

**MEMORANDUM**

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

**FROM:** Sophia Papadimos, Regulatory Policy Advocate

**DATE:** October 27, 2015

**RE:** **CSI Review – Division of Food Safety – Juice Products (OAC 901:3-23-01 through 901:3-23-10)**

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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 (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.

**Analysis**

This analysis includes ten rules proposed by the Ohio Department of Agriculture (ODA) pursuant to the five-year review requirement in statute. The draft rules were submitted to the CSI Office as two separate packages, one package with a single amended rule – Ohio Administrative Code (OAC) 901:3-23-01 – and one package with nine no-change rules, but have been combined for this analysis. The packages were submitted to the CSI Office on September 10, 2015 and the public comment period was held open through October 1, 2015. One comment was received during this time.

The proposed rules regulate the processing of juice products in Ohio. OAC 901:3-23-01 outlines the definitions of juice products and sets forth the criteria that determine which establishments are subject to this chapter of the Ohio Administrative Code. OAC 901:3-23-01 is being amended to allow certain establishments to be exempt from this chapter. The current rule allows businesses to produce raw, unpasteurized juice for consumers as long as the juice was produced at the site where it was sold. The amendments proposed to this rule allow companies to utilize a “central kitchen” model. This model would allow raw juice companies to produce their product in a central kitchen and deliver it to their own establishments, where the product would be sold. While raw juice companies are not subject to this chapter, the companies will be required to comply with

food service operation or retail establishment regulations. The nine no-change rules in this package outline sanitation requirements, hazard analysis and critical control point plans, corrective action plans, recordkeeping requirements, and penalties for non-compliance.

The affected industry includes juice processors in Ohio. The adverse impacts described in the BIAs are the time and costs associated with registering as a food processing establishment. Depending on the size of the establishment the fee ranges from \$50 to \$300. There is also time required for recordkeeping and developing the specific plans outlined in the rules, which, depending on the particular activities, could be significant. ODA states that there are no fines associated with these regulations; however, failure to comply can result in the adulteration or destruction of products.

ODA has been approached by raw juice companies wishing to expand their businesses and the proposed amendments to OAC 901:3-23-01 are a result of the stakeholder input. While the request from stakeholders was to sell their products in multiple locations (licensed under their businesses), the CSI Office asked ODA to also explore the option to sell the juice products to third parties such as grocery or health food stores. Subsequent conversations with ODA revealed that federal FDA guidelines do not permit raw juices to be sold to third parties. Therefore, in order to be in compliance with FDA guidelines, ODA cannot allow the practice.

The one comment received during the public comment period did not apply to the proposed rules but to another area ODA regulates. After reviewing the proposed rules and associated BIAs, the CSI Office has determined that the purpose of the rules is 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.

cc: Mark Hamlin, Lt. Governor's Office