



MEMORANDUM

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

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: March 3, 2015

RE: **CSI Review – Processing Acidified Foods (OAC §§ 901:3-5-01, 901:3-5-02, 901:3-5-03, 901:3-5-04 and 901:3-5-05)**

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.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

On December 5, 2014, the Ohio Department of Agriculture (“ODA”) submitted a rule package containing five (5) amended rules. The rules were submitted as a result of the five-year review requirement contained in state statute. The rules outline the standards for the process of hermetically sealing¹ acidified foods.² ODA cites R.C. § 913.04 as authority to establish these rules. The official public comment period closed on December 29, 2014. No comments were submitted.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

As indicated by ODA in the BIA, the scope of the business community impacted by this rule consists of all facilities in Ohio which hermetically seal acidified foods (“Cannery/Canneries”).

¹ For example, canning or jarring.

² According to the rules, acidified foods are foods with an initial low acidic content to which acidic content is added.

According to ODA, state statute requires the issuance of a license to any facility wishing to operate as a cannery. The rules require the processing of the foods to be supervised by personnel with a minimum education requirement. The rules require canneries to test the acid levels of each product, as well as display certain information on the packaging, for example, an identification code that states the date and facility information. The rules also contain requirements if a Cannery deviates from its regularly scheduled process. ODA explains that if not handled properly, deviations could result in fatally harmful bacteria growth in the food. Such deviation requirements include additional processes that must be followed, including possible recall or destruction of the products. Finally the rules require certain records to be maintained by Canneries for three (3) years, such as processing, production and distribution records. State statute gives ODA the authority to revoke any license for non-compliance with the statutory or administrative regulations.

The above provisions require the reporting of information and the expenditure of costs to ensure compliance, along with possible punitive measures for non-compliance. All of these requirements are enumerated in R.C. § 107.52, and therefore, these provisions are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

According to ODA, the Department reached out to stakeholders early in the review process, in particular the Ohio Manufacturers' Association, and stakeholders supported the proposed rules. According to ODA, *Clostridium botulinum* is a bacterium which can grow in hermetically sealed acidified foods if not properly produced. *Clostridium botulinum* is deadly to humans if consumed. ODA argues that the impacts created by the rule are necessary as the processing, labeling and recordkeeping requirements greatly reduce the risk of the bacteria *Clostridium botulinum* from forming in the hermetically sealed acidified food.

CSI is satisfied with the Department's justification because (1) ODA included stakeholders from an early stage of rule review and the stakeholders support the proposed rules, (2) CSI has received no stakeholder comments, and (3) ODA has created these rules pursuant to statute, and that the processing, labeling and recordkeeping requirements in the rules are necessary to greatly reduce the risk of deadly bacterium forming in foods. Accordingly, these rules have been sufficiently justified by ODA.

III. RECOMMENDATIONS

For the reasons explained above, this office has no recommendations regarding this rule package.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI 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