

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** February 2, 2018

**RE:** **CSI Review – Produce Safety (OAC 901:3-12-01 through 901:3-12-06)**

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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 (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 contains six new rules proposed by the Ohio Department of Agriculture (ODA). The rule package was submitted to the CSI Office on September 6, 2017 and the public comment period was held open through September 22, 2017. No public comments were received during this time.

The rules in this package adopt the produce safety regulations of 21 Code of Federal Regulations (CFR) 112 into Ohio's food production regulations. The CFR regulations set standards for the growing, harvesting, packing, and handling of produce meant for human consumption. Ohio Administrative Code (OAC) 901:3-12-01 incorporates the regulations of 12 CFR 112. OAC 901:3-12-02 through 901:3-12-04 establish the portions of 12 CFR 112 that are to be amended or deleted, in order to bring the regulations in line with Ohio practices. OAC 901:3-12-05 establishes the enforcement dates for the rules. OAC 901:3-12-06 was created after ODA received stakeholder feedback and creates a process for voluntary registration as a regulated business for those that would not otherwise meet the requirements for regulation.

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During early stakeholder outreach, ODA sent the rules to industry organizations, professional associations, and other relevant interested parties. Comments were received from two stakeholders. The first comment suggested changes to the exemptions for small businesses and the addition of an ombudsman to mediate the implementation process of the rules. In response to the stakeholder's comments on small businesses, ODA proposed OAC 901:3-12-06, which allows exempted businesses to voluntarily accept regulation. ODA stated that it would not establish an ombudsman, since the Department will be offering training and outreach sessions regarding the implementation of the rules. Another comment suggested including a formal procedure for variance requests. ODA declined to formalize the procedure, stating that the requests received by the Department are diverse and that reviewing each variance request on a case-by-case basis offers businesses proper consideration for their unique circumstances. No comments were received during the CSI public comment period.

The business community impacted by these rules includes all entities that grow, harvest, process, pack, and sell produce in Ohio. The rules include exemptions from regulations for entities which handle produce that is rarely consumed raw or average an annual value of less than \$25,000 over three years. However, the rules offer exempted businesses the option of voluntarily applying for inclusion if desired. ODA states in the BIA that the adverse impacts created by these rules are difficult to quantify, as the rules require compliance in the form of adherence to safety and training requirements. ODA references the cost of preventing workers with health conditions from contaminating produce, testing agricultural water quality twice per production cycle, and the change some businesses may need to make in order to comply with biological soil amendment requirements. ODA acknowledges that the effort required to adhere to these rules is heavily dependent on the type and amount of produce handled and the capacity of facilities, which could mean rather large impacts on businesses. ODA states in the BIA that these rules protect the public from foodborne illness by promoting safe and hygienic practices during all stages of production, thus explaining the need for these rules. 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.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Agriculture should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.