CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Kaye Norton, Ohio Department of Health

FROM: Whitney Sullinger, Regulatory Policy Advocate

DATE: April 4, 2012

RE: **CSI Review – ODH Chapter 3717-1 Ohio Uniform Food Safety Code**

On behalf of Lt. Governor Mary Taylor, 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. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The rules submitted (Ohio Administrative Code Chapter 3717-1) contain the Ohio Uniform Food Safety Code. Ohio Revised Code (ORC) section 3717.05 gives the Director of Agriculture and the Public Health Council the authority to adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations. The ORC also requires the adoption of the most current Food and Drug Administration(FDA) Model Food Code. The FDA released the 2009 Model Food Code and Supplement in November 2009 and September 2011 respectively.

The Ohio Department of Health Food Safety Program worked on the rules jointly with the Ohio Department of Agriculture Division of Food Safety to develop the rules. The rules were then presented to the Retail Food Safety Advisory Council, which consists of representatives from the food service and retail food establishments industry, the public and the local health districts. The draft changes were reviewed and recommended for approval by the Retail Food Safety Advisory Council and consist of updates from the FDA Code, grammatical corrections, and the addition of new language for "micro markets," a new type of retail food establishments being defined for the first time in these rules. The "micro markets" language was added at the request of the vending

industry in Ohio, and among the provisions is a change to allow these facilities to sell prepackaged foods without a person in charge at the location.

An adverse impact was not identified for every change adopted from the 2009 FDA Code. The rules in general do not represent additional costs to food service operations and retail food establishments, according to the Ohio Department of Health (ODH). The following are the business impacts related to the rules.

- The requirement to refrigerate "cut leafy greens" should not have an adverse impact to most licensable facilities since they already have refrigeration equipment in place
- The rule for non-continuous cooking of raw animal foods was written to allow a specific type of operation to process large quantities of animal foods. The FDA adopted this rule change at the request of the food service industry.
    - Those who wish to engage in that process will have to have adequate facilities to properly cool the animal foods which could cost approximately $4,000 to $12,000 per facility. (per ODH)
- The new "micro market" language requires equipment with an automatic shut off to lock the doors of the units if there is a loss of power or when the temperature of the unit rises above 41 degrees Fahrenheit.
    - The cost of this equipment is approximately $200 a unit. There are currently 70 locations that would require this equipment to be installed. (per ODH)
        - The money that each company would save by not being required to hire a person in charge for each facility, which could be $30,000, would offset this cost. (per ODH)

After reviewing the BIA, the CSI Office has determined not to suggest any changes with respect to the rule or the BIA for the following reasons:

- No comments were received from the public during the public comment period.
- The BIA submitted by ODH was accurate and complete and did not raise any ongoing issues.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rules justifies the adverse impact identified in the BIA.

Recommendations

For the reasons explained above this office does not have any recommendations regarding this rule change.

Conclusion

Based on the above comments, the CSI Office concludes that the Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Dr. Ted Wymyslo, Director, Ohio Department of Health
David Daniels, Director, Ohio Department of Agriculture
Howard Henry, Staff Counsel, Ohio Department of Agriculture
Mark Hamlin, Lt. Governor's Office