

Rule Summary and Fiscal Analysis (Part A)**Department of Agriculture**

Agency Name

Dairy

Division

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901:11-3-02

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Standard of identity.**RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **917.02**
5. Statute(s) the rule, as filed, amplifies or implements: **917.02**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being filed pursuant to the five year rule review process.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Ohio Administrative Code rule 901:11-3-02 adopts the federal standard of identity

for frozen desserts outlined in Title 21 C.F.R. 135 Subpart B. These include food products such as ice cream, frozen custard, and sherbet. The rule is being amended to add an effective date to 21 C.F.R. 135 Subpart B so that the rule is compliant with the incorporation by reference standards.

The adoption of the federal standards of identity allows Ohio producers of #frozen desserts# to ship their frozen products across the United States. Standards of identity are legal definitions of food products which outline what a food must contain, often in terms of ingredients and measurements, in order to be marketed as that product. The adoption of this rule is not a federal requirement however, by adopting the federal standard Ohio producers have the flexibility needed to expand their businesses nationwide.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

Pursuant to sections 121.76 and or 121.75 of the Revised Code, the code sections incorporated into this rule are exempt from compliance with sections 121.71 to 121.74 of the Revised Code

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. Five Year Review (FYR) Date: **11/24/2015**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

\$0.00

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

The rule does not have fines or penalties, although R.C. 917.02 provides for suspension or revocation of a production license and possible embargo of products that are not produced in accordance with the rules.

Manufacturers of frozen desserts and like products may only identify their products as frozen desserts if they are listed in 21 CFR 135 Subpart B.

The only adverse impact from this rule would be a situation where a manufacturer wanted to classify their product as a #frozen dessert# but their product was not listed in the CFR. This impact is difficult to quantify based on a variety of factors including, the type of product, amount potentially produced, and the price of that product.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

The rule does not have fines or penalties, although R.C. 917.02 provides for suspension or revocation of a production license and possible embargo of products that are not produced in accordance with the rules.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**