

**MEMORANDUM**

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

FROM: Cory Bailey, Regulatory Policy Advocate

DATE: July 27, 2015

RE: **CSI Review – Plant Health: Pesticide Application Licensure (OAC § 901:5-11-02; 901:5-11-04; 901:5-11-05; 901:5-11-08; 901:5-11-09; 901:5-11-11; 901:5-11-12; 901:5-11-13; 901:5-11-14; 901:5-11-15; 901:5-11-19; 901:5-11-99)**

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.

Analysis

On April 8, 2015, the Ohio Department of Agriculture (ODA) submitted a draft rule package consisting of twelve amended rules to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on April 29, 2015.

The draft rule package addresses the use and application of pesticides in the state of Ohio. The rules cover a range of issues such as licensing, storage, notification requirements, and pesticide use in schools. According to the BIA, the regulatory intent is to ensure the health and safety of Ohio citizens by training and registering pesticide applicators.

There are many requirements for the handling and use of pesticides as reflected in the draft rules. Pesticide applicators, whether commercial or private, must receive a license issued by ODA that ensures they possess the knowledge and competence to adhere to the requirements. To obtain a license, applicators are required to pay a licensing fee and pass a general examination, along with additional examinations for each applicable pesticide-use category. Renewal of the license can be obtained by passing the general examination or through continuing education courses.

As already stated, each of the twelve rules has been amended. Many of the amendments are stylistic, in most cases to clarify the language and make the rule easier to understand. However, more substantive changes were made in a few cases:

- OAC § 901:5-11-02 now requires that residents of property where pesticides have been applied should receive a document informing them of the pesticide application.
- An amendment to OAC § 901:5-11-04 eliminates the need for a reciprocal agreement between ODA and the licensing state of a non-resident commercial applicator. Rather, ODA can use discretion to determine whether the applicator possesses the necessary competence to operate in Ohio.
- New requirements are added to OAC § 901:5-11-09 to ensure that lawn chemical application signs are clearly visible.
- Changes to OAC § 901:5-11-15 clarifies the appropriate times for pesticides to be applied in schools.

Follow-up with stakeholders revealed that comments had been submitted by the Ohio Pest Management Association (OPMA) during early stakeholder outreach that were not mentioned in the original BIA. The comments were specific to the wording in a couple provisions and expressed concern with the changes to reciprocity agreements. Additionally, comments were made regarding insurance requirements in OAC § 901:5-11-07, but that rule has since been pulled from this rule package and is being handled on a separate track in order to continue discussions with stakeholders. After several conversations with ODA and OPMA, it was determined that the concerns reflected in the comments had been adequately satisfied. The comments from OPMA are included in a revised BIA requested by the CSI Office.

The regulations in the draft rules apply to all pesticide applicators including businesses, from lawn care to pest control to farmers. In the BIA, ODA lists several adverse impacts to business resulting from the rules. Adverse impacts include licensing fees, paperwork, time invested in successfully completing exams, the cost of notification through signs and informational documents, continuing education course fees, and storage compliance. According to ODA, the justification for these costs is the need to protect human health against the inherent danger posed by pesticides when they are misused or mishandled.

While the adverse impact to business is considerable, the CSI Office agrees with ODA that regulation is necessary to ensure the health and safety of pesticide applicators and the public. Input from stakeholders confirms that the rules will achieve this goal without being overly burdensome. Following review of the draft rules and BIA, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules and amendments are justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Agriculture 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