

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Ohio Proud – Five Year Rule Review

Rule Number(s): 901:4-6-(01, 03-06)

Date: December 18, 2017

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☒ Rescinded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.

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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.

Created in 1993, the Ohio Proud Program increases sales and consumer awareness of Ohio made and grown agricultural products. Since the program's inception, membership has continued to grow to more than 500 members who make value-added products; raise livestock and grow fresh produce and nursery stock. These rules have been reviewed and amended pursuant to the five year rule review process. The rules and their amendments are as follows:

OAC 901:4-6-01 outlines the definitions as used in the chapter. The rule has been amended to include a definition of the word "Department." Further, the definition of the word "Board" has been removed pursuant to the rescission of rule 901:4-6-06. Other stylistic changes have been made which do not impact the substance of the rule.

OAC 901:4-6-03 sets forth the application and registration process for participating in the Ohio Proud program. The rule has been amended to make a stylistic change which does not impact the substance of the rule.

OAC 901:4-6-04 outlines the product which are eligible for participation in the Ohio Proud program. The rule has been amended to make stylistic changes which should assist in reader comprehension. No substantive changes have been made to the rule.

OAC 901:4-6-05 sets the fee for registration of products. The Department currently charges a \$25 annual licensing fee to agricultural companies which allows them to use the registered Ohio Proud trademark packaging, advertising and social media. These companies are listed on the program's website and can participate in educational and promotional activities throughout the year. The licensing fee is deposited into a dedicated Rotary Fund which is used to administer the program.

With the GRF reduction in previous budget cycles, the Rotary Fund has been the primary funding source to administer the program. In addition to the GRF reduction, the licensing fee was reduced in 2008 from \$100 to \$25. These reductions are depleting the Rotary Fund balance and limiting the department to create programs that will enhance the competitive advantage of Ohio Proud companies. The department is requesting an increase in the annual licensing fee from \$25 to \$50. These additional funds will enable the Department to create opportunities to increase sales and consumer awareness of Ohio Proud companies.

OAC 901:4-6-06 establishes an advisory board to advise the Department on the administration of the Ohio Proud program. The rule has been proposed to be rescinded. This

board has been defunct for several years and has not met. Therefore, the Department has determined that the board is unnecessary and should be rescinded.

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

ORC 901.171

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.

No.

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)?

Food and agriculture are one of Ohio's top industries, contributing more than \$123 billion to the state's economy. Ohio is home to more than 1,000 food processing companies and produces more than 200 commercial crops. The Ohio Proud program provides prospective consumers with a quick and reliable way for consumers to identify Ohio-made and grown goods.

Studies have shown that people are more willing to purchase products that are grown and produced locally over those that were not. Further, every dollar spent on Ohio Proud products reinvests in the state's economy. The Ohio proud allows consumers to support local farmers and food processors, their community, and Ohio's livelihood by purchasing Ohio Proud products.

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

The Department will continue to review the Ohio Proud program to determine its impact on Ohio Proud products.

Development of the Regulation

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

On October 31, 2017, the Department emailed all 526 Ohio Proud members. The Department provided these entities with a copy of the rules and an explanation of the proposed

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amendments. The Department gave these individuals until November 30, 2017, to respond with comments.

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

The Department received fifteen (15) comments regarding the proposed rule amendments. Of these comments twelve supported the increase in the fee while three did not support the increase.

Jamie Johnson of Bluescreek Farm Meats & Market stated, “We think that you should revisit this again in a few years. Maybe increase it to \$75 after people adjust to \$50.”

Mark of MKM Family Farms LLC stated, “I think raising the fee to \$50 is reasonable and the other changes you propose make sense.”

Kimberly Buechner Fouse of All Things Alpaca, LLC stated, “I personally believe a fee increase from \$25 to \$50 for an annual renewal is a hefty increase.” She went on to further state, “My very small, family owned business appreciates the Ohio Proud affiliation. As a non-food producer, the licensing gives us market credibility.”

Based on the high percentage of support for the fee increase as well as the other proposed amendments the Department determined that the fee increase should remain in the proposed rules.

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?

A 2007 consumer study found that 93 percent of those surveyed prefer to buy Ohio products over national brand. Of those surveyed, 90 percent indicated they would pay up to 50 cents more for items made in Ohio. Ohio agribusinesses, farmers, producers, manufacturers, and retailers help consumers identify Ohio-made and grown products using the Ohio Proud logo. This study provides scientific data to show that products that bear that Ohio Proud logo fare better in the marketplace.

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 the rules; however the Department determined by the stakeholder outreach that these changes were necessary.

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.

Not applicable.

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

The Department is given sole regulatory authority in ORC 901.171.

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.

These changes will impact the 2019 Ohio Proud year. The Department will reach out to all licensees and registrants to alert them of the upcoming changes.

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;

Manufacturers and producers of any agricultural commodity, processed food, feed, fiber, or combinations thereof, that is produced in Ohio and wishes to join the Ohio Proud program.

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

Individuals interested in participating in the Ohio Proud program must spend time for compliance. There are no fines for non-compliance however, the Department could take action against a person using the logo without a proposed Persons wishing to participate in the Ohio proud program shall apply to the director of agriculture for a license on the forms provided by the department, provide all of the information required on the forms and any additional information if requested; and submit to the department:

(a) A product registration application for each product they will market in conjunction with the logotype providing all of the information requested on the forms and any additional information requested by the director; and,

(b) A signed license agreement; and,

(c) The actual employment or a facsimile of the actual employment of the logotype in complete content; and

(d) A product registration fee; and

(e) If requested, samples of products with which the logotype will be used.

c. Quantify the expected adverse impact from the regulation.

As this program is voluntary there is minimal adverse impact from this regulation. However, interested individuals must complete necessary paperwork which takes a minimal amount of time. The proposed product registration fee is \$50 annually which is an increase from \$25.

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

As stated above, the Ohio Proud program gives consumers a quick and reliable way for consumers to identify Ohio-made and grown goods. Every time consumers purchase an Ohio Proud product consumers are reinvesting in their communities and the state of Ohio. As the program is voluntary and the impact that the Ohio Proud program has had on Ohio's economy for the last 24 years, the Department considers the adverse impact to be justified.

Regulatory Flexibility

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

As this program is voluntary, no exemptions or alternative means of compliance are necessary.

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?

Not applicable.

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

The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.