



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Jamie Higley, Ohio Department of Health

FROM: Michael Bender, Business Advocate

DATE: April 22, 2024

RE: **CSI Review – Ohio Uniform Food Safety Code (OAC 3717-1-01, 3717-1-02, 3717-1-02.1, 3717-1-02.2, 3717-1-02.3, 3717-1-02.4, 3717-1-03, 3717-1-03.1, 3717-1-03.2, 3717-1-03.3, 3717-1-03.4, 3717-1-03.5, 3717-1-03.6, 3717-1-03.7, 3717-1-04, 3717-1-04.1, 3717-1-04.2, 3717-1-04.3, 3717-1-04.4, 3717-1-04.5, 3717-1-04.6, 3717-1-04.7, 3717-1-04.8, 3717-1-05, 3717-1-05.1, 3717-1-05.2, 3717-1-05.3, 3717-1-05.4, 3717-1-06, 3717-1-06.1, 3717-1-06.2, 3717-1-06.3, 3717-1-06.4, 3717-1-07, 3717-1-07.1, 3717-1-07.2, 3717-1-08, 3717-1-08.1, 3717-1-08.2, 3717-1-08.3, 3717-1-08.4, 3717-1-08.5, 3717-1-09, and 3717-1-20)**

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 forty amended rules and four no-change rules proposed by the Ohio Department of Health (ODH) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 23, 2023, and the public comment period was held open through November 23, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 23, 2023.

Ohio Administrative Code (OAC) 3717-1-01 contains definitions pertaining to the Ohio Uniform Food Safety Code, which is based on the federal Food and Drug Administration (FDA) Model Food Code. The rule is amended to add terms, revise definitions, and update language, citations, grammar,

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and effective dates. OAC 3717-1-02 provides for the determination of the primary business by a licenser when the activities of a food service operation (FSO) and a retail food establishment (RFE) are conducted within the same facility. The rule is amended to update language. OAC 3717-1-02.1, 3717-1-02.2, 3717-1-02.3, and 3717-1-02.4 contain requirements for FSO and RFE food management and personnel with respect to employee health, personal cleanliness, hygienic practices, and supervision. The rules are amended to require food employees to use gloves to cover bandages, finger cots, or finger stalls, declare that the assignment of responsibility provision does not apply to vending machine locations, require a person in charge to identify sesame as a major food allergen, require a person in charge to ensure that food employees are properly maintaining the temperature of time/temperature controlled for safety foods during thawing, describe food allergy awareness as it relates to proper food safety training, add clarifying language, remove unnecessary language, add a citation, and update language and citations.

OAC 3717-1-03, 3717-1-03.1, 3717-1-03.2, 3717-1-03.3, 3717-1-03.4, 3717-1-03.5, 3717-1-03.6, and 3717-1-03.7 establish requirements for FSO and RFE food with respect to sources, specifications, containers, protection from contamination after reception, destruction of organisms of public health concern, limitation of the growth of organisms of public health concern, identification, presentation, labeling, discarding, adulteration or contamination, and service to highly susceptible populations. With the exception of OAC 3701-1-03.6, the rules are amended to clarify how to obtain beef steaks, clarify requirements for dealers and harvesters concerning the packaging and identification of molluscan shellfish, prohibit the commingling of molluscan shellfish from different containers prior to a customer's order, require raw animal foods to be separated from fruits and vegetables before they are washed, and require a test kit or other similar device to be provided to measure the active ingredient concentration of the fruit and vegetable wash solution. The rules are also amended to revise the amount of time certain raw animal foods must be cooked, incorporate manufacturer cooking instructions, provide more flexibility regarding required initial temperatures, allow for the repackaging of commercially prepared frozen foods under certain conditions, provide more flexibility for food packaged using a cook-chill or sous vide process when it comes to cooling and holding, revise the contents that must be included in a hazard analysis and critical control point (HACCP) plan, require license holders to notify customers of the presence of major food allergens in unpackaged food items, prohibit certain packaged goods from being sold in a ready-to-eat form, add clarifying language, remove unnecessary language, add citations, as well as to update language, citations, grammar, and a rule title.

OAC 3717-1-04, 3717-1-04.1, 3717-1-04.2, 3717-1-04.3, 3717-1-04.4, 3717-1-04.5, 3717-1-04.6, 3717-1-04.7, and 3717-1-04.8 outline requirements for FSO and RFE equipment, utensils, and linens with respect to materials for construction and repair, design and construction, numbers and capacities, location and installation, maintenance and operation, cleanliness, sanitization, laundering, and protection. The rules are amended to require FSOs and RFEs to have food monitoring devices to

attain and maintain critical limits, remove reference to an HACCP regarding the operation of molluscan shellfish life-support system display tanks, remove unnecessary language, add clarifying language, add citations, and update language, citations, grammar, and an effective date. OAC 3717-1-05, 3717-1-05.1, 3717-1-05.2, 3717-1-05.3, and 3717-1-05.4 contain requirements for FSOs and RFEs concerning water, plumbing, and waste. The rules are amended to reduce the required minimum temperature for a handwashing sink from one hundred degrees Fahrenheit to eighty-five degrees Fahrenheit, add clarifying language, remove unnecessary language, and update language and grammar. OAC 3717-1-06, 3717-1-06.1, 3717-1-06.2, 3717-1-06.3, and 3717-1-06.4 establish requirements for FSO and RFE physical facilities regarding materials for construction and repair, design, construction, and installation, numbers and capacities, location and placement, and maintenance and operation. With the exception of OAC 3717-1-06, the rules are amended to add clarifying language, remove unnecessary language, and update language, grammar, and a citation.

OAC 3717-1-07, 3717-1-07.1, and 3717-1-07.2 outline requirements for FSOs and RFEs regarding poisonous or toxic materials. Of these rules, OAC 3717-1-07.1 is amended to remove unnecessary language, update language and grammar, and prohibit a container previously used to store poisonous or toxic materials from being used to store equipment, utensils, linens, or single-service or single-use articles. OAC 3717-1-08, 3717-1-08.1, 3717-1-08.2, 3717-1-08.3, 3717-1-08.4, and 3717-1-08.5 contain special requirements for FSOs and RFEs with respect to fresh juice production, heat treatment dispensing freezers, custom processing, bulk water machines, acidified white rice preparation, and dogs in outdoor dining areas. The rules are amended to state that certain heat treatment dispensing freezers may be cleaned at a frequency beyond the normally-required fourteen days, clarify that cooked and acidified rice must have a pH below 4.2, clarify that rice samples must be completely submerged when determining pH levels, add citations, remove unnecessary language, and update language, grammar, and citations. OAC 3717-1-09 requires an individual responsible for an FSO or RFE to submit facility layout and equipment specifications to the appropriate licenser ensuring that certain criteria are or will be met. The rule is amended to add clarifying language, remove unnecessary language, and update language and a citation. OAC 3717-1-20 requires existing facilities and equipment in an FSO or RFE to be replaced under certain circumstances. The rule is amended to update language.

During early stakeholder outreach, ODH presented the proposed rules at the April 18, 2023, meeting of the Retail Food Safety Advisory Council (Council), which consists of members representing local health departments, the general public, the academic community, RFEs, and FSOs. The Council recommended that ODH proceed with the rules as proposed. During the CSI public comment period, ODH received comments from the Seneca County Health Department (SCHD), the Columbiana County Health District (CCHD), Public Health – Dayton & Montgomery County (PHDMC), the Carroll County General Health District (CCGHD), the Lake County General Health District (LCGHD), Richland Public Health (RPH), Yum Brands, Inc. (Yum), and a private individual.

The SCHD suggested exempting RFEs from the requirement to store prepackaged raw food according to cooking temperature in retail display and prohibiting the use of a reusable towel system on a roll inside the dispenser. ODH replied that all foods need to be stored according to code and that the FDA Model Food Code permits a continuous towel system because it can be performed in a sanitary manner when used properly. PHDMC urged ODH to require reduced oxygen packaging to be labelled to include the manufacturer's instructions to keep it frozen until time of use. ODH pointed out that the code does not require repackaged foods to be labelled with the manufacturer's instructions but does require them to indicate that the food must be kept frozen until time of use. The CCGHD expressed concern about the proposed removal of a provision that allowed for chemically treated towelettes in mobile and temporary RFEs when food exposure is limited. ODH assured the CCGHD that the change was simply meant to clarify that facilities with no food employees are not required to provide handwashing sinks.

The LCGHD and RPH sought clarity about the requirement for licensed food facilities to provide written notification of the presence of major food allergens as ingredients in unpackaged food items. ODH stated that written notification of major food allergens could be provided in many forms and stressed that consumers with food allergies depend on allergen information that is made readily available through such notification when making an informed purchasing decision in order to avoid unintended exposures. The LCGHD asked whether the requirement to calibrate food monitoring devices in accordance with the manufacturer's specifications applied to thermometers. ODH replied that food thermometers were not considered food monitoring devices. Yum pointed out that because the rules list more reportable diseases than the FDA Model Food Code, the comprehensive and integrated approaches created by multi-state chains to manage reportable diseases nationwide are not effective in Ohio, thereby rendering the creation of new initiatives solely for restaurants in Ohio cost prohibitive. ODH explained that these reportable diseases are included in the rules because they are all contained in OAC 3701-3, which lists the illnesses that must be reported to the local health district when diagnosed and is consistent in all states, adding that this ensures consistency and predictability across Ohio's public health operations and programs. However, ODH added that it can provide food facilities with a sample health reporting form. Lastly, the CCHD, PHDMC, the LCGHD, and the private individual each proposed several citation updates as well as grammatical and technical corrections that were made by ODH.

The business community impacted by the rules includes FSOs and RFEs. The adverse impacts created by the rules include the time and costs associated with providing staffing and supervision, maintaining proper equipment and supplies, keeping facilities clean and sanitary, preventing the contamination of food, and appropriately regulating temperatures. ODH notes that the actual costs will vary depending on the location, size of operation, type of equipment and vendors used, the kind of food sold, and staff size. ODH emphasizes that some of the revisions reduce the regulatory burden

on businesses, such as providing more flexibility regarding required initial temperatures, extending the frequency by which some heat treatment dispensing freezers need to be cleaned, and reducing the minimum water temperature for handwashing sinks. ODH states that the adverse impacts to business are justified to implement statutory requirements, minimize foodborne illness, and ensure that food provided to consumers is safe.

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.