

**MEMORANDUM**

TO: David Miran, Ohio Department of Agriculture

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: July 14, 2017

RE: **CSI Review – Pesticide-2017 Update (OAC 901:5-11-02, 901:5-11-09, and 901:5-11-19)**

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

Analysis

This rule package consists of three amended rules proposed by the Ohio Department of Agriculture (ODA). The rule package was submitted to the CSI Office on April 26, 2017 and the public comment period was held open through May 16, 2017. No comments were received during this time.

The rules in Ohio Administrative Code (OAC) Chapter 901:5-11 regulate pesticide application in the state. Rule 901:5-11-02 is being amended to clarify that services persons are not allowed to apply pesticides on behalf of their employer unless their supervisor is within the allotted distance. In addition, the rule is being amended to no longer require aerial applicators of pesticides to pass a category exam for each pesticide they are spraying. Further, OAC 901:5-11-09 and 901:5-11-19 include changes to notification requirements for pesticide applicators and adoption of the Agricultural Worker Protection standard as the benchmark safety standard in Ohio. The purpose of the rules is to fulfill a statutory requirement to regulate pesticide use in the state and help ensure the safe use and application of pesticides to prevent misuse and address public safety

concerns.

As part of the early stakeholder outreach process, ODA contacted 28 agricultural entities and provided them with a copy of the draft rules and a request for comment. During this process, stakeholders did not express concerns with the rules and specifically noted that the change to OAC 901:5-11-09 helped ensure that home and property owners were sufficiently notified of potentially dangerous chemicals being applied around their property. No comments were received during the CSI public comment period.

The rules impact all individuals and businesses who apply pesticides in a commercial setting in Ohio. The BIA notes that the adverse impact exists because no person can apply the aforementioned pesticides without a license, which may cause a burden on individuals and businesses. Pre-requisites to obtain a pesticide license include reading the Department manual on safety or completing an employer sponsored training program. In addition, both personal and commercial applicators must pay a licensing fee which typically costs \$30 or \$35 depending on whether the license is for an individual or business. Additionally, all pesticide businesses must pay a registration fee to the Department and renew the registration on an annual basis at the cost of \$35 dollars. ODA contends that the adverse impact is outweighed by the regulatory intent of the rules because the rules ensure the health and safety of citizens by requiring training and registering individuals who apply pesticides.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding 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.