



# Common Sense Initiative

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

**Sean McCullough**, Director

## Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Food Safety – Chapter 21

Rule Number(s): 901:3-21-01

Date of Submission for CSI Review: December 22, 2021

Public Comment Period End Date: January 17, 2022

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_1\_ rules (FYR? \_1\_)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR?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.*

Ohio Revised Code 3715.041 requires that individuals who operate a food processing establishment register with the Ohio Department of Agriculture. The rule outlines the cost of the registration which is based on the size of the establishment.

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.**

Sections 3715.041 and 3715.021 of the Revised Code

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.

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- 5. If the regulation 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)?**

Section 3715.041 of the Revised Code requires that individuals who operate a food processing register with the Department. This registration allows the Department to know the locations of food production in the state and to inspect these facilities. Inspection of the facilities helps ensure that all food produced in this state is produced and stored in a safe, sanitary establishment.

- 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 food processing establishments. The rules are deemed successful when inspections and investigations find few violations, there is no increase in the number of complaints filed with the Department, and there are minimal health related outbreaks attributed to registered food processing establishments.

- 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 3, 2021 for a public comment period open until September 17, 2021:

Capitol Advocates – Rob Eshenbaugh

Maple Producers – Dan Brown

Ohio Association of Food Banks – Lisa Hamler-Fugit

Ohio Bakery Association- Lora Miller

Ohio Beef Council / Ohio Cattlemen’s Association – Elizabeth Harsh

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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, Jack Irvin, Leah Curtis, Roger High, and Tony Seegers  
Ohio Farmers Union – Joe Logan  
Ohio Lawn Care Association – Mark Bennett  
Ohio Manufacturer’s Association – Ryan Augsberger  
Ohio Pork Producer’s Council – Bryan Humphreys  
Ohio Poultry Association – Jim Chakeres  
Ohio Produce Growers Association – Lisa Schacht  
Ohio State University – Peggy Hall, Adam Ward, Christie Welch, and Gwen Wolford  
Snack Food Association (Arlington, VA) – David Walsh  
Wholesale Beer and Wine Association – Timothy Bechtold  
Great Lakes Community Action Partnership – Robin Richter  
PACA Inc. – David P. Corey  
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?**

During the public comment period, no stakeholder comments were received.

**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?**

As the rule is administrative in nature, no scientific data was used.

**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?**

Ohio Revised Code 3714.041(F) requires the Department adopt rules which establish the amounts of the registration and late fees for food processing establishments. This rule specifically accomplishes this requirement, therefore no other alternative regulations were considered.

**13. Did the Agency specifically consider a performance-based regulation? Please explain.**

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*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

This rule is a performance-based regulation.

**14. 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 section 3715.041 of the Revised Code.

**15. 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.**

This rule is already implemented within the industry and the Department works with all food processing establishments to educate and inform them on the requirements and regulations.

**Adverse Impact to Business**

**16. 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; and**

All food processing establishments operating within the state of Ohio.

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

Food processing establishments must fill out an application and pay a registration fee based on the size of their establishment.

**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 cost of a food processing establishment registration depends on the size of the establishment. The smallest facilities, those below 5000 square feet, must pay a \$50 registration fee annually. The largest facilities, over 100,000 square feet, must pay a \$300 annually to register as a food processing establishment.

**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 this regulation. The regulatory intent of the rule is considered justified due to the public safety risk.

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## **Regulatory Flexibility**

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

The regulation provides for a lower registration fee for smaller facilities than larger facilities. Any further exemptions would not be applicable since the primary purpose of the rule is public safety.

### **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. When violations are found during an inspection, a facility is given time to come into compliance before a legal remedy is sought.

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

The staff of the Division of Food Safety ensure that all manufacturers in Ohio are treated in a similar manner. The Department has online resources and field staff available to provide assistance.