

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: **Dairy: Cleaning and sanitizing of containers and equipment.**

Rule Number(s): 901:11-4-06

Date: 1-30-2012

**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☐ Rescinded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.*

The draft rule is clarifying the SOP for a milk hauler that is released from a receiving location without washing to pick up additional milk within a 24 hour period.

This rule covers the cleaning and sanitizing of containers and equipment used by milk haulers, weighers, samplers, and testers.

The main purpose of the amendment is to clarify the cleaning and sanitizing responsibilities for milk haulers and the procedure for transporting multiple loads within a twenty-four period. Under the amendment bulk milk haulers/samplers have the responsibility to assure that milk tank trucks have been cleaned and sanitized at a proper facility and that a cleaning and sanitizing tag is affixed. Haulers will be able to continuously transport multiple loads of milk within a twenty-four hour period before cleaning and sanitizing, so long as the first receiving facility indicates on the cleaning and sanitizing tag the earliest pickup time and each receiving facility makes a copy of the washing tag and retains a copy of its records.

The amendments in paragraphs (A), (C), (D), and (E) are not new to the rule. Wording in deleted paragraphs (D) and (E) has been moved to other paragraphs to be more logical or been expanded as part of the clarification of the tagging process.

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

O.R.C. Chapter 917.02

### **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.*

Not a federal requirement, but this additional clarification would enhance the federal program known as the Pasteurized Milk Ordinance.

### **4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The amended rule exceeds the federal requirement in order to help our industry reduce the incidents of unneeded rejected loads of milk. Rejected loads of milk represent a financial lose to all stakeholders, and reducing their occurrence through clearer regulations is expected to have a positive financial impact to the industry.

### **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)?**

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There have been a number of incidents where the last recorded wash for a milk transportation tanker was in question. When such an incident occurs the tanker's load is rejected and is lost to the hauler and producer. This is an effort to close the information loop, so the receiving plant can be assured the transportation tank was properly washed, sanitized, and sealed.

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

ODA will monitor the number of rejected loads and the rule will be successful if the number of contaminated and rejected loads decreases with time.

**Development of the Regulation**

**7. 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 Dairy industry approached ODA with the problem of contaminated and rejected loads. A processing plant introduced the idea of a state-wide uniform SOP in regulation form, to address the assembling of multiple loads on one milk tanker within a 24 hour period. ODA then met with a number of groups including:

- The State of Ohio Milk Haulers Association
- Milk Sanitation Board
- Dairy Farmers of America Cooperative
- Other dairy marketing agencies within Ohio.

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

Industry has provided positive feedback on the proposed rule. ODA did receive one comment asking about the responsible party when the rule was not adhered to. The rule was modified to make it clear that the milk hauler is the responsible party. The hauler is the logical party for bearing responsibility, as the transport remains under the hauler's control and supervision.

**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?**

The Federal Pasteurized Milk Ordinance is based on scientific data and has been developed to protect the safety of the milk supply. This rule enhances the Pasteurized Milk Ordinance and the amendments allow for a more efficient delivery of safe milk.

**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 rule was drafted with industry input and revised until stakeholders and ODA were comfortable that the rule accomplished its objective with as minimal economic impact as possible.

**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.***

This approach is not applicable.

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

ODA Dairy Division is statutorily responsible for dairy regulation in Ohio. Therefore, there is no duplication with other Ohio regulations.

**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.**

Processors and haulers are the primary stakeholders affected by the rule amendment. They have had significant input into the rule and ODA will continue to work with them in this regard.

**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;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.  
*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.*

The scope of the impacted business community is limited to milk processors, milk haulers and milk producers. This is a clarification to our existing rule. There will be no new cost in terms of additional wash tags required by this amendment. There is expected to be a positive impact to the stakeholders as a result of this rule amendment. The stakeholders will have

fewer instances of rejected milk loads due to improper handling or documentation, resulting in greater efficiency and reduced costs.

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

No adverse impact is expected. The rule clarifies how to more efficiently implement an existing procedure, and the goal is to benefit the industry by there being fewer rejected milk loads and a resulting cost savings to the industry.

**Regulatory Flexibility**

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

This draft amendment is a less costly alternative for industry. A receiving location could wash and sanitize every milk tank truck before allowing the truck to leave the facility to pick up an additional load of milk. This amendment provides another alternative method that for some plants may prove more economical.

**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?**

Ohio Revised Code 119.14 does not apply in this situation.

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

This is a clarification of current procedures and no new training or education programs will be needed for this rule. ODA Dairy Division will continue to assist stakeholders with compliance requests.