

**MEMORANDUM**

TO: David Miran, Ohio Department of Agriculture

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: October 11, 2018

RE: **CSI Review – Pesticides: 2018 Update (OAC 901:5-11-01, 901:5-11-10)**

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 two amended rules submitted by the Ohio Department of Agriculture (ODA) as part of the statutorily required five-year rule review. The rule package was submitted to the CSI Office on September 18, 2018 and the comment period closed on October 1, 2018. No comments were received during this time.

The rules in Ohio Administrative Code (OAC) 901:5-11 regulate pesticide application in the state of Ohio. They serve to train and regulate pesticide applicators on proper pesticide use and application. OAC 901:5-11-01 outlines the definitions used in the Chapter. It is being amended to comply with the incorporation by reference requirements in order to add an effective date to the Federal Insecticide, Fungicide, and Rodenticide Act. Additionally, the definitions of several pesticide use categories have been amended to clarify that those categories do not include the use of fumigants. Lastly, the definition of "anti-siphon device" has been amended to prevent contamination of water sources.

OAC 901:5-11-10 sets forth the recordkeeping requirements for all licensed pesticide applicators. The rule has been amended at the request of the industry to remove the burden of recording

unnecessary data during pesticide applications by commercial applicators. The current rule separates recordkeeping requirements based on the area where an applicator was applying pesticides. This results in situations where applicators are required to record wind direction and velocity during applications that cannot be impacted by wind direction or velocity. The amended rule will correct this.

As part of early stakeholder outreach, the Department provided a copy of the rules to the leaders of several agricultural organizations within Ohio and asked for comment. One comment was received regarding the pesticide use categories and the amended definition of anti-siphon device. Originally, the definition of anti-siphon device included the statement, “of at least six inches between the water supply and the highest portion of the tank.” The Department amended the definition from the original six inches to the currently proposed “two times the diameter of the hose.” This amendment is consistent with international standards of anti-siphon devices. The rule was also amended to reflect two times the diameter of the point of discharge. This dispelled any confusion between a permanent fixture and the hose used to connect the anti-siphon device. No comments were received during the CSI review period.

The rules impact all individuals and businesses that apply pesticides in a commercial setting, or apply restricted use pesticides in the state of Ohio. No person can apply pesticides in the state of Ohio unless they have either been licensed by the Department or are acting as a trained serviceperson. Commercial applicators and private applicators must pay a licensing fee of \$35 and \$30 respectively. Commercial applicators must renew annually whereas a private applicator’s license is valid for a period of three years. They must also demonstrate that they possess the adequate knowledge and competence to apply pesticides. In order to be a trained serviceperson, individuals must either read the Department manual on safety or complete an employer sponsored training program. This requires time for employer compliance. All pesticide businesses and dealers must be registered with the Department on an annual basis. The registration fee is \$35 per year.

All initial applicants are required to take a competency 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 which are offered for free but some courses may have a fee of up to \$85 for all five hours. The Department justifies any adverse impact because the potential for human illness is great with the misuse or mishandling of pesticides and the regulatory intent of the rules is train and register individuals who apply pesticides. This ensures the health and safety of the citizens of Ohio.

Recommendation

For the reasons explained 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.