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Hearing Date: 3/6/2024

Today's Date: 3/15/2024

Agency: Ohio Department of Agriculture

Rule Number(s): **901:3-17-01**

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. 901:3-17-01 Keith Pritchard, Slate Run Vineyard

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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

The Ohio Department of Agriculture (ODA) received comments during the open public comment period regarding 901:3-17-01. The comments received were from the same individual by email on February 1, 2024, March 4, 2024, and at the public hearing on March 6, 2024. In summary, the individual that submitted comments feels that all producers of intoxicating liquor are being double regulated by the Division of Liquor Control and the Ohio Department of Agriculture.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

ODA did not incorporate any of the comments received during the public hearing comment period. In summary, the comments presented are not directly related to the substance of the rules under review but rather the inclusion of wine and intoxicating beverages in the scope of the rules. Specifically, the commentor states that the Division of Liquor Control has “sole regulatory authority of producers of intoxicating beverages” and therefore, ODA does not have jurisdiction over the production and sanitary inspection of wine producers in the state.

ORC 4301.011 states that “[t]he General Assembly hereby finds that the Twenty-first Amendment to the United States Constitution confers upon the state of Ohio sole and exclusive authority to regulate the *sale and distribution of beer and intoxicating liquor in this state.*” The statute does not grant broad authority to the Division of Liquor Control as is mentioned in the comments.

The statute goes on to address the intent of the general assembly with regards to Title XLIII of the Revised Code. Specifically, it states that it is the intention of the General Assembly to do all of the following:

- (A) Promote temperance by preventing consumption by underage persons and by discouraging abusive consumption;
- (B) Promote orderly markets by requiring transparent, accountable, and stable distribution of beer and intoxicating liquor and preventing unfair competition; and
- (C) Facilitate the collection of taxes related to the sale and consumption of beer and intoxicating liquor.

These intentions are in line with the Division of Liquor Control’s exclusive authority to regulate the sale and distribution of these products, however, they lack reference to the production and sanitary inspection authority.

ORC 3715.01(A)(2) states that “‘Food’ means: (a) Articles used for food or drink for humans or animals [. . .]” Wine is a drink that is ingested into the body and therefore it falls under the definition of food. A facility that manufactures and wholesales or distributes food, including alcoholic beverages, meets the definition of a food processing establishment as defined in 3715.021(A) and is regulated as such by the ODA. There is no exception in ORC 3715 or other state law which would otherwise exempt wine from these regulations and the rules adopted under it.

ODA has communicated with the Division of Liquor Control who agree with ODA’s analysis of the applicable statutes. Additionally, ODA has reached out to surrounding states, including Pennsylvania, Michigan, Tennessee, Indiana, Wisconsin, and New York, to examine their regulatory structure and have found them to be similar to Ohio.

ODA conducts sanitary inspections of all food processing establishments, including wineries that sell predominantly retail, both under state authority in ORC 3715 and under contract with the Food and Drug Administration (FDA). The purpose of these inspections is to ensure that the facility is producing food products in safe, sanitary conditions in accordance with Ohio and federal law.

The Division of Liquor Control may have oversight over basic sanitation pursuant to Ohio Administrative Code section 4301:1-1-17 however this is limited to those establishments which are permitted for on-premises consumption. These standards do not address, nor are they intended to address, the potential hazards that are inherent in food manufacturing such as the exclusion of rodents and pests, physical hazards such as glass inclusion, and chemical hazards. These and other food processing hazards are addressed in ORC 3715 under ODA’s jurisdiction.

Therefore, based on the above there is not a duplication of licensing and regulation in this space.

Hearing Summary Report