

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Food Safety – Meat, Poultry, and Fish

Rule Number(s): 901:3-31-(01-16)

Date: July 3, 2017

Rule Type:

☐ New

☒ 5-Year Review

☐ Amended

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The rules in Chapter 901:3-31 outline regulations concerning the labeling, packaging, preparation, and sale of meat, poultry, and fish products in the state of Ohio. **The rules have been proposed to be rescinded as all of the requirements in this Chapter are currently regulated in other parts of the Ohio Administrative Code.** Namely, these regulations can also be found in Chapters 901:3-1 and 901:2-1 of the Ohio Administrative Code. Based on this duplication, it was determined that this chapter be rescinded. The rules which are being rescinded are as follows:

OAC Rule 901:3-31-01 outlines the definitions as used in the chapter. The rule is being rescinded.

OAC Rule 901:3-31-02 outlines the labeling requirements for meat, poultry, and fish products. The existing regulations mirror the regulations found in 21 C.F.R. 101. These regulations have been adopted in Ohio Administrative Code Chapter 901:3-1 and Chapter 901:6-3. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-03 also outlines the labeling requirements for meat, poultry, and fish products. The existing regulations mirror the regulations found in 21 C.F.R. 101. These regulations have been adopted in Ohio Administrative Code Chapter 901:3-1 and Chapter 901:6-3. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-04 outlines the labeling requirements for meat, poultry, and fish products. The existing regulations mirror the regulations found in 21 C.F.R. 101. These regulations have been adopted in Ohio Administrative Code Chapter 901:3-1 and Chapter 901:6-3. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-05 states that meat products shall not be packed in hermetically sealed metal or glass containers unless subsequently heat processed or otherwise treated. The rule goes on to state that this processing must meet the requirements of OAC 901:2-1-01. This requirement already exists in OAC 901:2-1-01, in order to avoid duplication, this rule is being rescinded.

OAC Rule 901:3-31-06 outlines requirements concerning ingredients and other articles used in the preparation of products. The requirements listed in this rule mirror those found in Title 9 of the Code of Federal Regulations. These requirements have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-1 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-07 states the process for the approval of substances used in the preparation of food products. These requirements mirror 9 C.F.R. 424.21 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-1 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-08 outlines the prescribed treatment of pork and products containing pork to destroy the bacteria trichinae. These requirements mirror 9 C.F.R. 318.10 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-1 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-09 outlines the use of separate meat grinders when processing different meat products. These requirements have been adopted in Ohio Administrative Code Chapter 901:3-1 as Good Manufacturing Practices. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-10 outlines the process by which the Department may embargo a product that is unfit for the use intended by the manufacturer. These requirements have been adopted in Ohio Administrative Code Chapter 901:3-1 as Good Manufacturing Practices. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-11 outlines the “standards of identity” for meat products. These requirements mirror 9 C.F.R. 319 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-1 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-12 outlines the proper cooking temperature for poultry products. These requirements mirror 9 C.F.R. 318.146-150 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-3 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-13 sets forth the requirements for the disclosure of poultry meat content. These requirements mirror 9 C.F.R. 318.155-174 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-3 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-14 outlines the “standards of identity” for poultry products. These requirements mirror 9 C.F.R. 318.155-174 which have been adopted pursuant to Chapter 918 of the Ohio Revised Code in Chapter 901:2-3 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-15 outlines the standards kinds, cuts, and classes of poultry products. These requirements mirror 9 C.F.R. 318.155-174 which have been adopted pursuant to

Chapter 918 of the Ohio Revised Code in Chapter 901:2-3 of the Ohio Administrative Code. Therefore, in order to avoid duplication, the rules are being rescinded.

OAC Rule 901:3-31-16 outlines lighting requirements for meat and poultry displays. These requirements have been adopted in Ohio Administrative Code Chapter 901:3-1 as Good Manufacturing Practices. Therefore, in order to avoid duplication, the rules are being rescinded.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 918.01 and 3715.69

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

As previously stated, these rules are duplicative. The rules can also be found in Chapters 901:3-1 and 901:2-1 of the Ohio Administrative Code. Those particular chapters implement federal rules and regulations however, they are not up for review at this time.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rules have been proposed to be rescinded as all of the requirements in this Chapter are currently regulated in other parts of the Ohio Administrative Code. Namely, these regulations can also be found in Chapters 901:3-1 and 901:2-1 of the Ohio Administrative Code. Based on this duplication, it was determined that this chapter be rescinded. Therefore, it is the Department's position that there is no public purpose for these rules as they are duplicative.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

As the rules are being rescinded, this question is not applicable.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following stakeholders were sent the proposed rules via email on June 12, 2017, and were given until June 30, 2017 to provide any comments:

Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Department of Education/Child Nutrition	Andrea Denning
Environmental Law & Policy Center	Madeline Fleisher
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio State University (Farmers Markets)	Christie Welch
Maple Producers	Dan Brown
Ohio Council of Retail Merchants	David Raber
Snack Food Association – Arlington, VA	David Walsh
Mid-America Food Processors Association	Debra Gibson
Ohio Dairy Producers	Scott Higgins
Ohio State University (Farmers Markets)	Gwen Wolford
Ohio Farm Bureau	Jack Irvin
Ohio Produce Growers Association	Jennifer Kennedy
Ohio Farm Bureau	Tony Seegers
Ohio Grocers Association	Joe Ewig
Ohio Farm Bureau	Yvonne Lesicko
Ohio Restaurant Association	Joe Rosato
Ohio Farmers Union	Joe Logan
Ohio Restaurant Association	John Barker
Ohio Farmers Union	Linda Borton
Ohio Farmers Union	Roger Wise
Ohio Soft Drink Association	Kimberly McConville
Ohio Grocers Association	Kristen Mullins
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Association of Food Banks	Lisa Hamler-Fugitt
Ohio Produce Growers Association	Lisa Schacht
Ohio Bakery Association	Lora Miller
Ohio Lawn Care Association	Mark Bennett
Ohio Manufacturer's Association	Ryan Augsberger
Wholesale Beer and Wine Association	Timothy Bechtold

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8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Department did not receive any stakeholder comments for this package.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

As the rules are being rescinded, this question is not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The department considered maintaining this rule package however, after a thorough review of the Department's current administrative rules it was discovered that the rules were duplicative. In the interest of clarity and eliminating government regulations, the Department elected to rescind these rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

As the rules are being rescinded, this question is not applicable.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Please see the Department's response to question number 10 above.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

As previously stated, these rules are duplicative. The rules are well implemented within the industry and can also be found in Chapters 901:3-1 and 901:2-1 of the Ohio Administrative Code. The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

As currently established, the rules impact meat, fish, and poultry manufacturers in the state of Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

These rules regulate the labeling, packaging, preparation, and sale of meat, poultry, and fish products in the state of Ohio.

c. Quantify the expected adverse impact from the regulation.

As the Department has proposed to rescind the rules there would be no adverse impact after rescission. However, as stated above, the requirements in this Chapter are currently regulated in other parts of the Ohio Administrative Code but these rules are not up for review.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As the rules are being rescinded, this question is not applicable.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

As the rules are being rescinded, this question is not applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

As the rules are being rescinded, this question is not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

As the rules are being rescinded, this question is not applicable.