

**MEMORANDUM**

**TO:** Howard Henry, Ohio Department of Agriculture

**FROM:** Jeffrey R. Kasler

**DATE:** September 13, 2012

**RE:** **CSI Review – Dairy Rules (Five-Year Review)**

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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 42 rules, all of which are subject to a five-year review under ORC 119.032 and all of which are being proposed with no changes. The rules establish proper handling, sanitation, and safety procedures for the milk and frozen dessert industries.

**Regulatory Intent**

The regulations contained in this package provide uniform health and safety standards for the milk and frozen dessert facets of the dairy industry.

**Development of the Regulation**

The stakeholders who assisted in drafting and reviewing the rules in this package come from many companies within the manufactured milk and frozen dessert industry. According to the Department, the rules were written and discussed individually and agreed upon with a consensus among stakeholders. There was no discussion about rescinding or changing any of the rules in this package because the standards embodied in the regulations are approved by the FDA and USDA and thus represent standard industry practice.

**77 South High Street | 30th Floor | Columbus, Ohio 43215-6117**  
**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

### Adverse Impact

The impacted business community is comprised of 700 dairy producers and 34 dairy processors. It also includes 44 licensed entities in the frozen dessert industry. Because the rules are unchanged, there is no new adverse impact created. That said, without the standards provided for in these regulations, the Department submits that Ohio dairy and frozen dessert products could not be sold in other states due to safety regulations.

There is an existing financial impact to Ohio producers in the form of a license fee for manufactured milk producers and an inspection fee for frozen dessert producers. A manufactured milk producer pays a one-time license fee of \$15.

Frozen dessert processors pay a prorated monthly inspection fee based on the costs of inspection for the entire industry. Producers making less than 80,000 gallons of product in a month pay a minimum inspection fee of \$25. Producers making more than 80,000 gallons pay a prorated portion of the remaining inspection costs. In correspondence with the Common Sense Initiative Office, the Department provided examples of a producer that made roughly 94,000 gallons of product in one month and paid a \$28 dollar inspection fee, and another that produced approximately 500,000 gallons of product in the same month and paid a fee of about \$1,000.

According to the Department, the system for collecting inspection fees is designed to cover the costs of inspection whereby each producer pays a reasonable amount. Most processors are small and pay the minimum.

### Recommendations

For the reasons described above, the CSI Office has no recommendations for this rule package.

### Conclusion

Based on its review of this rule package, the CSI Office recommends the Department should proceed in filing the rules with JCARR.