



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

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Regulation/Package Title (a general description of the rules' substantive content):

Food Safety- Maple Syrup, Honey, Sorghum

Rule Number(s): 901:3-44-01; 901:3-45-01 to 05 and 901:3-46-01 to 09

Date of Submission for CSI Review: 11/27/23

Public Comment Period End Date: 12/15/23

Rule Type/Number of Rules:

New/ rules

No Change/ 8 rules (FYR? Yes)

Amended/ 7 rules (FYR? Yes)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Generally, any food production operation is required to be licensed as a food processing establishment and inspected regularly by the Ohio Department of Agriculture or their local department of health. However, pursuant to Ohio Revised Code 3715.021, this general rule does not apply to processors of tree syrup, sorghum, and honey who meet certain criteria. Regardless, certain provisions of Chapter 3715 of the ORC do apply to tree syrup, sorghum, and honey. The rules of this package contain the regulations and standards of tree syrup, sorghum, and honey as allowed under the ORC.

OAC 901:3-44-01 outlines the mandatory food sampling tolerance levels for tree syrup, sorghum, and honey. As stated above, tree syrup, sorghum, and honey producers are not regulated in the same manner as other food production operations. However, ORC 3715.022 states that all food products, including maple syrup, sorghum, and honey, shall be sampled and tested to determine if the food product is misbranded and/or adulterated. This rule is being amended to replace maple syrup with tree syrup to line up with ORC 3715.021.

Pursuant to ORC 3715.24, the Department shall adopt rules which establish voluntary grades, authorized optional ingredients, standards for fill of containers, and standards of weight for the sale of maple products in this state and that specify the analytical tests to be used for determining compliance with those voluntary grade requirements. The rules in Division 901:3-45 of the Administrative Code fulfill this requirement.

OAC 901:3-45-01 this rule is established to mirror the grading system used to classify maple syrup utilized by the United States Department of Agriculture. The rule adopts color classifications of maple syrup which are verified by measuring light transmission of the syrup. This rule is being submitted as a no change.

OAC 901:3-45-02 sets out the optional ingredients which are allowed in maple products. These optional ingredients match those ingredients allowed in federal law (See 21 C.F.R. 168.140). This rule is being submitted as a no change.

OAC 901:3-45-03 outlines the labeling requirements for maple syrup. This rule is being submitted as a no change.

OAC 901:3-45-04 sets forth the packing and fill requirements for maple syrup. This rule is being submitted as a no change.

OAC 901:3-45-05 sets forth the bulk packaging requirements for maple syrup. This rule is being submitted as a no change.

Ohio Revised Code 3715.024 permits maple syrup, sorghum, and honey producers to be voluntarily inspected by the Department. Upon successfully passing inspection, the producers will receive a seal of conformity and inspection by the Department. The rules below identify the requirement of these processors necessary to pass inspection.

OAC 901:3-46-01 outlines the definitions as used in the Chapter. The rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-02 reiterates the option that maple syrup, sorghum, and honey processors may seek voluntary inspection. This rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-03 states that maple syrup, sorghum, and honey processors who elect to be voluntarily inspected must register with the Department. This rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-04 outlines the seal of conformity and inspection pursuant to ORC 3715.024. This rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-05 outlines the collection equipment which may be utilized in production. This rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-06 sets forth the packing and fill requirements for tree syrup, sorghum, and honey. This rule is being submitted as a no change.

OAC 901:3-46-07 sets forth the bulk packaging requirements for tree syrup, sorghum, and honey. This rule is being amended to replace maple syrup with tree syrup.

OAC 901:3-46-08 outlines the good manufacturing practices which are required under the rule. This rule is being submitted as a no change.

OAC 901:3-46-09 establishes water supply requirement for production. This rule is being submitted as a no change.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC 3715.021, 3715.022, 3715.023, and 3715.024

4. **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, the rule does not implement a federal requirement however, the rule mirrors the current federal standards.

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable

6. **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 current state of maple/tree syrup, sorghum, and honey regulations is an example of a food safety conscious, business friendly approach of allowing individuals to sell safe, wholesome food products without the burden of regulation. For example, these rules would allow an individual with a hobby for maple/tree syrup, sorghum, or honey production to sell their food items as a side business or may allow a company thinking about starting a full time operation to test the water by selling a small number of maple/tree syrup, sorghum, and honey items without investing thousands of dollars into a full production line.

This flexibility is not without food safety restraints. The rules require mandatory food sampling and allow for voluntary inspection of their operations. The seal of conformity and inspection gives consumers the confidence that the product they are purchase is safe and wholesome.

In the end, the rule removes general licensure requirements in a safe, flexible manner to allow individuals to produce and sell wholesome, non-potentially hazardous foods.

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

The Department inspects and investigates complaints regarding maple/tree syrup, sorghum, and honey production operations. The rules are judged as being successful when inspections and investigations find few violations, when there is no increase in the number of complaints filed with the Department, and when there are minimal health related outbreaks attributed to maple/tree syrup, sorghum, and honey food products.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. 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 contacted via email on September 18, 2023, for a public comment period which remained open until October 2, 2023.

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| Ohio Veterinary Medical Association | ohiovma@ohiovma.org |
| Samuel Porter | samuel.porter@icemiller.com |
| Capitol Advocates | reshenbaugh@capitoladvocates.net |
| CIFT | twildermuth@ciftinnovation.org |
| Maple Producers | dnbrown33@gmail.com |
| Mid-Ohio Growers | midohiogrowersmtg@gmail.com |
| Midwest Foods Association - Ohio group | Patricia.Anderson@midwestfoodsassociation.com |
| Ohio Ag Council | info@ohioagcouncil.org |
| Ohio Apples | ohioapplemarketingprogram@gmail.com |
| Ohio Association of Food Banks | Lisa@ohiofoodbanks.org |
| Ohio Aquaculture Association | smith.11460@osu.edu |
| Ohio Bakery Association | loram@ohioretailmerchants.com |
| Ohio Beef Council/Ohio Cattlemen's Association | eharsh@ohiobeef.org |
| Ohio Council of Retail Merchants | info@ohioretailmerchants.com |
| Ohio Craft Brewer's Association | mary@ohiocraftbeer.org |
| Ohio Craft Brewer's Association | ashley@ohiocraftbeer.org |
| Ohio Dairy Producers | scott.higgins@odpa.org |
| Ohio Ecological Food and Farm Association | amalie@oeffa.org |
| Ohio Ecological Food and Farm Association | Alisha@oeffa.org |
| Ohio Ecological Food and Farm Association | Amber@oeffa.org |
| Ohio Farm Bureau | asharp@ofbf.org |
| Ohio Farm Bureau | jirvin@ofbf.org |
| Ohio Farm Bureau | lcurtis@ofbf.org |
| Ohio Farm Bureau | rhigh@ofbf.org |
| Ohio Farm Bureau | lantosch@ofbf.org |
| Ohio Farmers Union | joelogan.jl@gmail.com |
| Ohio Manufacturer's Association | raugsburger@ohiomfg.com |
| Ohio Pork Producers Council | cday@ohiopork.org |
| Ohio Poultry Association | jchakeres@ohiopoultry.org |
| Ohio Produce Growers Association | schachtfarmmarket@gmail.com |

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| Ohio Restaurant Association | jbarker@ohiorerestaurant.org |
| Ohio Restaurant Association | lmorrison@ohiorerestaurant.org |
| Ohio Restaurant Association | tbowen@ohiorerestaurant.org |
| Ohio Soybean Association | bkern@soyohio.org |
| Ohio State University | ward.311@osu.edu |
| Ohio State University (Farmers Markets) | welch.183@osu.edu |
| Ohio Wine Producers Association | dwinchell@ohiowines.org |
| Snack Food Association – Arlington, VA | dwalsh@sfa.org |
| The Ohio State University | hall.673@osu.edu |
| Wholesale Beer and Wine Association | tjbechtold@vorys.com |
| Great Lakes Community Action Partnership | rrichter@glcap.org |
| PACA Inc. | dpc@pacainc.com |
| Wood County Committee on Aging | abradford@wccoa.net |
| Ohio Greater Showmen Association | greaterohiosa@gmail.com |
| President/CEO- Ohio Grocers | kristin@ohiogrocers.org |
| Ohio Farmers Market Network | hello@ohiofarmersmarketnetwork.org |
| Ohio Farmers Market Network | ohiofarmersmarketnetwork@gmail.com |

10. 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 during the open comment period.

11. 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?

The majority of these rules are administrative, having been derived from statute. However, some of the rules have been developed through years of scientific research and data. Specifically, mandatory tolerances have been established to ensure that food products are safe for consumption. Further, OAC 901:3-46-08 mirror the basic good manufacturing practices established by years of experience and research.

12. 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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

The department is statutorily obligated to promulgate the rules listed in this package.

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

The Department has sole regulatory authority to regulate maple/tree syrup, sorghum, and honey production operations in the state of Ohio.

14. 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 rules are already implemented within the industry and the Department works with all maple/tree syrup, sorghum, and honey food production operations to educate and inform them on the requirements and regulations. The staff members of the Division of Food Safety ensure that all maple/tree syrup, sorghum, and honey production operations in Ohio are treated in a similar manner. The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

All maple/tree syrup, sorghum, and honey production operations operating within the state of Ohio.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a representative business. Please include the source for your information/estimated impact.

There is no quantifiable adverse impact from this regulation. Maple/tree syrup, sorghum, and honey production operations which produce foods that are misbranded or adulterated would be subject to embargo and destruction of their products. The quantified loss for this cannot be calculated due to the variables of the food product.

All maple/tree syrup, sorghum, and honey production operations are prohibited from producing adulterated products. Further, maple/tree syrup, sorghum, and honey production operations may subject themselves to voluntary inspection. Pursuant to the rules, these processors must register with the Department. There is no cost for this registration; however, through voluntary registration individuals subject themselves to additional requirements.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No

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

The prevention of food borne illness and the protection of consumers is outweighed by the adverse impact of these regulations. The regulatory intent of these rules is considered justified due to the public safety risk.

Regulatory Flexibility

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

As stated above, generally any food production operation is required to be licensed as a food processing establishment and inspected regularly by the Ohio Department of Agriculture or their local department of health. However, pursuant to Ohio Revised Code 3715.021, this general rule does not apply to processors of maple/tree syrup, sorghum, and honey who meet certain criteria. Ohio Revised Code 3715.024 permits maple/tree syrup, sorghum, and honey producers to be voluntarily inspected by the Department. Upon successfully passing inspection, the producers will receive a seal of conformity and inspection by the Department.

19. 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?

There are no penalties for paperwork violations.

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

The staff members of the Division of Food Safety ensure that all processors of maple/tree syrup, sorghum, and honey in Ohio are treated in a similar manner. The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.