue agricultural production with economic success, while applying fertilizer in a manner which minimizes health and environmental impacts on Ohio's waterways. ODA has partnered with the experts in agricultural science at The Ohio State University to create the standards for this education as well as an approved course. Further, with regard to the cost of the training course which ODA estimates to be \$35 for each applicant, the Department will subsidize the costs of the training for the first three (3) years of the certification program.

According to ODA, the Department engaged stakeholders early in the rule review process, and incorporated various stakeholder suggestions, such as training hours required for the course. ODA has also noted that it has received general support for the rules from stakeholders during this review. The six (6) official comments by stakeholders were all responded to by ODA. One of the comments, which suggested clarified recordkeeping requirements involving weather conditions, was incorporated into the proposed rules. After a review of the remaining comments, it is CSI's position that ODA's responses were appropriate and adequately justified the Department's reasoning for not incorporating the remaining comments.

CSI is satisfied with ODA's justification of the adverse impacts to businesses because (1) the Department reached out to stakeholders for feedback, (2) stakeholder feedback and comments have been considered by ODA and either incorporated into the rules or appropriately addressed, and (3) ODA has provided sufficient substantive reasoning as to why the proposed rules are necessary; specifically, that the Department is statutorily obligated to create the certification process, but also that the certification process itself will help to keep Ohio agricultural businesses successful, while reducing the health and environmental impacts of fertilizer application on Ohio waterways.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, CSI has no specific recommendations regarding the rule package.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI concludes that ODA should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office