

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Agriculture

Regulation/Package Title: Meat Inspection – Production of Red Meat and Poultry Products

Rule Number(s): 901:2-1-(01-05); 901:2-3-(01-05); 901:2-6-(01-05); 901:2-7-(01-05)

Date: October 4, 2018

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☒ Rescinded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 rules in this package adopt and amend the federal meat inspection regulations of the United States Department of Agriculture (USDA) pursuant to the Federal Meat Inspection Act, the Wholesome Meat Act, and the Livestock Slaughter Act. Pursuant to 918.04 of the Ohio Revised Code, the Ohio Department of Agriculture (Department) shall adopt rules which meet or exceed the federal requirements for meat inspection. The rules set forth in this package update the rules to meet the 2018 federal meat inspection requirements as well as clarify the existing portions of the law to ensure that all interested parties are able to read, understand, and follow the laws.

Currently, the Department maintains four chapters of Administrative Code rules regarding meat inspection. OAC Chapter 901:2-1 regulates the intrastate production of red meat. OAC Chapter 901:2-3 regulates the intrastate production of poultry products. OAC Chapter 901:2-6 regulates the interstate production of red meat. OAC Chapter 901:2-7 regulates the interstate production of poultry products.

As a part of the five-year rule review process, the Department elected to combine the interstate and intrastate chapters. This will allow the regulated community to rely on one chapter of rules rather than two. Due to this change, OAC Chapters 901:2-6 and 901:2-7 are proposed to be rescinded. The applicable provisions have been included in 901:2-1 and 901:2-3, respectively.

The proposed rules in OAC 901:2-1 and 901:2-3 are more specifically outlined below:

OAC Chapter 901:2-1

OAC 901:2-1-01 establishes that the purpose of OAC Chapter 901:2-1 is to regulate the production of meat food products. The rule adopts the red meat federal standards housed in 9 C.F.R. parts 300 through 442. The rule is being amended to adopt the changes in the 2018 federal meat inspection regulations.

OAC 901:2-1-01.1 is being rescinded. This rule states that the rules in OAC Chapter 901:2-1 only apply to intrastate production. As noted above, the rules are being amended to combine the intrastate and interstate chapters to allow for the regulated community to rely on one, rather than two, chapters of rules.

OAC 901:2-1-02 amends any definition of a federal term to correspond with the same terminology used at the state side. For example, the term “U.S. condemned” shall be read as

“Ohio condemned.” The rule is being amended to amend to correct the referenced CFR sections used in the rule.

OAC 901:2-1-03 sets forth the regulations housed in 9 C.F.R. parts 300 through 442 which are deleted under the rules. The deleted portions do not affect the requirement of at least equal to status. The rule is being amended to reinstate 9 CFR 325.4, and to delete 9 CFR 325.18 and 325.19. The deleted portions do not apply to the state of Ohio.

OAC 901:2-1-04 sets forth the regulations which are amended under the rules. Due to the Legislative Service Commission’s guide to administrative rule drafting this rule has been rescinded and replaced with a new version. Many of the amendments have been made to ensure that the correct terminology and mark of inspection are accurate for the state of Ohio.

OAC 901:2-1-05 establishes a rule regulating exemptions based on religious dietary laws. No changes have been made to this rule.

OAC Chapter 901:2-3

OAC 901:2-3-01 establishes that the purpose of OAC Chapter 901:2-3 is to regulate the production of poultry and poultry products. The rule adopts the poultry federal standards housed in 9 C.F.R. parts 362 through 442. The rule is being amended to adopt the changes in the 2018 federal meat inspection regulations.

OAC 901:2-3-01.1 is being rescinded. This rule states that the rules in OAC Chapter 901:2-3 only apply to intrastate production. As noted above, the rules are being amended to combine the intrastate and interstate chapters to allow for the regulated community to rely on one, rather than two, chapters of rules.

OAC 901:2-3-02 amends any definition of a federal term to correspond with the same terminology used at the state side. For example, the term “U.S. condemned” shall be read as “Ohio condemned.” Due to the Legislative Service Commission’s guide to administrative rule drafting this rule has been rescinded and replaced with a new version.

OAC 901:2-3-03 sets forth the regulations housed in 9 C.F.R. parts 362 through 442 which are deleted under the rules. The deleted portions do not affect the requirement of at least equal to status. The rule is being amended to ensure that the style of the rule is consistent within the rule and across chapters in Division 901:2 of the Administrative Code. Due to the Legislative Service Commission’s guide to administrative rule drafting this rule has been rescinded and replaced with a new version.

OAC 901:2-3-04 sets forth the regulations which are amended under the rules. Due to the Legislative Service Commission’s guide to administrative rule drafting this rule has been

rescinded and replaced with a new version. Many of the amendments have been made to ensure that the correct terminology and mark of inspection are accurate for the state of Ohio.

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

O.R.C. 918.04

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.

Yes, the Division of Meat Inspection rules must be at least equal to the federal meat inspection regulations as found in 9 C.F.R. parts 300 to 500. If Ohio's regulations did not at least meet the same level as federal regulations, all Ohio meat inspection would have to be conducted by federal inspectors at a higher cost to the industry.

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

The rules of this chapter amend the federal regulations however, they do so minimally. The majority of the amendments are to ensure that proper terminology is used for the state of Ohio rather than the federal terminology.

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)?

These regulations are federally required. However, the Department through these rules ensures and verifies that each of the establishments regulated in the state produces safe, wholesome, and properly labeled products in a sanitary environment. This ensures the detection and destruction of diseased meat and/or contaminated meat, the assurance of clean and sanitary handling and preparation; minimization of microbiological contamination of meat; prevention of adulteration of meat through the addition of harmful substances or the presence of chemical or drug residues; and the prevention of false labeling.

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

Success of this program will be measured by the limited number of non-compliance reports or regulatory enforcement actions issued by the Department, little or no recalls of food products in the state, and little or no instances of food borne illness caused by meat processing establishments.

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.

On September 17, 2018, the following stakeholders were emailed a copy of the proposed rules:

Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
Environmental Law & Policy Center	Madeline Fleisher
Ohio Association of Food Banks	Lisa Hamler-Fugitt
Ohio Bakery Association	Lora Miller
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Council of Retail Merchants	David Raber
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Amalie Lipstreu
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 Farm Bureau	Yvonne Lesicko
Ohio Farmers Union	Joe Logan
Ohio Farmers Union	Linda Borton
Ohio Grocers Association	Joe Ewig
Ohio Grocers Association	Kristen Mullins
Ohio Pork Producers Council	Bryan Humphreys
Ohio Poultry Association	Jim Chakeres
Ohio Restaurant Association	Joe Rosato
Ohio Restaurant Association	John Barker
Ohio State University	Adam Ward
Ohio Veterinarian Medical Association	Jack Advent
Ohio Veterinarian Medical Association	R. David Frash
The Ohio State University	Peggy Hall
Ohio Association of Meat Processors	Valerie Parks Graham
Ohio Association of Meat Processors	James

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

On October 1, 2018, the Department received comments from the Ohio Farm Bureau Federation. The comments called into question the difference between Ohio Administrative Code rule 901:2-1-04 and 9 CFR 307.6(b). Specifically, 9 CFR 307.6(b) states that, “Official establishments, importers, or exporters requesting and receiving the services of a Program employee after he has completed his day's assignment and left the premises, or called back to duty during any overtime or holiday period, shall be billed for a minimum of 2 hours overtime or holiday inspection service at the established rate.”

However, the proposed change at Ohio Adm. Code 901:2-1-04(F)(3) changes the two hour minimum to four hours. The same issue applies to 9 CFR 381.6(b) and the change to four hours in Ohio Adm. Code 901:2-2-03(B)(15).

This amendment from the CFR has existed in the OAC since at least 2003. Please note that many of the Division of Meat Inspection employees are represented by the Ohio Civil Service Employees Association (OSCEA). Pursuant to section 13.08 of the OSCEA negotiated contract all employees who are called back to work or do work outside of their normal hours must be paid at a minimum of four hours of “call-back” pay. In order to accurately reflect the costs of administering the program this rule was amended to match the OSCEA contract.

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?

These rules are based on years of scientific research regarding safe meat handling practices. Additionally, agency product sampling data and performance standards for process control are analyzed to support or modify the regulations accordingly.

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 rules in this chapter are based on federal requirements for the processing of meat. As such, no other regulatory alternatives were considered.

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.*

The Department did consider performance based regulation. A safe, wholesome, properly labeled product produced in a sanitary environment is the required outcome. Establishments

have the freedom to develop their own SSOP and HACCP plans to achieve compliance. An effective, supportable food safety system must be implemented in the regulated establishments to reduce the public health risk associated with adulterated, diseased, or contaminated meat. These performance standards are established in the federal regulations and adopted by the state program to maintain an “at least equal to” status.

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 to regulate meat processing establishments in O.R.C. § 918.04.

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 rules are already implemented within the industry and the Department works with all meat processors to educate and inform them on the food safety regulations. Additional education and outreach will be performed by the Division of Meat Inspection to notify the affected communities of the changes. The Department has online resources and has field staff available to provide assistance. Training and seminars are also available.

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;

All meat processing establishments which are regulated by the Division of Meat Inspection.

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

As outlined in Chapter 918 of the Ohio Revised Code, all meat processing establishments must be licensed by the Department.

All fully inspected facilities must also submit a written Hazard Analysis Critical Control Points (HACCP) plan, a written Sanitation Standard Operating Procedures (SSOP) plan, and a written blueprint narrative of the facility. All custom slaughter facilities must provide the Department an SSOP.

As a part of the annual license fees, all fully inspected operations receive forty hours of inspection time per week. If a facility were to require overtime inspection or an inspection for a non-amenable species there is an additional hourly rate.

All violations of the rules adopted and amended under this section are subject to the progressive enforcement actions housed in Chapter 901:2-2 of the Ohio Administrative Code. Violations could result in the suspension or revocation of the meat establishment's license.

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.

As outlined in Chapter 918 of the Ohio Revised Code, the licensing fees for both fully inspected and custom slaughter establishments is \$100 annually.

All fully inspected facilities must also submit a written Hazard Analysis Critical Control Points (HACCP) plan, a written Sanitation Standard Operating Procedures (SSOP) plan, and a written blueprint narrative of the facility. All custom slaughter facilities must provide the Department an SSOP. The development of these plans requires time for establishments to comply. The Department does provide guidance documents and resource materials to the facilities to help them create these plans.

Overtime inspection costs establishments an hourly rate of \$46.80. Voluntary inspections cost establishments \$15.04 per hour.

All violations of the rules adopted and amended under this section are subject to the progressive enforcement actions housed in Chapter 901:2-2 of the Ohio Administrative Code. Violations could result in the suspension or revocation of the meat establishment's license.

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

The Department acknowledges that there will be an adverse impact on the business community. However, the Department is also directed by statute to protect the health and safety of Ohio's animals and Ohio's consumers. Due to the danger to both public and animal health these rules are deemed necessary. The Department has worked closely with members of the regulated business community and at this time the rules as set forth represent the best balance of public health and adverse business impact.

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Regulatory Flexibility

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

Due to the public health and food safety importance of the rule, different standards based on the size of the business would be inappropriate.

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?

The Department works with all offenders to ensure compliance with the rules. Often violators are issued letters of warning to alert them to the violations and resources are provided to assist them in developing corrective actions. However, due to the serious health and food safety risk many violations are subject to immediate suspensions which are held in abeyance after an establishment implements corrective actions to resolve the violations.

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.