

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture  
**FROM:** Christopher Smyke, Regulatory Policy Advocate  
**DATE:** March 2, 2018  
**RE:** CSI Review – Frozen Dessert Rules (OAC 901:11-3-01 to 901:11-3-11)

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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 consists of seven no-change and four amended<sup>1</sup> rules submitted by the Ohio Department of Agriculture (ODA). The rules have been reviewed pursuant to the statutory five-year rule review requirement. The rules were submitted to CSI on December 28, 2017 and the public comment period was held open until January 19, 2018. No stakeholder comments were received during the CSI review period.

Ohio Administrative Code (OAC) Chapter 901:11-3 regulates the production of frozen desserts in Ohio. The Chapter establishes a standard of identity for frozen desserts and sets requirements for labeling, pasteurization, corrective actions, and sanitation standard operating procedure. In addition, the Chapter stipulates chemical, bacteriological, and temperature standards. The rules also require a hazard analysis and critical control point (HACCP) plan and outlines requirements for HACCP verification and validation, records retention, and training. Proposed amendments would ensure that labeling requirements apply to frozen desserts whose ingredients are not from a cow or goat and would allow the addition of dairy products after pasteurization, with ODA

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<sup>1</sup> Ohio Administrative Code (OAC) 901:11-3-04 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

approval. The rest of the rule changes are non-substantive changes to language style, as well as simplifying rule references.

Prior to filing with CSI, the rules were reviewed by the Ohio Milk Sanitation Board, an advisory group comprised of industry stakeholders, established by ORC 917. The Board was supportive of the proposed changes and approved the rules to file with CSI. In addition, no comments were received during the CSI public comment period.

The rules impact all businesses that manufacture frozen desserts in Ohio. State law requires manufacturers of frozen desserts to obtain a milk processor license, sets forth fees, and establishes a process to suspend or revoke a license for non-compliance with the rules. The rules under review only outline the required standards. The BIA asserts that it is not feasible to quantify the cost of compliance because of significant overlap between the standards set in rule and common business practice. For example, the rules dictate equipment specifications, so equipment manufacturers design their machinery accordingly; the rules impose record keeping requirements, which most machinery in the industry automatically record the necessary information. However, statutory requirements entail a \$15 annual licensing fee and an inspection fee that shall not exceed 63% of the estimated cost of administering and enforcing ORC Chapter 917.

ODA is mandated by statute to develop and establish standards for the dairy industry. The BIA justifies the rules as necessary to ensure that safeguards are in place during the manufacturing process of frozen desserts to prevent the growth of dangerous pathogens. The rules also mirror the U.S. Food and Drug Administration's recommended guidelines, which allow Ohio businesses to export frozen desserts to other states. Following review of the draft rules and BIA, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules 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.

CC: Emily Kaylor, Lt. Governor's Office