



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Agriculture

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Regulation/Package Title (a general description of the rules' substantive content):

State Survey Procedures for Program Evaluation

Rule Number(s): OAC 901:3-4-17

Date of Submission for CSI Review: 4/25/24

Public Comment Period End Date: 5/16/24

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? 1)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Rule 901:3-4-17 sets forth the procedures regarding program evaluation of the state surveys of local health districts on retail food establishments. The amendments include reducing regulatory restrictive language as required by Senate Bill 9, adds language to clarify what administrative aspects will be evaluated, adds language that a written or electronic assessment will be administered pursuant to section 3717.33(H) of the Revised Code, sets forth the procedures that will be followed regarding the assessment, clarifies that performance standards are outside the scope of the status of compliance, adds language to define the classification of provisional, sets forth survey methodology to determine if the licensor is qualified which includes a review to ensure the health districts are properly setting fees, licensing, inspections and program administration. Further, the rule adds language to set forth the requirements for providing the survey report to the licensor and sets forth the procedures the director follows for re-evaluating a licensor that has been deemed provisional.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Ohio Revised Code sections 3717.11, 3717.04 and 3717.33

4. **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.

No

5. **If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable.

6. **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)?**

Under Chapter 3717.33 of the Revised Code, the director is required to adopt rules regarding retail food establishment surveys to determine whether boards of health are qualified and have the capacity to administer and enforce the provisions of the chapter, rules adopted under it and to abide by the Ohio Uniform Food Safety Code. These rules provide uniformity to the boards of health while protecting the public at large.

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

The success of these rules can be measured by the reduction in food borne illnesses/outbreaks associated with retail food establishments in Ohio. In addition, regular assessments of the boards of health will ensure competency in evaluating retail food establishments which leads to continues food safety.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

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

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

The Division of Food Safety worked with the Ohio Environmental Health Association (OEHA) and the Association of Ohio Health Commissioners (AOHC) and the rule was modified based on input received from these organizations.

Additionally, the following stakeholders were contacted via email on April 10, 2024, for an open comment period ending on April 24, 2024:

Buckeye Quality Beef Association	David Hyde
Capital Advocates	Kurt Leib
Capitol Advocates	Rob Eshenbaugh
CIFT	Troy Wildermuth

Government Advantage Group	Amanda Sines
Great Lakes Community Action Partnership	Robin Richter
Greater Ohio Showmen Association	general email
Greater Ohio Showmen Association	David Drake
Greater Ohio Showmen Association	Randy Kissel
Greater Ohio Showmen Association	Russell Clements
Ice Miller	Samuel Porter
Maple Producers	Dan Brown
Mid-Ohio Growers	general email
Midwest Foods Association - Ohio group	Pat Anderson
Nation Farmers Organization	Alva Heiss
Ohio Ag Council	Janice Welsheimer
Ohio Apples	general email
Ohio Aquaculture Association	Matthew A. Smith
Ohio Association of Food Banks	Joree Novotny
Ohio Association of Food Banks	Lisa Hamler-Fugitt
Ohio Bakery Association	Lora Miller
Ohio Beef Council/Ohio Cattlemen's Association	Elizabeth Harsh
Ohio Council of Retail Merchants	David Raber
Ohio Craft Brewer's Association	Ashley Rose
Ohio Craft Brewer's Association	Mary MacDonald
Ohio Dairy Producers	Scott Higgins
Ohio Ecological Food and Farm Association	Alisha Schleining
Ohio Ecological Food and Farm Association	Amalie Lipstreu
Ohio Ecological Food and Farm Association	Amber Mitchell
Ohio Farm Bureau	Adam Sharp
Ohio Farm Bureau	Jack Irvin
Ohio Farm Bureau	Leah Curtis
Ohio Farm Bureau	Roger High
Ohio Farm Bureau	Larry Antosh
Ohio Farm Bureau	Tony Seegers
Ohio Farmers Market Network	general email
Ohio Farmers Market Network	general email
Ohio Farmers Union	Joe Logan
Ohio Grocers	Kristin Mullins
Ohio Lawn Care Association	Mark Bennett
Ohio Manufacturer's Association	Ryan Augsberger
Ohio Pork Producers Council	Bryan Humphreys
Ohio Pork Producers Council	Cheryl Day

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Ohio Poultry Association	Jim Chakeres
Ohio Produce Growers Association	Lisa Schacht
Ohio Restaurant Association	John Barker
Ohio Restaurant Association	Laura Morrison
Ohio Restaurant Association	Tod Bowen
Ohio Soil and Water Conservation Commission	Jen Bowman
Ohio Soybean Association	Brandon Kern
Ohio State Gange	Mike Russell
Ohio State University	Adam Ward
Ohio State University (Farmers Markets)	Christie Welch
Ohio Veterinarian Medical Association	Chris Henney
Ohio Veterinarian Medical Association	R. David Frash
Ohio Veterinarian Medical Association	general email
Ohio Wine Producers Association	Donniella Winchell
PACA Inc.	David P. Corey
Snack Food Association – Arlington, VA	David Walsh
The Ohio State University	Peggy Hall
Wholesale Beer and Wine Association	Timothy Bechtold
Wood County Committee on Aging	Angie Bradford

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

The agency worked with Ohio Environmental Health Association (OEHA) and Association of Ohio Health Commissioners (AOHC) and the rule was modified based on input received from these agencies. Additionally, during the stakeholder outreach comment period no comments were received.

11. 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 rules are not based on scientific data. However, the rules provide administrative guidance on how to apply chapter 3717.33 of the Administrative Code. This chapter 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 public welfare are directly affected by how we collectively provide and protect our food.

12. 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?
Alternative regulations may include performance-based regulations, which define the

required outcome, but do not dictate the process the regulated stakeholders must use to comply.

After modifying the rule with input from OEHA and AOHC and the lack of stakeholder comments during stakeholder outreach the Department along with Ohio Department of Health has determined that this is the best regulatory scheme at this time. For these reasons, no other regulatory alternatives were considered.

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

The Department of Agriculture has sole authority to adopt rules regarding retail food establishments which are contained in this rule package.

14. 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.

The Ohio Department of Agriculture and the Ohio Department of Health share regulatory authority over these matters in section 3717.04 of the Revised Code. The Department of Agriculture has sole authority in 3717.33 to adopt rules regarding retail food establishments which are contained in this rule package.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

These rules impact the 113 local health districts.

b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

These rules impact the 113 local health districts and do not have any adverse impact on businesses. These rules will help provide uniformity amongst local health district environmental health specialists so that all retail food establishments are inspected consistently and fairly throughout the state of Ohio.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No

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

The regulatory intent of the rules is to ensure public safety and the health of Ohioans by regulating how the 113 local health districts operate. There is no adverse impact on the regulated business community. These rules will help provide uniformity amongst local health district environmental health specialists so that all retail food establishments are inspected consistently and fairly throughout the state of Ohio.

Regulatory Flexibility

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

This rule applies only to local health districts across the state and does not apply to small businesses.

19. 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?

This rule applies only to local health districts across the state and does not apply to businesses. There are no fines or penalties towards businesses.

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

The Department has online resources and has staff available to answer inquiries.