



# Common Sense Initiative

Mike DeWine, *Governor*  
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

## MEMORANDUM

**TO:** Renee Schmauch, Ohio Department of Agriculture

**FROM:** Michael Bender, Business Advocate

**DATE:** October 25, 2023

**RE:** CSI Review – Dairy Division Chapter 1 and 4 (OAC 901:11-1-02, 901:11-1-03, 901:11-1-05, 901:11-4-01, 901:11-4-02, 901:11-4-03, 901:11-4-04, 901:11-4-05, 901:11-4-06, 901:11-4-07, 901:11-4-08, 901:11-4-09, 901:11-4-10, 901:11-4-11, 901:11-4-12, and 901:11-4-13)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

### Analysis

This rule package consists of eleven amended rules, one no-change rule, and four rescinded rules proposed by the Ohio Department of Agriculture (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 20, 2023, and the public comment period was held open through October 12, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 20, 2023.

Ohio Administrative Code (OAC) 901:11-1-02 incorporates materials by reference and adopts sections 1 to 14 and appendices B to T of the 2019 revision of the federal Pasteurized Milk Ordinance (PMO). The rule is amended to remove the requirement that "Appendix B" of the PMO be read as "rules 901:11-4-01 to 901:11-4-13 of the Administrative Code." OAC 901:11-1-03 deletes certain components of the PMO. The rule is amended to no longer delete Appendix B of the PMO. OAC 901:11-1-05 amends certain components of the PMO. The rule is amended to remove the requirement

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that “Appendix B” of the PMO be read as “rules 901:11-4-01 to 901:11-4-13 of the Administrative Code” and exclude manufacture milk that must meet the requirements of OAC 901:11-2-12 from Appendix B section VIII item 2, paragraph a. of the PMO. OAC 901:11-4-01 lists definitions pertaining to milk producers. The rule is amended to remove terms. OAC 901:11-4-02 provides for the licensing and registration of a person as a milk hauler or a weigher, sampler, or tester. The rule is amended to remove and revise license and registration categories, incorporate Appendix B of the PMO by reference, and eliminate the requirement for the Director of the Department to inspect each milk hauler’s conveyance prior to issuance of a milk hauler license. OAC 901:11-4-03 outlines prohibited activities for a milk hauler or a weigher, sampler, or tester.

OAC 901:11-4-04, which concerns the inspection of a milk hauler or a weigher, sampler, or tester, is rescinded due to the incorporation by reference of Appendix B of the PMO. OAC 901:11-4-05 specifies construction requirements for conveyances used to transport milk. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-06 specifies requirements with respect to cleaning and sanitizing containers and equipment. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-07 specifies requirements regarding the weighing of milk. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-08 specifies milk sampling requirements. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-09 requires milk cans to only be used for transporting milk and milk products in order to protect against contamination. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-10, which concerns the transfer of milk, emptying farm bulk milk tanks, and partial pickups, is rescinded due to the incorporation by reference of Appendix B of the PMO. OAC 901:11-4-11 requires all conveyances, milk tank trucks, and milk cans containing milk or milk products to be labeled in accordance with the provisions of the chapter. The rule is amended to remove requirements that are no longer relevant to the chapter. OAC 901:11-4-12, which concerns testing methods for milkfat, is rescinded due to the incorporation by reference of Appendix B of the PMO. OAC 901:11-4-13, which concerns personnel cleanliness, is rescinded due to the incorporation by reference of Appendix B of the PMO.

During early stakeholder outreach, the rule changes were reviewed by the Milk Sanitation Board at its August 3, 2023, meeting. The Department then emailed the proposed rules to stakeholders on August 15, 2023, to solicit comments through August 29, 2023. Stakeholders that were contacted included individuals affiliated with Capitol Advocates, the Ohio Beef Council/Ohio Cattlemen’s Association, the Ohio Council of Retail Merchants, Ohio Dairy Producers, the Ohio Ecological Food and Farm Association, the Ohio Farm Bureau, the Ohio Farmers Union, the Ohio Pork Producers Council, the Ohio Poultry Association, the Ohio Restaurant Association, Ohio State University, and the Milk Sanitation Board. No stakeholders submitted comments on the proposed rules. No comments were received during the CSI public comment period, although the Department revised

the rules to correct a citation.

The business community impacted by the rules includes milk haulers as well as weigher, sampler, or testers in Ohio. The adverse impacts created by the rules include the costs associated with obtaining licensure, inspections, cleaning and sanitizing, weighing, sampling, transportation and transfer, protection against contamination, labeling, testing, personnel cleanliness, and penalties for violations of the rules. Penalties may include denial, suspension, or revocation of a license or registration. The Department notes that the changes to the rules remove duplicative requirements by incorporating federal standards. The Department states that the adverse impacts to business are justified to protect consumers and promote both honesty and fair payment to dairy producers.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.