MEMORANDUM

TO: Kaye Norton, Ohio Department of Health

FROM: Cory Bailey, Regulatory Policy Advocate, Lt. Governor's Office

DATE: July 2, 2015

RE: **CSI Review – Ohio Uniform Food Safety Code (OAC § 3717-1-01; 3717-1-02.2; 3717-1-02.4; 3717-1-03.2; 3717-1-03.3; 3717-1-03.4; 3717-1-03.5; 3717-1-04.2; 3717-1-04.4; 3717-1-04.5; 3717-1-04.7; 3717-1-07.1 and 3717-1-09)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

Analysis

On May 21, 2015, the Ohio Department of Health (ODH) submitted a draft rule package consisting of 13 amended rules to the CSI Office as part of the five-year rule review requirement contained in Ohio statute. The official public comment period closed on June 22, 2015 with four comments submitted by stakeholders.

The draft rule package establishes certain provisions of the Ohio Uniform Food Safety Code. The Ohio Uniform Food Safety Code includes the standards and requirements that ensure sanitary conditions and the safe handling of food in retail food establishments and food service operations. The rule package covers a range of topics, including requirements for management and personnel, food, and equipment. Some examples of issues covered include specific directions for employee handwashing, minimum temperatures for the cooking of meat, instructions for cleaning linens, and the storage of toxic and poisonous materials. Through the enforcement of these rules, the number of outbreaks of foodborne illnesses can be reduced.

The Ohio Uniform Food Safety Code is required by R.C. § 3717.05 to match the federal standards

found in the Food and Drug Administration (FDA) Model Food Code. According to the BIA, the FDA issued a supplement to the 2009 Model Food Code in 2011 and a new edition in 2013.
A number of amendments have been proposed to update the draft rules so they are aligned with the most recent FDA Model Food Code. Many of the proposed changes are relatively minor, aiming to clarify certain requirements. However, a few substantive policy changes have been proposed as well. For instance, language was added that requires at least one employee with supervisory responsibility to be a certified food protection manager. The BIA states that a study by the Centers for Disease Control and Prevention found that the presence of a certified food protection manager is a distinguishing factor between facilities that experience an outbreak of foodborne illness and those that do not.

According to the BIA, the adverse impacts to business as a result of the draft rules are largely defined by ODH as time committed by management and personnel for compliance. Additionally, there are costs related to certification, equipment, and the submission of facility layout and equipment specifications. Penalties that result from violations of the rules could also be considered an adverse impact to business, since compliance with the uniform food code is a requirement. A licensed establishment can be shut down by inspectors after repeated violations and food may be disposed of if not handled properly.

The Retail Food Safety Advisory Council, which was created by statute to manage the uniform food code, was heavily involved in the review of the draft rules and amendments and has recommended that they be implemented. ODH also conducted early stakeholder outreach with several trade associations, and no objections to the proposed rules were raised. However, four comments were received during the CSI comment period. Those commenting included the Mahoning County District Board of Health, Licking County Health Department, Lorain County General Health District, and The Ohio State University Wexner Medical Center. Each comment received a response from ODH stating whether the suggestion could be accommodated, and if not, why not. While a couple of the rules were revised, several of the comments were not incorporated into the rule. Statute requires that the uniform food code meet federal standards, limiting ODH’s flexibility on issues such as food temperature.

Regulations governing sanitation and the handling of food in retail food establishments and food service operations are necessary to prevent the outbreak of foodborne illnesses and to ensure the health and confidence of consumers. The regulations in the draft rules are based on federal standards as statute requires. Review of the rules, including review of input from stakeholders and the Retail Food Safety Advisory Council, has led the CSI Office to conclude that sanitation and food handling issues are successfully addressed without being overly burdensome to the industry. As a result, it has been determined that the standards espoused by the CSI Office have been met, and the adverse impacts of the draft rules and amendments are justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

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

cc: Mark Hamlin, Lt. Governor's Office