MEMORANDUM

TO: David Miran, Ohio Department of Agriculture

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

DATE: October 22, 2015

RE: **CSI Review – Dairy – Manufacture Milk Grade (OAC § 901:11-2-01 through 901:11-2-44)**

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 18, 2015, the Ohio Department of Agriculture (ODA) submitted a draft rule package consisting of 44 amended rules 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 9, 2015 with no comments submitted.

The draft rule package regulates the production of manufacture-grade milk products. The purpose of the rules is to protect consumers by reducing the risk of bacterial contamination. As noted in the BIA, milk-borne illness was responsible for 25% of all disease outbreaks due to infected foods and contaminated water in 1938. Today, that number has dropped to less than 1% of reported outbreaks, in large part to greater monitoring of manufacturing practices.

The rules cover a wide range of topics, from equipment and facilities to labeling and cleanliness. Among the many requirements, milk product manufacturers must test samples of raw milk for bacterial count, somatic cell count, and beta lactum drug residue. The rules also establish standards for the health of the herd, operating procedures, and transportation. While each of the rules has been amended, the majority of the amendments make simple stylistic or grammatical changes.

The adverse impacts to business resulting from the rules are extensive. According to the BIA, milk haulers, dealers, producers, and processors must pay a $15 annual licensing fee and meet the requirements of the rules. Each requirement or limitation regarding the manufacturing process is considered an adverse impact to business. The testing of samples to track bacterial count is one example of an adverse impact to business. Another example would be the required insect and rodent control program. ODA cites the need to protect the public from contaminated products and a statutory obligation to implement the rules as justification for the adverse impacts.

While the requirements in the draft rules adversely impact business, review of the rules and stakeholder participation has led the CSI Office to conclude that the adverse impacts are not overly burdensome given the need to ensure milk products are free from bacterial contamination. As a result, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules 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.