

NOTICE OF PUBLIC RULES HEARING

DATE: Wednesday, December 20, 2018
TIME: 11:00 a.m.
LOCATION: Ohio Department of Health
35 E. Chestnut Street
Columbus, Ohio 43215
ROOM: ODH Basement Training Room A

In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

Ohio Revised Code (O.A.C.) Chapter 3717-1 – State of Ohio Uniform Food Safety Code.

Pursuant to *R.C. 3717.04 and 3717.05*, the Director proposes to amend the following rules. The Director proposes to amend twenty-nine rules contained in this rule package; Rescind and replace one rule contained in this package and proposed no change to thirteen rules in this package including satisfying the five-year review for all of said rules. The Food Safety Code is based on the most current version of the Federal Food and Drug Administration (FDA) Model Food Code.

The following amendments are being proposed:

- **3717-1-01:** provides the definitions of the terms used within the food code. Changes to this rule include: eliminated hanging sentences; put the definitions in alphabetical order; corrected the definitions (easily movable, packaged, restricted egg, safe material, slacking) to be consistent with FDA's Model Food Code; corrected the definition of general use pesticide and restricted use pesticide to be consistent with the Ohio Department of Agriculture's law; corrected a typo of coli in Shiga toxin-producing *Escherichia coli*; corrected references in time/temperature controlled for safety food; and clarified who is the regulatory authority in the definition of variance.
- **3717-1-02:** establishes standards for local health departments to determine the primary business of a facility for issuing either a food service operation license or a retail food establishment license. The changes to this rule include: the reordering the language to have food service operation and retail food establishment placed in alphabetical order; and to designate a hanging paragraph as a new section.
- **3717-1-02.1:** establishes standards for a facility to determine when an employee must be restricted or removed from being a food handler. Changes include: (A)(2)(e) removed the term "Enterohemorrhagic"; (A)(2)(k) added "spp." to the end of "Shigella"; (A)(4)(b) removed the term "Enterohemorrhagic", increased the exposure time to past ten days and deleted the reference to *Shigella spp*; (A)(4)(c) added the *Shigella spp* exposure time and increased to past four days; (A)(5)(e) exposure time increased to past fifty days; (A)(5)(b) removed the term "Enterohemorrhagic", increased the exposure time to past ten days and deleted the reference to *Shigella spp*; (A)(5)(c) added the *Shigella spp* exposure time and increased to past four days; and (A)(5)(e) exposure time increased to past fifty days.
- **3717-1-02.2:** provides the requirements for personal cleanliness for food employees. Changes to this rule were to be consistent with the Food and Drug Administration's Model Food Code by providing the exception in paragraph (B)(1) and changing the word "or" to "and" in the standing paragraph under (C).
- **3717-1-02.3:** provides the requirements for hygienic practices of food employees. Changes to this rule include: amended language to clarify that all food employees must wear hair restraints; and change the word "or" to "and" to be consistent with the FDA Model Food Code.

- **3717-1-02.4:** provides the requirement for the person in charge to demonstrate the knowledge and duties that apply to their facility. Changes included: (A)(2) replaced “One year after the effective date of this rule” with “Each risk level III and risk level IV food service operation and retail food establishment shall have”, and removed “shall” between “service” and “obtain”; (B) split out the methods to determine demonstration of knowledge to paragraphs (1) and (2) and deleted the reference to have level two as a way to demonstrate knowledge; (C)(9) added new section “Employees are properly maintaining the temperatures of time/temperature controlled for safety foods during hot and cold holding through daily oversight of the employees' routine monitoring of food temperatures;”; and (C)(17) replaced “shall have” to “has”. • **3717-1-03:** states that food in a food service operation and retail food establishment shall be safe, unadulterated and honestly presented. No changes are proposed.
- **3717-1-03.1:** provides the requirements for sources of food used in a food service operation or for sale in a retail food establishment. Changes included: added in paragraph (A)(4) “if they are”; changed paragraph (O)(1)(b) to reference the exception that was a hanging paragraph but is paragraph (O)(4); and paragraph (S)(1) replaced “and either” with “or”.
- **3717-1-03.2:** provides the requirement for protecting food from contamination after it is received. Changes included: adding “Nail Brushes” to new paragraph (A)(4)(f)(ii); converted standalone paragraph to paragraph (C)(1); updated the sections to the paragraphs under the new (C)(1); correction the reference in paragraph (C)(1)(a); replaced “; and” with a period; section (D) put the exception at the beginning of the paragraph; section (F)(2)(b) put the exception at the beginning of the paragraph; section (K)(1) added new reference since a new (K)(2) was added; Added new section (K)(2) “In any manner within a food ingredient, provided the entire ingredient batch undergoes further cooking as specified in rule 3717-1-03.3 of the Administrative Code, and the utensil is cleaned and sanitized at a frequency specified under paragraphs (A) and (B) of rule 3717-1-04.5 of the Administrative Code and paragraph (B) of rule 3717-1-04.6 of the Administrative Code;” (N)(4) added new section: “The use of latex gloves is prohibited in food service operations and retail food establishments. Types of non-latex gloves that are permitted for use in food service operations and retail food establishments include but are not limited to nitrile, polyethylene, and vinyl”; converted the floating paragraph to new section (Q)(1); and converted the second floating paragraph to the new section (Q)(2).
- **3717-1-03.3:** provides the temperature requirements for destroying organisms of public health concern. Changes made to this rule included correcting the internal reference in paragraph (F)(2).
- **3717-1-03.4:** provides the requirements for limiting the growth of organisms of public health concern with time/temperature control. Changes include: in paragraph (D)(3) added an “a” between “rule” and “time/temperature”; and added new section (L)(2) “A description of the training program that ensures individuals responsible for implementing the HACCP plan understand the:” with subsections (a)-(d).
- **3717-1-03.5:** provides for the requirement for identifying, presenting and labeling of food in a food service operation or retail food establishment. Changes included: (C)(2)(c) added “net” before “quantity”; (C)(4) removed “such as bakery products and unpackaged foods”; and (C)(4)(b) removed “or” between “establishment” and “at” and added a comma after “establishment” in two places.
- **3717-1-03.6:** provides the requirements for when food shall be discarded. No changes are proposed.
- **3717-1-03.7:** provides for special requirements for food used for the highly susceptible populations in a food service operation or retail food establishment. Changes included (D)(2)(c)(iv) added “as specified in paragraph (L) of rule 3717-1-03.4 of the Administrative Code.”
- **3717-1-04:** provides the requirements for materials for construction and repair of equipment and utensils to be used in a food service operation or retail food establishment. Changes included: (G)(1) reworded the floating paragraph and made it (G)(1); (G)(2) removed “that” between “wood” and “may”; (G)(2)(a) removed “and” at the end of the paragraph; (G)(2)(b) added “; and” at the end of the paragraph; (G)(2)(c) added new section “Wood fermentation tanks, wood maturation barrels, and other wood used in the alcoholic beverage making process”; (G)(3) removed “Wood shipping containers in which”; added “may be kept in the wood shipping containers in which they were”; removed “are” before “received”; added “,until” after “received”; removed “if” in front of the fruits; and removed “kept in them until”; (G)(4) removed “Untreated wood containers or wood containers treated with a preservative that meets the requirements specified in 21 C.F.R. 178.3800, and”; added “If the nature of” to the beginning of the paragraph; removed “that is stored in them is whole, uncut, raw food that”; added “, the whole, uncut, raw food may be kept in:” at the end of the paragraph; and deleted the period at the end of the paragraph; (G)(4)(a) added new section “Untreated wood containers; or”; and (G)(4)(b) added new section “Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 C.F. R. 178.3800.”

- **3717-1-04.1:** provides the requirements for the design and construction of equipment, utensils and linens used in a food service operation or retail food establishment. Changes included: (R) corrected the spelling for “cannot”; (Y)(4) moved “Food temperature measuring devices and” to the beginning of the paragraph; (LL)(1) corrected the spelling for “temperature”; and (LL)(1)(b) corrected the internal reference to (LL)(1)(a).
- **3717-1-04.2:** provides the requirements for the numbers and capacities of equipment, utensils and linens needed in a food service operation or retail food establishment. Changes included: (E) separated the floating paragraph into two new sections (E)(1) and (E)(2); (G)(2) corrected the spelling of “fillets”; (H) removed the period in between (H) and (1); and (J) added new section dealing with cleaning agents and sanitizers, availability.
- **3717-1-04.3:** provides the requirement for the location and installation permitted for equipment, utensils and linens. No changes are proposed.
- **3717-1-04.4:** provides the requirements for maintaining and operating equipment in a food service operation or retail food establishment. Changes included: (L) converted the floating paragraphs into section (L)(1). Subsections (a) – (b), and (L)(2); and (N) replaced the “and” with a “or” between “instructions” and “shall”.
- **3717-1-04.5:** provides the requirement for cleaning of equipment and utensils. Changes included: (C)(1) corrected the reference; (F)(1) corrected the spelling of “scraped”; (G) combined the floating paragraph with the title; (I) combined the floating paragraph with the title; (I)(2) corrected the spelling of “scraped”; and (J) combined the floating paragraph with the title.
- **3717-1-04.6:** provides the requirement for sanitizing of equipment and utensils. No changes are proposed.
- **3717-1-04.7:** provides the requirements for the laundering of linens in a food service operation or retail food establishment. Changes included: (B)(5) replaced the “or” with an “and”; (C) replaced the “or” with an “and”; (D) split the floating paragraph into two new sections (D)(1) and (D)(2); and (E) split the floating paragraph into two new sections (E)(1) and (E)(2).
- **3717-1-04.8:** provides the requirements for protecting clean items in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-05:** provides the requirement for safe water in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-05.1:** provides the requirement for the plumbing system in a food service operation or retail food establishment. Changes included: replacing all references to the building code with plumbing code; and in paragraph (E) added the word construction between for and installation.
- **3717-1-05.2:** provides the requirements for a water tank in a mobile food service operation or mobile retail food establishment. No changes are proposed.
- **3717-1-05.3:** provides the requirements for how sewage, liquid waste and rainwater are handled in a food service operation or retail food establishment. Changes included: (C) converted the floating paragraph and section (C)(1) and (C)(2) into new section (C)(1), and converted the bottom floating paragraph into new section (2).
- **3717-1-05.4:** provides the requirements for how waste, recyclables and returnables are handled in a food service operation or retail food establishment. Changes included: (Q)(1) removed “the” between “and” and “waste”; and (Q)(2) replaced “or” with “and” between “recyclables” and “returnables”.
- **3717-1-06:** provides the requirements for the indoor and outdoor areas in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-06.1:** provides the requirements for the design, construction and installation of the floors, walls and ceilings in a food service operation or retail food establishment. Changes included: (F)(2) the exception was placed at the beginning of the paragraph; (H) the exception was placed at the beginning of the paragraph; (K)(2)(b) replaced the “or” with “and” in three locations; (L) replaced the “or” with “and” between “establishment” and “does”; (M)(1) replaced “(M)(2) and (M)(3)” with “(M)(3) and (M)(4)”; (M)(2) converted the floating paragraph that was at the bottom of (M)(1)(c) to this new section; (M)(4) added “Except as specified in paragraphs (M)(2) and (M)(5) if” to the beginning of the paragraph; and (M)(5) converted the floating paragraph that was at the bottom of (M)(4) to this new section.
- **3717-1-06.2:** provides the requirements for the number and capacities of the physical facilities located in a food service operation or retail food establishment. Changes included: (I)(2)(c) added a “,” after “rooms”; removed the “and” after “rooms”; added “and” between “warewashing” and “equipment”; and replaced “storage, or” with “and”.
- **3717-1-06.3:** provides the requirements for the location and placement of handwashing sinks, toilet rooms, designated area for staff, location for distressed merchandise, and waste handling. No changes are proposed.

- **3717-1-06.4:** provides the requirement for the physical facilities of a food service operation and retail food establishment to be maintained and operated. Changes included: (H) removed “and maintenance” in the title, and “and maintained” at the end of the paragraph.
- **3717-1-07:** provides for the labeling and identification of poisonous or toxic materials found in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-07.1:** provides the requirements for storing and use of poisonous or toxic materials within the food service operation and retail food establishment. Changes included: (B) removed “the” between “for” and “cleaning”; removed “of” between “sanitizing” and “equipment”; added “,” removed “and the control of” and added “licensed application for controlling” between “utensils” and “insects”; and added “or for using as an incidental use pesticide as defined in paragraph (C)(3) of this rule,” between “rodents,” and “shall”; (C)(3) removed “after July 1, 2004” and added “,” between “use” and “or”; (L)(1) added “Except as specified in (L)(2) of this rule, a” to the beginning of the paragraph; (L)(2) added “If used, a” to the beginning of the paragraph; added “and” between “linens” and “single-service”; and replaced “articles, or” with “and”.
- **3717-1-07.2:** provides for the proper storage and display of poisonous or toxic materials for retail sale. No changes are proposed.
- **3717-1-08:** provides for the requirement when packaging fresh juice in a food service operation or retail food establishment. Changes include in (A)(2)(a) converted the first floating paragraph into this new section; (A)(2)(b) converted the second floating paragraph into this new section; and (B) replaced “The” with “A”.
- **3717-1-08.1:** provides for the requirements for using a heat treatment dispensing freezer in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-08.2:** provides for the requirements for custom processing of game animals, migratory waterfowl or game birds in a food service operation or retail food establishment. Changes included: in (A) replaced “may” with “shall” between “establishment” and “be”; (C) added comma after “owner”; (E) added comma after processing; and (F) replaced “must” with “shall” between “number” and “remain”.
- **3717-1-08.3:** provides for the requirements for using a bulk water machine in a food service operation or retail food establishment. No changes are proposed.
- **3717-1-08.4:** provides the requirement for acidifying white rice as a non TCS food. Changes included: (B)(4) replaced “must” with “shall” between “rice” and “have”; added comma and replaced “and an equilibrium” with “not to exceed a” between “4.1” and “pH”; and replaced “4.6 or less” with “4.3”; (B)(5) replaced “must” with “shall” between “solution” and “be”; (C)(1) added comma and replaced “and an equilibrium” with “not to exceed a” between “4.1” and “pH”; replaced “4.6 or less” with “4.3” at the end of the paragraph; (C)(2) moved “Blending the slurry for approximately twenty seconds to create a thorough mix.” from the end of the paragraph to new section (C)(3); (C)(4) added “to ensure a pH of 4.3 or less is achieved.” behind “slurry”; and removed “Repeated measurements with a new slurry from the same batch of rice must be taken to assure the equilibrium pH of 4.6 or less is achieved” and (E) replaced “Describes” with “A description of”.
- **3717-1-09:** provides the requirement for reviewing facility layout and equipment specifications in a new or renovated food service operation or retail food establishment. Changes included: (A)(1) added “food service” in front of “operation” and “retail food” in front of “establishment” and (A)(7) replaced “the” with “all”.
- **3717-1-20:** provides the requirements for dealing with existing facilities and equipment when they no longer comply with the code. Changes included: Combined paragraphs (A) and (B) into new floating paragraph; (A) to read “They no longer comply with the following:”; (A)(3) Replaced “and” with “or”; (B) to read “Criteria upon which they were originally approved” and (C) to read “The food service operation or retail food establishment changes ownership.”

Hearing and Contact Information:

At the hearing, people affected by the proposed action may appear and be heard in person or accompanied by an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting visitors through building security, any persons intending to testify at the hearing or planning to observe are encouraged to pre-register by writing to the Office of the General Counsel, Ohio Department of Health, 246 North High Street, 7th Floor, Columbus, Ohio 43215, or by phone to (614) 466-4882, or send an e-mail to odhrules@odh.ohio.gov.

Copies of the proposed rule will be available on the Register of Ohio website: <http://www.registerofohio.state.oh.us/jsps/publicdisplayrules/searchRuleNumber.jsp> approximately a half day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://www.odh.ohio.gov/rules/drafts/drafts.aspx>).

Please e-mail any written comments to ODHrules@odh.ohio.gov by 5:00 p.m. on December 18, 2018.

11/6/2018