



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Alicyn Carrel, Ohio Department of Health

FROM: Jacob Ritzenthaler, Business Advocate

DATE: October 31, 2022

RE: **CSI Review – Uniform Food Safety Code (OAC 3717-1-01, 3717-1-02.4, 3717-1-03.2, 3717-1-03.4, 3717-1-03.6, 3717-1-04.1, 3717-1-04.3, 3717-1-04.7, 3717-1-06, 3717-1-06.3, 3717-1-07, 3717-1-07.2, and 3717-1-08.1)**

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 thirteen amended rules proposed by the Ohio Department of Health (ODH). This rule package was submitted to the CSI Office on April 19, 2021, and the public comment period was held open through May 19, 2021. ODH concluded its review of and responses to the comments on this rule on October 3, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on April 19, 2021.

Ohio Administrative Code (OAC) Chapter 3717-1 establishes the Uniform Food Safety Code. OAC 3717-1-01 lists definitions used throughout the chapter and is amended to introduce minor language edits. OAC 3717-1-02.4 lists supervision requirements for managers and personnel and is amended to update requirements for Level III and IV food service operations to have one employee that has obtained manager certification, instead of Level Two certification. OAC 3717-1-03.2 sets forth requirements for protecting food from contamination, including packaging standards, contamination prevention through proper storage and handling, and proper use of equipment and

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utensils. The rule is amended to remove flour from the group of foods that may be sealed due to time and temperature control and to update language and references. OAC 3717-1-03.4 establishes requirements that limit the growth of organisms through standards for heating and serving food. The rule is amended to fix a typographical error. OAC 3717-1-04.1 concerns the design and construction of equipment, utensils, and linens, and is amended to exclude low-risk mobile food service operations and low-risk mobile retail food establishments from food equipment certification and classification requirements. OAC 3717-1-04.7 sets forth requirements for laundering linens, utensils, and equipment and is amended to correct a misspelling. OAC 3717-1-06.3 concerns the physical placement of facilities, such as toilets, employee accommodations, and sinks, and is amended to correct a misspelling. OAC 3717-1-07.2 requires poisonous or toxic materials to be stored separately from food, equipment, or utensils and is amended to correct a misspelling. OAC 3717-1-01, 3717-1-03.6, 3717-1-04.3, 3717-1-06, 3717-1-07, 3717-1-08.1 are amended to include reference to ORC 3717.04.

During early stakeholder outreach, the Department reviewed the rules during meetings of the Retail Food Safety Advisory Council (Council), which includes industry stakeholders, and posted the proposed rules on the Department website. No comments were received during that time, and the Council recommended that the rules proceed to the public comment period. During the CSI public comment period, the Department received comments from eight stakeholders. Three health departments questioned the Department regarding non-commercial and non-mechanical methods for maintaining appropriate food temperatures, while another asked the Department about requirements for cleaning utensils and equipment in disrepair. ODH responded that non-mechanical and non-commercial refrigeration was deemed appropriate in a 2010 letter of opinion, but that licensors are still authorized to place restrictions or conditions on food operator licenses according to statute. ODH also noted that that cleaning requirements for utensils and equipment standards are addressed elsewhere in rule. Accordingly, ODH did not make changes based on these comments. Five health departments also submitted comments that supported the proposed rules as written.

The business community impacted by the rules includes licensed food service operations and retail food establishments. The adverse impacts created by the rules include the cost of employee compliance with rule requirements and additional costs for equipment and supplies. ODH notes that the time and cost required to comply with safety requirements can vary based on the size and scale of the food operation. ODH states that the adverse impacts are necessary to provide a system of prevention and safeguards that mitigate the impact of foodborne illness through training, sanitization, and proper handling of food and equipment.

Recommendations

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

Conclusion

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