

**MEMORANDUM**

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

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: February 24, 2014

RE: **CSI Review – Livestock Environmental Permitting Amended Rules (OAC 901:10-1-01; 901:10-1-02; 901:10-1-03; 901:10-1-06; 901:10-1-09; 901:10-2-01; 901:10-2-02; 901:10-2-04; 901:10-2-05; 901:10-2-06; 901:10-2-08; 901:10-2-11; 901:10-2-12; 901:10-2-16; 901:10-2-19; 901:10-2-20; 901:10-3-01; 901:10-3-04; 901:10-3-05; 901:10-6-01; 901:10-6-02; 901:10-6-04)**

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.) 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 R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

The Ohio Department of Agriculture (ODA) submitted a rule package containing twenty-two (22) amended rules on January 15, 2014. This rule package has been submitted by ODA pursuant to five year rule review requirements, and ODA is proposing amendments to all 22 rules. Generally, the rules govern Livestock Environmental Permitting; specifically, permits and compliance standards for Concentrated Animal Feeding Operations (CAFO) or Facilities (CAFF). ODA has cited R.C. § 903.08 and 903.10 as authority to establish these rules. The official comment period for these rules was held open until February 4, 2014. One stakeholder comment was submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

According to ODA, the scope of the impacted business community is comprised of farms considered CAFFs and CAFOs.

The rule package does contain impacts to businesses. CAFFs and CAFOs must comply with various administrative requirements to obtain and maintain NPDES permits, permits to install, and permits to operate. The package contains rules governing certified livestock managers, along with reporting, recording, and operational requirements for the handling, sale, and transportation of manure operations. The package also contains significant reformatting intended to make the rules easier to read. Nearly all of the above require costs, time and resources of businesses to ensure their compliance.

C. JUSTIFICATION FOR ADVERSE IMPACT

According to ODA, stakeholders for these rules were involved early on in the process through ODA's work with various associations and representatives of CAFFs and CAFOs. ODA describes in the BIA that these stakeholders contributed input and suggestions throughout the process of rule drafting. Further, according to ODA, "[a] number of rules in this package were recommended for changes by [stakeholders]" themselves.

ODA has determined that this package will "ensure public safety and environmental protection of Ohio's waterways and groundwater by regulating how Ohio's largest livestock and poultry farms handle and store manure." This determination, according to ODA, balances this protection with the goal of allowing the CAFFs and CAFOs to "operate cost-effectively."

The only comments received by CSI were submitted by the Ohio Farm Bureau Federation (OFBF). CSI discussed the comments with both ODA and OFBF staff. ODA indicated that one of the suggestions contained in OFBF's comment will be incorporated into the draft rules, but disagreement remains on the remainder of the comments. The comments concern legal interpretation and definitional disagreements between ODA and OFBF. Neither OFBF nor any other stakeholders expressed substantive concerns regarding impacts to business within this rule package, and ODA has shown that adverse impacts to CAFFs and CAFOs are outweighed by the need to protect the environment and public. The CSI Office agrees because (1) stakeholders were involved and provided input from an early stage of rule drafting, (2) the only comments submitted did not concern any adverse impacts to business, and (3) ODA has determined that these rules are necessary to ensure public safety and environmental protection. Therefore, the adverse impact of

this rule package to business has been sufficiently justified by ODA.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, the CSI Office has no specific recommendations regarding the rule package.

IV. CONCLUSION

Based on the above analysis and recommendations, the CSI Office concludes that ODA 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