



MEMORANDUM

TO: Kaye Norton, Ohio Department of Health

FROM: Sydney King, Regulatory Policy Advocate

DATE: March 24, 2016

RE: **CSI Review –Agricultural Labor Camps (OAC 3701-33-01 through 3701-33-20)**

On behalf of Lt. Governor Mary Taylor, 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 Agency as provided for in ORC 107.54.

Analysis

The Ohio Department of Health (ODH) initially submitted a rule package of thirteen amended¹ and eight rescinded rules on June 4, 2014. This chapter of the Ohio Administrative Code was reviewed by ODH pursuant to the statutory five-year review requirement. The comment period for the initial rule package closed on July 5, 2014 and six comments were received. As a result of comments received, ODH made additional amendments to Rule 3701-33-06 and submitted the rule for public comment on February 5, 2015. The public comment period closed March 7, 2015 and eight comments were received. ODH made additional amendments to Rule 3701-33-02 based on conversations with the CSI Office and stakeholders. This rule was again submitted for comment on November 30, 2015 and the public comment period ended December 30, 2015 with no comments received.

¹ Rules 3701-33-02, 3701-33-03, 3701-33-04, 3701-33-05, 3701-33-06, 3701-33-07, 3701-33-08, 3701-33-11, 3701-33-12, and 3701-33-13 are being amended by more than 50 percent. Therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

The rule package regulates the residential facilities that are provided for the temporary workers employed by the agriculture producers. The amendments and rescinded language reflect changes based on stakeholder input, and the need to reorganize and consolidate the regulations. Regulations include licensing requirements, facility and safety requirements, and standards of habitability.

The BIAs detail the many amendments to the rule packages based on stakeholder input received during the CSI public comment periods. After the rule package was initially submitted in 2014, several commenters expressed concerns regarding Rule 3701-33-06's lack of requirement for running water in the housing units provided to the temporary employees. ODH facilitated meetings between interested parties, including members of the agricultural industry, and amended the language to require running hot and cold water in existing housing units within five years of the rule's effective date. After these changes, the rule was again submitted for public comment period and received eight comments. Although a majority of the comments supported the running water requirement, the Ohio Farm Bureau (OFB) expressed concerns about the costs of the new requirement to industry members. ODH communicated that the amendments are necessary because running hot and cold water ensures the safety and well-being of the worker but also reduces the risk of the agriculture product being exposed to diseases. ODH provided information from the Centers for Disease Control and Prevention that stated "hand washing can lead to a 31% decrease in the amount of diarrheal illness in communities."² ODH states that requiring a handwashing sink in housing units will help increase proper hygiene, reduce illness, and prevent disease transmission. Several members of the rule committee that reviewed the changes are members of the agriculture industry and agreed that the amendments were necessary to protect the health and safety of the workers and the health of the public who may consumer the agriculture products.

An additional comment received during this public comment period expressed concerns with the spacing between beds, stating the requirements would be impossible for some existing housing units to comply with. In response, ODH amended this requirement to allow for more flexibility.

The OFB also commented on the potential expense from Rule 3701-33-02's requirement that all physical facility plans submitted to ODH for the licensure be "signed and sealed by a professional engineer or an architect, registered in Ohio." ODH states this requirement is necessary to ensure the structural soundness of the facility for the individuals residing in the housing units. The CSI Office contacted staff from the Ohio Board of Building Standards to understand the process of local building inspections. Based on conversations with the Board of Building Standards, the CSI Office presented an option to ODH that would allow state or local building departments to also approve the plans for structural soundness. ODH worked with the Board of Building Standards to develop language that would allow for this potentially less-costly alternative option without

² Ohio Department of Health's Business Impact Analysis, page 9, submitted February 5, 2015

jeopardizing the existing exemption for agricultural structures from building department enforcement authority. The CSI Office facilitated a meeting between ODH, the Board of Building Standards, and the OFB to discuss the language. The OFB approved of the changes. With the amendments to the language, Rule 3701-33-02 was again submitted for public comment. No comments were received during the CSI public comment period.

After reviewing the proposed rules and the BIAs, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified. ODH provided sufficient health and safety justifications for the new requirement for running water in the housing units. Industry members also communicated to the CSI Office that running water is necessary for the industry to continue to attract temporary workers to Ohio.

Recommendation

ODH amended Rule 3701-33-02 based on the CSI Office's recommendation to allow agricultural camp licensees obtain approval for structural soundness from the state building department or the local building department.

Conclusion

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office