

**MEMORANDUM**

TO: David Miran, Ohio Department of Agriculture

FROM: Sarah JanTausch, Lt. Governor's Office

DATE: March 21, 2017

RE: **CSI Review – Food Safety – Food Coloring & Standards of Identity (OAC 901:3-1-12 and 901:3-1-13)**

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 one new rule and one amended rule, as part of the five-year rule review requirement contained in Ohio statute, proposed by the Ohio Department of Agriculture (ODA). The rule package was submitted to the CSI Office on January 25, 2017 and the public comment period was held open through February 9, 2017.

These rules are being created and amended to align with the Ohio Revised Code and changes in the United States Department of Agriculture food standards found in Title 21 of the Code of Federal Regulations (CFR). Standards of identity were first adopted by Congress in the 1938 Food, Drug and Cosmetic Act in order to promote food safety and consumer protection by establishing consistent standards in commercial food products. According to the BIA, these rules adhere to the standards and good manufacturing practices for food processing establishments. Adoption of these standards in Ohio rule is not a federal requirement; however, ODA is proposing alignment with CFR to aid in creating uniform regulations and removing any barriers in Ohio for businesses to have the flexibility to operate or expand into other states and nationwide. The BIA states that many other states have also adopted the CFR. However, other states may choose to add

additional regulations for businesses operating in their states.

These rules set the standards of identity (legal definitions) of various food products. The definitions outline what the food must contain, including ingredients and measurements, in order to be identified as that specific product. This rule package covers standards of identity for iodized salt, common or usual name for non-standardized foods, milk, cheese, frozen deserts, and the use of color additives in food. ODA has incorporated the CFR by reference in these two rules in order to ensure alignment and accuracy with the federal standards.

The rules impact all food manufacturers operating within the State of Ohio. Although the rules do not have fines or penalties, failure to meet these requirements may result in the embargo of products and destruction of the food. As a result, there is impact in the time and associated resources related to compliance. Additionally, there could also be time associated with the research and compliance for businesses to ensure that they are reviewing the related Ohio Revised Code, Ohio Administrative Code, and CFR sections. ODA indicated in the BIA that staff members of the Division of Food Safety are available in assisting businesses in complying before they become operational, during operation, and surrounding inspections. Additionally, ODA has online resources, field staff, trainings, and seminars available to assist food manufacturers. Upon further discussion with ODA, they indicated that they regularly meet with and support businesses in understanding the regulations and provide robust resources for anyone needing assistance or with questions about the laws or rules. Lastly, ODA indicated that various associations affiliated with food manufacturing in Ohio also provide resources and trainings for their members to aid in compliance, and local health departments are a resource as well.

During early stakeholder outreach, ODA reached out to its list of food safety stakeholders. This list includes the majority of food-related associations, producers, and councils in Ohio that represent the food industry. No comments were received during early stakeholder outreach or the CSI public comment period.

The BIA states that these standards allow customers to be confident in purchasing products by ensuring that the label accurately reflects what the product actually is. These rules help to ensure public safety and consumer confidence in the food industry. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding 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.