

**MEMORANDUM**

TO: David Miran, Ohio Department of Agriculture

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: October 26, 2015

RE: **CSI Review – Dairy – Frozen Dessert Standard of Identity (OAC § 901:11-3-02)**

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) § 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 ORC § 107.54.

Analysis

On September 23, 2015, the Ohio Department of Agriculture (ODA) submitted a draft rule package consisting of one amended rule to the CSI Office as a part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on October 15, 2015 with no comments submitted.

The draft rule incorporates by reference the federal standard of identity for frozen dairy desserts found in Title 21 Code of Federal Regulations 135 Subpart B. A standard of identity essentially defines what the product is, such as the ingredients and measurements, and ensures continuity among different brands. The products covered by the rule include ice cream, frozen custard, goat's milk ice cream, mellorine, sherbet, and water ices. By voluntarily adopting the federal standard, Ohio producers can more easily sell their products across the country.

The adverse impact to business in the draft rule, which applies to all producers of frozen dairy dessert products in Ohio, is the constraint placed on how they market their products. In order to sell ice cream, the product must meet the standard for ice cream as defined by the rule. Without the rule, producers could potentially set their own definition of what constitutes ice cream. Consumer confidence, as well as the need to warn individuals that may be sensitive to certain types of ingredients or products, are cited by ODA as justifications for the adverse impact.

Following review of the draft rules, BIA, and stakeholder outreach, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rule and amendments 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.