

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: 3717-1 Ohio Uniform Food Safety Code

Rule Number(s): 3717-1-01

Date: June 26, 2013

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The Ohio Uniform Food Safety Code provides the standards for safe food handling and sanitation in retail food establishments and food service operations. The code is based on the most current version of the Federal Food and Drug Administration (FDA) Model Food Code.

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The change purposed is to modify the definition of “micro markets” to allow additional food items to be provided at these locations as requested by the vending industry in Ohio.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Chapter 3717.05 of the Ohio Revised Code gives the Director of Agriculture and the Director of Health the sole authority to adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations.

3. 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.

This regulation does not implement a federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. 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)?

The Ohio Uniform Food Safety Code, which is based on the FDA Model Food Code, is needed to assist the regulatory authority in providing the retail food industry scientific and technical information to operate their facility, and to ensure a safe and properly protected and presented food supply. The change proposed to the definition of “micro-markets” is to accommodate the vending industry’s request to allow a facility to sell additional food items at a location without a person-in-charge.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of this regulation will be measured by the reduction of foodborne illnesses/outbreaks in relation to food prepared and/or served at food service operations and retail food establishments in Ohio. In addition, regular inspections by local health districts will ensure continuous food safety.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Ohio Department of Health Food Safety Program worked on the proposed change to the definition jointly with the Ohio Department of Agriculture Division of Food Safety and the vending industry. The proposed change was presented to the Retail Food Safety Advisory Council on their April 9, 2013 meeting and received approval. The Retail Food Safety Advisory Council consists of representatives from the food service and retail food establishment industry, the general public, academia and the local health districts.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On March 27, 2013 ODH and ODA met with micro market operators (vending industry), National Automatic Merchandising Association, the Ohio Council of Retail Merchants, and Representative Watchman to discuss the serving of coffee, cappuccino, and soft drinks in micro markets. The proposed change will allow these operations to provide these products to their customers.

9. 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?

The proposed definition is not based on scientific data however the food code is based on the most current FDA Model Food Code, which is based on scientific data. The FDA Model Food Code is the cumulative result of the efforts and recommendations of many contributing individuals, agencies, and organizations with years of experience using earlier model code editions. It embraces the concept that our quality of life, state of health, and the public welfare are directly affected by how we collectively provide and protect our food.

10. 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?

The Ohio Department of Health and the Ohio Department of Agriculture did not consider alternative rules, since the change is specific to Ohio.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

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The Ohio Department of Health and the Ohio Department of Agriculture did not consider a performance-based regulation, since the code is based on the United States FDA Model Code and the change of the definition to “micro market” is specific to Ohio.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

In section 3717.05 of the Ohio Revised Code it states in part that the Director of Agriculture and the Director of Health shall adopt rules, with each other’s concurrence, that establish standards for safe food handling and sanitation in retail food establishments and food service operations. In addition section 3717.04 of the Revised Code states in part that no other agency has the authority to adopt regulations pertaining to retail food establishments and food service operations.

13. 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.

Once the rule is adopted by Directors, an effective date will be scheduled to allow time to notify the local health departments and industry of the change.

Adverse Impact to Business

14. 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;

The change of the definition of a micro market will not have negative impact to the operators of these facilities since it will allow additional food items to be sold.

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

The change would not have an adverse impact on these operations.

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 change is not expected to have an adverse impact on this type of operation.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

This change will not have an adverse impact to the regulated business community.

Regulatory Flexibility

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

The definition change does not impact the current regulation that allows the industry to apply for a variance from either the Ohio Department of Health or the Ohio Department of Agriculture to certain provisions of the code.

17. 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?

The definition change of micro market does not require the facility to submit any paperwork that would have a fine or penalty fee.

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18. What resources are available to assist small businesses with compliance of the regulation?

The technical staff at the Ohio Department of Health Food Safety Program and the Ohio Department of Agriculture Division of Food Safety is available to assist any business or government agency with compliance of the Ohio Uniform Food Safety Code.