



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. 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):

Farm Markets and Auctions

Rule Number(s): 901:3-6-01 to 08

Date of Submission for CSI Review: 3/15/2024

Public Comment Period End Date: 4/5/2024

Rule Type/Number of Rules:

New/ rules

No Change/ 1 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Rescinded/ rules (FYR?)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.

Chapter 901:3-6 of the Ohio Administrative Code regulates farm markets and farm product auctions which have registered with the Ohio Department of Agriculture. Pursuant to Ohio Revised Code 3717.22(B), these operators are exempt from licensing with the local health department as a retail food establishment so long as they register with the Department. This registration is voluntary, however, only through registration is an entity exempt from the retail food establishment licensure. In order to meet this exemption, the regulated operators are only allowed to sell foods that are outlined in ORC 3717.22(B) (11)(a) through (d) or (16) (a) through (f).

The revisions to this chapter include removing the requirement that a farmers' market is required to register with the Ohio Department of Agriculture's Division of Food Safety in order for its participants to be exempt from licensure as retail food establishments. The revision now allows all farmers market participants to operate under the exemption, so long as they only sell items outlined in ORC 3717.22(B)(2)(a) through (e), without the market itself having to register with ODA Food Safety. Also, the revision removes the requirement that registered farmers markets must be inspected by ODA Food Safety. Farmers markets are now inspected by local health departments. The law was changed in September of 2021 (ORC 3717.221).

Specifically, the rules outline sanitation and process requirements for these entities and are being amended as follows:

OAC 901:3-6-01 outlines the terms as defined in the chapter. Specifically, the rule is being amended to make stylistic changes to the rules which do not impact the substance of the rule. Additionally, the references to farmers' markets are being removed because ODA no longer has jurisdiction over them; the term "maple syrup" has been changed to "tree syrup;" apple butter and apple syrup have been added to the list of food items that may be offered for sale at a registered farm market and registered farm product auction; and "maple syrup or sorghum producer" is being replaced with "processor". Lastly, additional references to the ORC have been added.

OAC 901:3-6-02 outlines requirements and prohibitions regarding food articles at farm markets, and farm product auctions. The rule is being amended to alter the structure of the rule which should allow for easier reading comprehension.

OAC 901:3-6-03 outlines requirements for equipment and facilities for the regulated operators. More specifically, the rule outlines basic sanitation requirements for equipment as well as refrigeration and restroom requirements. The rule is being amended to remove the references to farmers' markets because ODA no longer has jurisdiction over them.

OAC 901:3-6-04 outlines the wash, rinse, and bactericidal treatments for utensils and food contact surfaces for operators offering raw poultry and/or non-amenable meats. The rule is being amended to remove hypocrite as the only permitted sanitizer and adds an option to use additional sanitizers which are approved for food contact surfaces, at their approved concentrations.

OAC 901:3-6-05 outlines the handwashing requirements for the regulated operators. The rule is being amended to add that personnel shall wash their hands to prevent contamination of food contact surfaces and food packaging material, replaces toilet room with facilities, and removes alcohol towelettes as an alternative method of handwashing.

OAC 901:3-6-06 outlines the water supply requirements for the regulated operators. As a general rule, water provided for handwashing and cleaning must be from a municipal water supply. However, water from a non-municipal water supply may be used as long as it is tested annually to determine if it is negative for coliform. No changes have been made to this rule.

OAC 901:3-6-07 establishes that the Department has authorization to inspect the regulated operators. The amendments to the rule include removing the references to farmers' markets because ODA no longer has jurisdiction over them.

OAC 901:3-6-08 states that when a regulated entity exceeds the scope permitted in OAC 901:3-6-01, the Department may refer the establishment to the local board of health. The amendments to the rule include removing the references to farmers' markets because ODA no longer has jurisdiction over them and replaces "facility" with "facilities."

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 3717.221

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

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 purpose for these rules is to protect consumers by establishing basic sanitation requirements for farm markets and farm product auctions that are handling food. The regulated operators under this rule do not rise to the level of a retail food establishment, therefore they are exempt from inspection by the local health department, however, these regulated operators are offering food for sale to the public, so basic sanitation requirements are necessary. These requirements help to limit consumers from foodborne illnesses.

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 farm markets and farm product auctions. 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 these regulated operators.

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 January 25, 2024, for an open comment period ending on February 8, 2024:

Capital Advocates	Kurt Leib
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Capitol Advocates	Rob Eshenbaugh
CIFT	Troy Wildermuth
Government Advantage Group	Amanda Sines
Great Lakes Community Action Partnership	Robin Richter
Greater Ohio Showmen Association	general email
Greater Ohio Showmen Association	David Drake
Greater Ohio Showmen Association	Randy Kissel
Greater Ohio Showmen Association	Russell Clements
Ice Miller	Samuel Porter
Maple Producers	Dan Brown
Mid-Ohio Growers	general email
Midwest Foods Association - Ohio group	Pat Anderson
Ohio Ag Council	Janice Welsheimer
Ohio Agribusiness Assoc.	Chris Henney
Ohio Apples	general email
Ohio Aquaculture Association	Matthew A. Smith
Ohio Association of Food Banks	Joree Novotny
Ohio Bakery Association	Lora Miller
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Council of Retail Merchants	David Raber
Ohio Craft Brewer's Association	Ashley Rose
Ohio Craft Brewer's Association	Mary MacDonald
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Alisha Schleining
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Ecological Food and Farm Association	Amber Mitchell
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau	Tony Seegers
Ohio Farmers Market Network	general email
Ohio Farmers Market Network	general email
Ohio Farmers Union	Joe Logan
Ohio Grocers	Kristin Mullins
Ohio Lawn Care Association	Mark Bennett
Ohio Manufacturer's Association	Ryan Augsberger
Ohio Pork Producers Council	Cheryl Day
Ohio Poultry Association	Jim Chakeres

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Ohio Produce Growers Association	Lisa Schacht
Ohio Restaurant Association	John Barker
Ohio Restaurant Association	Laura Morrison
Ohio Soil and Water Conservation Commission	Jen Bowman
Ohio Soybean Association	Brandon Kern
Ohio State grange	Mike Russell
Ohio State University	Adam Ward
Ohio State University (Farmers Markets)	Christie Welch
Ohio Veterinarian Medical Association	general email
PACA Inc.	David P. Corey
Snack Food Association – Arlington, VA	David Walsh
The Ohio State University	Peggy Hall
Wholesale Beer and Wine Association	Timothy Bechtold
Wood County Committee on Aging	Angie Bradford

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

ODA did not receive any comments from stakeholders during the outreach 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?

These rules are based on widely accepted basic sanitation practices. These practices have been developed over the past several decades to ensure that products are handled in a safe, clean manner which limits the potential for foodborne illness.

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.

Based on the lack of comments submitted by the stakeholders, the Department believes that the rules as established help to ensure that general sanitation practices are utilized by these regulated operators. As the stakeholders had no specific suggestions, no other alternative regulations were considered.

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 pursuant to ORC 3717.221.

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 farm market and farm product auction operators to educate and inform them on the requirements and regulations. The staff members of the Division of Food Safety ensure that all entities 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

Farm market and farm product auction operators.

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.

All farm markets and farm product auction operators who wish to be exempted from licensure as a retail food establishment must register with the Department and be compliant with ORC 3717.22(B)(11)(a) through (d) or 3717.22(B)(16(a) through (f). This registration is voluntary but does take time to complete the one-page registration application. The registration is required to be updated annually. Entities which register must comply with the sanitation requirements outlined in the rules of this package. They include having proper refrigeration for their products, as well as having clean and sanitary utensils and food contact surfaces. This generally requires either a two or three compartment sink. There is no cost of registration.

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*).

Yes, it removes the requirement that a farmers' market is required to register with ODA Food Safety for its participants to be exempt from licensure as retail food establishments.

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

The prevention of the 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 the primary purpose of this rule is the protection of consumers and the prevention of foodborne illnesses, exemptions for small businesses would be inappropriate.

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 farm market and farm product auction operators 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.