



MEMORANDUM

TO: David Miran, Ohio Department of Agriculture

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: November 6, 2015

RE: **CSI Review – Pesticide Insurance – Five-Year Rule Review (OAC § 901:5-11-07)**

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) § 107.54, CSI has reviewed the abovementioned administrative rule and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in ORC § 107.54.

Analysis

On October 5, 2015, the Ohio Department of Agriculture (ODA) submitted a draft rule package consisting of one amended rule to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on October 27, 2015 with one comment submitted.

The draft rule establishes financial responsibility requirements for all individuals and businesses that apply restricted use pesticides or pesticides in a commercial setting in the state of Ohio. The rule requires that pesticide businesses have a commercial general liability insurance policy, as well as a separate professional liability insurance policy or endorsement covering liability arising from the application of pesticides. Policies specific to pesticide businesses licensed in wood-destroying insect diagnostic inspections and those that conduct aerial pest control applications are also outlined in the rule. Additionally, every person applying for a pesticide business license must submit a certificate of insurance or binder verifying that they meet the rule's requirements. The rule specifies the information that must be submitted along with the minimum coverage amounts for each of the insurance policy requirements.

The draft rule was originally part of a rule package consisting of several related pesticide rules, but as stated in the BIA, was placed on a different track to work more closely with industry

stakeholders to address concerns. According to ODA, insurance companies were not covering claims made by pesticide businesses due to the way the coverage requirements in the rule were being interpreted. Following conversations between ODA, pesticide businesses, and the insurance industry, language was agreed upon that creates clarity and understanding among the different stakeholders.

One comment was submitted during the CSI comment period from the Ohio Ecological Food and Farm Association (OEFFA). The comment suggested a considerable increase in the minimum coverage amounts set forth in the rule. In the BIA, ODA stated that other stakeholders made similar suggestions during early stakeholder outreach. However, there were also stakeholders that claimed the minimum coverage amounts were too high. As a result, ODA chose to keep the amounts the same.

The primary adverse impact to business in the draft rule is the cost of maintaining the required insurance policies. The premiums for the minimum coverage amounts can range from \$250 to \$700 annually. The time committed to submitting a certificate of insurance with the license application is also considered an adverse impact to business. ODA cites the need to protect consumers from damage caused by the misapplication of pesticides as the justification for the adverse impacts.

Following review of the draft rule, BIA, and stakeholder outreach, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rule 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.