

**MEMORANDUM**

TO: Howard Henry, Ohio Department of Agriculture
FROM: Mark Hamlin, Director of Regulatory Policy
DATE: May 8, 2013
RE: **CSI Review – Fertilizer Five-Year Review (OAC Chapters 901:5-1, 901:5-2, 901:5-3, and 901:5-5)**

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 28 rules being proposed by the Ohio Department of Agriculture dealing with the regulation of fertilizer, including the transportation and storage of fertilizer and anhydrous ammonia. The rules are being reviewed in accordance with the five-year review requirement of ORC 119.032, and all are being proposed with no changes. The rules were submitted to the CSI Office on April 3, 2013 and the comment period was open through April 24, 2013. No comments were received during the comment period.

As noted in the BIA submitted with the rule package, fertilizers present a significant risk to the environment and human health if released accidentally, and anhydrous ammonia presents an especially significant risk. As a result, the existing rules create strict standards for the labeling, storage, handling, and transportation of these substances. The rules generally are based on industry standards and incorporate model rules developed by various industry associations.

As noted by the Department, the rules represent minimum standards necessary to protect the environment and the public from fertilizer spills and exposure. In many cases, the Department

asserts that the businesses adopt standards that are even more restrictive than those required by the rules. However, the rules do create an adverse impact to businesses in terms of the construction and maintenance costs to ensure that storage containers meet the criteria of the rules, as well as business impacts from enforcement actions taken for failure to comply with the rules. However, the rules have been in place for a significant amount of time, and no comments were received during the CSI review period to suggest that the requirements adopted by the Department are overly burdensome.

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.