MEMORANDUM

TO: David Miran, Ohio Department of Agriculture

FROM: Christopher Smyke, Regulatory Policy Advocate

DATE: February 21, 2018

RE: **CSI Review – Agricultural Pollution Abatement (OAC 901:13-1-01 to 901:13-1-09, 901:13-1-12 to 901:13-1-20)**

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This rule package consists of one no-change, one rescinded, and sixteen amended[1] rules submitted by the Ohio Department of Agriculture (ODA). The rules have been reviewed pursuant to the statutory five-year rule review requirement. The rules were submitted to CSI on December 18, 2017 and the public comment period was held open until January 5, 2018. No stakeholder comments were received during the CSI review period.

The rules in this package outline state standards for best management and conservation practices with regard to animal feeding and farming operation in order to abate soil erosion and pollution of waters of the state. The entirety of Ohio Administrative Code (OAC) 901:13-1-15 and portions of OAC 901:13-1-16 are being rescinded and incorporated into OAC 901:13-1-17. The proposed rules also reduce the frequency of review for nutrient management plans for watersheds in distress. The rules also delete and amend definitions in order to align with ORC 939. Many of the rules are

[1] Ohio Administrative Code (OAC) 901:13-1-02 through -09, -12, -13, -16, and -17 are being amended to the extent that the Legislative Service Commission requires the Department to rescind the rules and replace them with new rules of the same rule numbers.

heavily amended to alter the structure and format, without making substantive changes to the rule.

Prior to filing with CSI, ODA distributed the rules to a large stakeholder list via email and received feedback from the Ohio Environmental Council, the Ohio Farm Bureau, Ms. Vickie Askins, and a coalition of various commodity groups. ODA initially proposed to incorporate a modified version of Natural Resources Conservation Service (NRCS) 590 standards to avoid potential conflict with ORC 939. However, due to the concerns of multiple commenters, ODA elected to remove OAC 901:13-1-11 from the current rulemaking, in order to conduct a closer review of how the NRCS 590 standards interact with ORC 939. The BIA notes that the rest of the early stakeholder comments addressed code references, definitions, and various questions, which ODA responded to appropriately.

The rules impact any animal feeding operation that is not subject to ODA licensing requirements, Livestock Environmental Permitting Program, or National Pollutant Discharge Elimination System permit. An operation that is found to be in violation of the rules may face civil fines between $250 and $10,000, based on the type and severity of a violation, as well as any history of non-compliance.

The BIA justifies the rules as a necessary safeguard for Ohio's natural resources from soil erosion and water pollution. In addition, ODA is directed by ORC 939 to adopt these standards. Following review of the draft rules and BIA, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules 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.

CC: Emily Kaylor, Lt. Governor's Office