

Ohio Administrative Code

Chapter 901:3-4

Retail Food Establishments-Licensing

901:3-4-01 Definitions.

As used in this chapter:

(A) "Certified in food protection" means an individual has met the certification requirements pursuant to Chapter 3717. of the Revised Code.

(B) "Director" means the director of agriculture or an authorized designee of the director.

(C) "Misbranding" has the meaning given in section 3715.60 of the Revised Code.

(D) "Noncommercial retail food establishment" means a retail food establishment as described in Chapter 3717. of the Revised Code, conducted by any of the following: an agency of government, a church, school, non-profit youth group whose membership consists primarily of persons aged eighteen or younger, or an organization which is described in subsection 501(c)(3) and is tax exempt under subsection 501(a) of the Internal Revenue Code.

(E) "Noncommercial temporary retail food establishment" means a temporary retail food establishment as described in Chapter 3717. of the Revised Code conducted by any of the following: an agency of government, a church, school, fraternal organization, service club organization, veterans' organization, volunteer fire organization, non-profit youth group whose membership consists primarily of persons aged eighteen or younger, volunteer emergency medical service organization, or an organization which is described in subsection 501(c)(3) and is tax exempt under subsection 501(a) of the Internal Revenue Code, or any individual or group raising all of its funds for the benefit of one of these organizations if such operation is operated at an event for no more than five consecutive days, except when operated for more than five consecutive days under division (E)(2) of section 3717.23 of the Revised Code.

(F) "Process review inspection" means an inspection made to determine if a risk level four or food processing procedure is being conducted within the parameters required by Chapter 3717. of the Revised Code.

(G) "Standard inspection" means an inspection designed to determine compliance with Chapter 3717. of the Revised Code, section 3715.551 of the Revised Code and the rules adopted thereunder.

(H) "Temporary retail food establishment" means a retail food establishment that is operated at an event for not more than five consecutive days, except when operated for more than five consecutive days pursuant to division (E)(2) of section 3717.23 of the Revised Code.

(I) "Variance review" means a determination by the licensor of compliance with a food processing variance issued by the department of agriculture.

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901:3-4-02 License.

(A) During the month of February of each year, except as hereinafter provided, every person that operates a retail food establishment shall apply for a license for that year from the licensor of retail food establishments for the area in which the retail food establishment is located. This provision shall apply to all retail food establishments except seasonal retail food establishments, mobile retail food establishments, temporary retail food establishments, and new retail food establishments opened for business subsequent to March first of each year.

All licenses issued to retail food establishments expire pursuant to divisions (C) of section 3717.23 of the Revised Code.

(B) An application for a license to operate a new retail food establishment during any part of the year shall be filed as hereinafter provided not less than ten days before the retail food establishment is opened for business. If proper application has been made, the facility layout and equipment specifications have been approved and complied with on the final inspection, and all items are in compliance with Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter; the ten-day waiting period may be waived and the license issued. The operator of a mobile retail food establishment shall make application for a license to the board of health of the health district in which the operator's business headquarters are located. The operator of a mobile retail food establishment whose business address is located outside of Ohio shall make application for a license to the board of health having jurisdiction over the operator's first Ohio location in any one licensing year. A retail food establishment license issued to an operator of a mobile retail food establishment by an approved health district, as provided in Chapter 3717. of the Revised Code, shall be recognized by all other licensors in this state.

(C) The operator of a retail food establishment shall make written application for a license to the licensor on an application form prescribed or approved by the director of agriculture which shall contain all pertinent information related to the premises utilized for the retail food establishment.

(D) Fees for issuing and renewing retail food establishment licenses, determined by the licensor in accordance with section 3717.25 of the Revised Code, may be levied upon each retail food establishment. These fees shall be used solely for paying the expense of the administration and enforcement of Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter.

(1) In determining the amount of the annual license fee, the licensor shall use the categories established by rule 901:3-4-03 of the Administrative Code and the cost analysis established by rule 901:3-4-04 of the Administrative Code.

(2) If a license fee as prescribed under this paragraph is not filed with the licensor or postmarked on or before the date it is due, a penalty of twenty-five per cent of any such fee shall be imposed and paid.

(3) Fees authorized or charged under this paragraph shall be in lieu of all retail food establishment and inspection fees required by the licensor on or with respect to the operation of, ownership of or employment by retail food establishments within this state, except as provided in paragraph (C) of rule 901:3-4-03 of the Administrative Code.

(E) For each retail food establishment license issued the following applicable amount shall be collected and transmitted by the licensor to the director of agriculture for deposit in the food safety fund created in section 915.24 of the Revised Code and used for administering and enforcing Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter:

(1) Twenty-eight dollars for each license that the licensor issues under the fee category specified in paragraphs (A)(1), (A)(2), and (A)(4) of rule 901:3-4-03 of the Administrative Code; or

(2) Fourteen dollars for each license that the licensor issues under the fee category specified in paragraph (B)(1) of rule 901:3-4-03 of the Administrative Code.

(F) The operator of a retail food establishment that also plans to cater shall apply for a catering food service operation endorsement to their retail food establishment license. A retail food establishment license with such an endorsement shall be recognized by all other licensors in this state. The operator of such an establishment shall maintain a copy of the license at each catered event.

(G) A license holder shall display the license for that retail food establishment at all times at the licensed location.

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901:3-4-03 License fees and categories.

(A) The license fees established by a licensor pursuant to section 3717.25 of the Revised Code for retail food establishments as described in section 3717.01 of the Revised Code shall be specified for the following categories:

- (1) Retail food establishments in which the interior premises is under 25,000 square feet for each risk level specified in rule 901:3-4-05 of the Administrative Code;
- (2) Retail food establishments in which the interior premises is 25,000 square feet or more for each risk level specified in rule 901:3-4-05 of the Administrative Code; and
- (3) Temporary retail food establishments as a per event fee or as a per day fee-; and
- (4) Mobile retail food establishments.

(B) The licensor may establish a different fee for retail food establishments it classifies as:

- (1) Noncommercial retail food establishments in all risk level categories, which shall be fifty per cent of the fee established in paragraphs (A)(1) and (A)(2) of this rule, as applicable; and
- (2) Noncommercial temporary retail food establishments, which shall be fifty percent of the fee established in paragraph (A)(3) of this rule.

(C) The licensor may establish fees for:

- (1) Review of facility layout and equipment specifications for retail food establishments, other than temporary retail food establishments;
- (2) Any necessary collection and bacteriological examination of food or water samples, or similar services specified in rules adopted under section 3717.05 of the Revised Code; and
- (3) Attendance at a course of study offered by the licensor in food protection if the course is approved under section 3717.09 of the Revised Code.

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901:3-4-04 Cost analysis and license fee calculation.

(A) A cost analysis shall be conducted each fiscal year. The licensor shall use data from the previous fiscal year to calculate the actual cost of administering and enforcing Chapter 3717. of the Revised Code, and the rules adopted thereunder for food service operations and retail food establishments licensed by the licensor. The licensor shall calculate the actual cost of administration and enforcement attributable to each of the following components on forms prescribed or approved by the director:

- (1) Risk level I, risk level II, risk level III, and risk level IV food service operations and retail food establishments;
- (2) Temporary food service operations and temporary retail food establishments; and
- (3) Mobile retail food establishments and mobile food service operations.

(B) Except as specified in paragraph (D) of this rule, the licensor shall calculate the cost attributable to each component listed in paragraph (A) of this rule for administering and enforcing Chapter 3717. of the Revised Code and the rules adopted thereunder for operations licensed by the licensor. Cost shall not exceed all reasonable and necessary direct cost and indirect cost determined in accordance with the applicable principles and standards established by office of management and budget circular A-87, revised, as set forth in 2 CFR 225 (August 31, 2005). For the purposes of this rule indirect cost means support cost which includes support staff cost plus overhead cost. The licensor shall use a form prescribed or approved by the director of agriculture and the director of health that includes the following data:

- (1) A list of all inspecting sanitarians who worked in the component;
- (2) The total hours worked in the component by each inspecting sanitarian;
- (3) The total hours that each inspecting sanitarian worked in the last year;
- (4) The total annual wages or salary paid to each inspecting sanitarian;
- (5) The total amount for fringe benefits paid on behalf of each inspecting sanitarian;
- (6) The total travel costs for each inspecting sanitarian;
- (7) The support costs for the component as determined by one of the following methods:
 - (a) Use of actual support cost not to exceed thirty per cent of the total program cost for items, such as salary and fringe benefits of the health commissioner, the director of environmental health, supervisory staff, clerical staff, utilities, rent, supplies, equipment, liability insurance, and training;
 - (b) Use of an indirect cost rate of thirty per cent of the wages or salaries and fringe benefits of inspecting sanitarians attributable to the component; or
 - (c) Application of a negotiated indirect cost rate and calculation method approved by an agency of the federal government for the licensor to the component;

(8) The sampling and laboratory costs for the component other than those costs specified in paragraph (C) of rule 901:3-4-03 of the Administrative Code;

(9) Funding for the component which includes revenues obtained from license fees and penalty fees.

(C) The licensor shall calculate the license fee for each retail food establishment category listed in rule 901:3-4-03 of the Administrative Code as follows:

(1) For a temporary retail food establishment:

(a) Using fees established on a per event basis, the temporary food service operation and temporary retail food establishment category cost divided by the number of temporary food service operation and temporary retail food establishment licenses issued. If a licensor elects to establish a noncommercial fee for temporary food service operations and temporary retail food establishments, the category cost is divided by the number of licenses issued for commercial temporary food service operations and commercial temporary retail food establishments plus fifty per cent of the number of licenses issued for noncommercial temporary food service operations and noncommercial temporary retail food establishments; or

(b) Using fees established on a per day basis, the temporary food service operation and temporary retail food establishment category cost divided by the total number of days for which temporary food service operation and temporary retail food establishment licenses were issued. If a licensor elects to establish a noncommercial fee for temporary food service operations and temporary retail food establishments, the category cost is divided by the number of days for which commercial licenses were issued plus fifty per cent of the number of days for which temporary licenses were issued for noncommercial temporary food service operations and noncommercial temporary retail food establishments.

(2) For retail food establishments classified as risk level I, risk level II, risk level III, and risk level IV retail food establishments:

(a) Determine support costs in accordance with paragraph (B)(7) of this rule. Equally allocate support costs attributable to the risk level food service operations and retail food establishments component by dividing the support costs of the risk level food service operations and retail food establishments component by the total number of commercial risk level I, risk level II, risk level III, and risk level IV food service operations and retail food establishments plus fifty per cent of the noncommercial operations classified by risk level;

(b) Determine the total number of food service operations and retail food establishments in each risk level category. If the licensor elects to establish noncommercial categories for risk level food service operations and risk level retail food establishments the total number of food service operations and retail food establishments in each risk level category is the number of commercial risk level food service operations and commercial risk level retail food establishments plus fifty per cent of the number of noncommercial risk level food service operations and noncommercial risk level retail food establishments.

(c) Determine the number of standard inspection periods for each risk level category using the inspection time factor. The number of standard inspection periods is the minimum number of

inspections required for each risk level category multiplied by the inspection time factor, the product of which is multiplied by the total number of food service operations and retail food establishments in each risk level category. The inspection time factor is the ratio of the average amount of time per inspection for all risk levels relative to the average time per inspection for the risk level I less than twenty-five thousand square feet operations. The inspection time factor for:

(i) Risk level I less than twenty-five thousand square feet is 1.00, and twenty-five thousand square feet or above is 1.88 ;

(ii) Risk level II less than twenty-five thousand square feet is 1.25, and twenty-five thousand square feet or above is 2.03 ;

(iii) Risk level III less than twenty-five thousand square feet is 1.64, and twenty-five thousand square feet or above is 4.84 ; and

(iv) Risk level IV less than twenty-five thousand square feet is 2.21, and twenty-five thousand square feet or above is 5.16.

(d) Determine the total number of standard inspection periods by summing the standard inspection periods for all risk level categories.

(e) Determine the non-support cost per standard inspection period: subtract the support cost from the total actual cost of the component and divide this amount by the total number of standard inspection periods.

(f) Determine the non-support cost for each risk level category by using the following formula:

$A \times B \times C$ = The non-support cost for each risk level, where A is equal to the non-support cost per standard inspection period, B is equal to the standard inspection period for the risk level category, and C is equal to the inspection time factor for the risk level category.

(g) Determine the maximum license fee that may be established: add the non-support cost for each risk level category to the support cost per license issued.

(3) The mobile retail food establishment and the mobile food service operation category cost divided by the number of mobile retail food establishments and mobile food service operation licenses issued.

(D)

(1) The total sanitarian hours that may be accounted for in calculating the cost attributable to the food service operations and retail food establishments identified in paragraph (A)(1) of this rule shall not exceed an average of nine hours per risk classified food service operation and retail food establishment.

(2) Anticipated increases in costs that may be attributable to a component are limited to known increases for which official notification or board action has been documented.

(E) The licensor shall provide a proportional reduction in the fees to be charged in the next license period if a licensor included anticipated costs in the calculation of licensing fees and the total amount of anticipated costs was not incurred.

(F) The licensor shall provide for a proportionate reduction in fees to be charged in the next license period if it is discovered through an audit by the auditor of state or any other means that the licensor has charged or is charging a license fee that exceeds the amount that should have been charged.

(G) The licensor shall reduce the fees to be charged in the next license period when a reduction is imposed as a penalty under division (C) of section 3717.071 of the Revised Code.

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901:3-4-05 Risk level of retail food establishments.

The licenser shall determine the risk level based on the highest risk level activity of the retail food establishment in accordance with the following criteria:

(A) Risk level I poses potential risk to the public in terms of sanitation, food labeling, sources of food, storage practices, or expiration dates. Examples of risk level I activities include, but are not limited to, an operation that offers for sale or sells:

- (1) Coffee, self-service fountain drinks, prepackaged non-time/temperature controlled for safety food beverages;
- (2) Pre-packaged refrigerated or frozen time/temperature controlled for safety food;
- (3) Pre-packaged non-time/temperature controlled for safety food;
- (4) Baby food or formula.

A "food delivery operation" as defined in division (H) of section 3717.01 of the Revised Code shall be classified as risk level I.

(B) Risk level II poses a higher potential risk to the public than risk level I because of hand contact or employee health concerns but minimal possibility of pathogenic growth exists. Examples of risk level II activities include, but are not limited to:

- (1) Handling, heat treating, or preparing non-time/temperature controlled for safety food;
- (2) Holding for sale or serving time/temperature controlled for safety food at the same proper holding temperature at which it was received; or
- (3) Heating individually packaged, commercially processed time/temperature controlled for safety food for immediate service.

(C) Risk level III poses a higher potential risk to the public than risk level II because of the following concerns: proper cooking temperatures, proper cooling procedures, proper holding temperatures, contamination issues or improper heat treatment in association with longer holding times before consumption, or processing a raw food product requiring bacterial load reduction procedures in order to sell it as ready-to-eat. Examples of risk level III activities include, but are not limited to:

- (1) Handling, cutting, or grinding raw meat products;
- (2) Cutting or slicing ready-to-eat meats and cheeses;
- (3) Assembling or cooking time/temperature controlled for safety food that is immediately served, held hot or cold, or cooled;
- (4) Operating a heat treatment dispensing freezer;

(5) Reheating in individual portions only; or

(6) Heating of a product from an intact hermetically sealed package and holding it hot.

(D) Risk level IV poses a higher potential risk to the public than risk level III because of concerns associated with: handling or preparing food using a procedure with several preparation steps that includes reheating of a product or ingredient of a product where multiple temperature controls are needed to preclude bacterial growth; offering as ready-to-eat a raw potentially hazardous meat, poultry product, fish, or shellfish or a food with these raw potentially hazardous items as ingredients; using freezing as a means to achieve parasite destruction; serving a primarily high risk clientele including immuno-compromised or elderly individuals in a facility that provides either health care or assisted living; or using time in lieu of temperature as a public health control for time/temperature controlled for safety food, or performs a food handling process that is not addressed, deviates, or otherwise requires a variance for the process. Examples of risk level IV activities include, but are not limited to:

(1) Reheating bulk quantities of leftover time/temperature controlled for safety food more than once every seven days; or

(2) Caterers or other similar food service operations that transport time/temperature controlled for safety food.

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Prior Effective Dates: 2/1/01, 12/14/01 (Emer.), 3/1/02, 12/20/04

901:3-4-06 Retail food establishment inspection frequency.

A licensor shall inspect retail food establishments at least every fifteen months as follows:

- (A) Risk level I: at least one standard inspection each licensing period.
- (B) Risk level II: at least one standard inspection each licensing period.
- (C) Risk level III: at least two standard inspections each licensing period.
- (D) Risk level IV: at least two standard inspections and if applicable two process review inspections, and if applicable two variance reviews each licensing period. The licensor may conduct the process review inspections on the same visits as the standard inspections and when applicable verify the terms of any variance that may have been issued.
- (E) Temporary retail food establishments: at least one inspection during the period of operation.
- (F) New retail food establishments: if less than six months remain in a licensing period, the licensor may elect to eliminate one standard inspection, one process review inspection and one variance review for an establishment classified as risk level III or IV. For the purpose of this rule, new retail food establishment means a retail food establishment that, in accordance with rule 901:3-4-07 of the Administrative Code, the licensor requires a facility layout and equipment specifications review be submitted for approval.
- (G) Mobile retail food establishments: at least one standard inspection each licensing period.

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901:3-4-07 Approval of facility layout and equipment specifications.

No person, firm, association, organization, corporation, or government operation shall construct, install, provide, equip, or extensively alter a retail food establishment until the facility layout and equipment specifications therefore have been submitted to and approved in writing by the licensor. When the facility layout and equipment specifications are submitted to the licensor, they shall be acted upon within thirty calendar days after date of receipt. The facility layout and equipment specifications shall be approved by the licensor in accordance with the rules adopted pursuant to section 3717.05 of the Revised Code stating the criteria for facility layout and equipment specifications.

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Rule Amplifies: 3717.21

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901:3-4-08 Appeal procedures.

(A) This rule prescribes procedures for appealing the proposed denial, suspension or revocation of a retail food establishment license and appealing the suspension of a license for a violation presenting a clear and present danger to the public health. An appeal of a proposed denial, suspension or revocation of an endorsement on a retail food establishment license and appeal of the suspension of an endorsement on a license for a violation presenting a clear and present danger to the public health shall be conducted in the same manner.

(B) In the case of a proposal to deny, suspend, or revoke a retail food establishment license, the licensor shall provide the license holder with written notice of the proposed action and the cause for the action. The notice shall describe the procedure for appealing the proposed denial, suspension, or revocation.

(1) The licensor shall provide written notice by certified mail, return receipt requested, or by hand delivery. If the notice is returned because of failure of delivery, the licensor shall send the notice by regular mail to the retail food establishment location listed on the license or conspicuously post the notice at an entrance of the operation, and posting or mailing constitutes notice.

(2) After receiving the notice, to obtain a hearing, the license holder must submit a written request that the licensor receives within fifteen days.

(3) The licensor shall schedule a hearing before the licensor or a hearing officer designated by the licensor. If the licensor provides a hearing officer, he or she shall be licensed to practice law in Ohio and shall not have participated in any manner in the decision to take the action against the license holder.

(4) The licensor shall mail or hand-deliver notice of the date, time, and place of the hearing to the license holder no less than ten days before the scheduled date.

(5) At the hearing, the license holder shall have the opportunity to present its case orally or in writing and to confront and cross-examine witnesses. The license holder may be represented by counsel and may review the case record before the hearing. If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, and a hearing officer has been designated, a member of that board does not have to be present at the hearing.

(6) If the hearing is before a hearing officer, he or she shall prepare a written recommendation as to the validity of the licensor's action, which shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the licensor's action. The hearing officer shall describe the basis for his or her recommendation, but need not prepare a full opinion or formal findings of fact and conclusions of law. The hearing officer shall mail by certified mail, return receipt requested, or hand-deliver the recommendation to the licensor and the license holder. Either party may file objections to the recommendation provided that the objections are received by the licensor within five days of receiving a copy of the recommendation from the hearing officer.

(7) After reviewing any timely objections, the licensor may by motion take additional evidence or approve, modify, or disapprove the hearing officer's recommendation and shall enter an order in the record of its proceedings.

(8) If the licensor does not receive a timely request for a hearing, the licensor may immediately enter an order as proposed in the notice.

(C) In the case of a suspension of a license issued for a violation presenting clear and present danger to the public health, the licensor shall provide the license holder with written notice of the action, the cause for the action, and the effective date of the action. The written notice shall specify the procedure for appealing the suspension and shall list the address to which a hearing request shall be sent or delivered. The license holder may appeal the suspension by mailing or hand-delivering a written request for a hearing to the address specified in the notice. If a hearing is requested, it shall be heard not later than two business days after the request is received by the licensor. At the hearing, the license holder shall have the opportunity to present its case orally or in writing and to confront and cross-examine witnesses. The license holder may be represented by counsel and may review the case record before the hearing. At the hearing, the licensor shall determine whether the clear and present danger to the public health continues to exist.

(D) Any determination made or order entered by the licensor pursuant to this rule shall be made as follows:

(1) If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, by majority vote of the members of the board or authority present at a meeting at which there is a quorum;

(2) If the director of agriculture is acting as the licensor pursuant to section 3717.11 or 3717.111 of the Revised Code, by decision of the director.

If the licensor conducts the hearing, the licensor may immediately render a decision denying, suspending, or revoking a license, or render a decision removing or continuing a license suspension. If the licensor is a board of health of a city or general health district or the authority having the duties of the board of health under section 3709.05 of the Revised Code, the determination or order may be considered and made at a meeting without publication or advertisement, and may become effective without such publication or advertisement, recording or certifying. An order is not effective until it is recorded in the licensor's record of its proceedings.

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Prior Effective Dates: 2-1-01; 6-16-03

901:3-4-09 Complaint investigation procedure.

(A) The licensor shall accept all complaints regarding retail food establishments. The complaints shall be investigated in accordance with a written policy of the licensor. The policy shall include at a minimum:

(1) A complaint form to be used to document all complaints,

(2) The time frame for conducting investigations of complaints according to the potential risk to the public health, and

(3) The criteria for declining to investigate a complaint.

(B) The results of the licensor's investigation shall be documented on the a retail food establishment inspection form. The complaint form, any laboratory results, and the retail food establishment form documenting the investigation findings shall be filed in the licensor's retail food establishment's file.

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901:3-4-10 Dispute mediation procedure.

A licensor or license holder may request mediation by the Ohio department of agriculture to resolve a dispute regarding the application of Chapter 3717. of the Revised Code, agency-level 3717 of the Administrative Code, or this chapter pertaining to retail food establishments. The request shall be in writing and contain a detailed description of the dispute including any applicable supporting documentation. The Ohio department of agriculture shall investigate the case and the findings transmitted to all affected entities. A request for mediation does not affect the right of any party to seek any other remedy available by law.

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Rule Amplifies: 3717

Prior Effective Dates: 2/1/01

901:3-4-11 Enforcement support.

(A) For the purpose of this rule “enforcement support” means the provision of any of the following by the Ohio department of agriculture in the license suspension, license revocation, prosecution or proposed prosecution of a person for a violation of the provisions of Chapter 3717. of the Revised Code, agency-level 3717 of the Administrative Code, or this chapter:

- (1) Consultation regarding the facts of the case;
- (2) Case preparation assistance if the county prosecutor or legal representative requests it;
- (3) Expert testimony;
- (4) Evidence collection, and
- (5) Review and comment on case documentation.

(B) To request enforcement support a board of health or the authority having the duties of a board of health must request assistance to the director on a form prescribed by the director.

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Prior Effective Dates: 2-1-01

901:3-4-12 Articles-requirement to cease use.

(A) Any article such as a utensil, material, or piece of equipment may be removed from use in a retail food establishment by the licensor if it presents a public health hazard. For the purposes of this rule, a public health hazard is presented by any article whose use can reasonably be expected to result in the contamination or adulteration of a food product based upon its state of repair, cleanliness, location, or construction. The licensor may tag any such article and prohibit its use by the license holder.

(B) A tag removing an article from use shall state the reason for the article's removal from use, and;

(1) The provisions for returning the article to use, or

(2) The disposition of the article if the article can not be satisfactorily reconditioned.

(C) No license holder shall remove or permit to be removed, a tag without the permission of the licensor.

(D) Any action that may be taken by a licensor under paragraphs (A) to (C) of this rule may be taken by a health commissioner or other person employed by the licensor if the person or health commissioner is authorized by the licensor to take the action.

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901:3-4-13 Records.

A license holder of a retail food establishment shall:

(A) For the purpose of any investigation provide the licensor, upon request and within a reasonable time, proof of origination of the foods sold at the retail food establishment.

(B) Maintain records required as a condition of a variance or a required HACCP plan.

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Rule Amplifies: 3717.05, 3717.27, 3717.28

Prior Effective Dates: 2-1-01; 6-16-03

901:3-4-14 Collection of food samples for the purposes of identifying adulteration and misbranding.

(A) A licensor may submit a sample for testing to the Ohio department of agriculture consumer protection laboratory when:

- (1) A food or food additive is the subject of a consumer complaint;
- (2) At the request of a consumer after a physician has isolated an organism from the consumer as the physician's patient;
- (3) A food or food additive is suspected of having caused an illness;
- (4) A food or food additive is suspected of being adulterated or misbranded;
- (5) A food or food additive is subject to verification of food labeling and standards of identity; or
- (6) The director considers a sample analysis necessary or it is part of an Ohio department of agriculture food sample monitoring program.

(B) Samples taken for any reason specified in paragraph (A) of this rule, should when possible, be from a non-compromised package and of the same lot, code, or production unit as the food or food additive that is of concern. As used in this rule "non-compromised" means securely wrapped and packaged as purchased, not opened by the complainant, or otherwise handled in a manner that might result in the discrediting of the sample results.

(C) The licensor shall take reasonable care to ensure that the sample is:

- (1) Not contaminated by the sampling or shipping process;
- (2) Maintained at a temperature that is appropriate to help minimize additional growth of bacteria, other organisms, and deterioration until received by the laboratory;
- (3) Collected, submitted, and shipped in accordance with any guidelines for such sample submission as directed by the consumer protection laboratory; and
- (4) For a non-compromised sample a chain of custody is documented. For the purposes of this rule, "chain of custody" means the documentation of the history of the handling of a sample by persons in charge of a sample from the initial sampling to receipt and analysis by the analyzing laboratory.

(D) The department of agriculture's consumer protection laboratory may charge a licensor a reasonable fee for the analysis of a sample unless the sample is considered to be an official sample as defined in rules promulgated pursuant to section 901.43 of the Revised Code or the fee has been waived by the director.

(E) No person shall refuse, upon demand and tender of payment therefor, to furnish a sample thereof for analysis.

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Statutory Authority: 3717.33

Rule Amplifies: 3717.25, 3717.33

Prior Effective Dates: 2-1-01

901:3-4-15 Embargo of food.

(A) For the purposes of this rule, “expired” means:

(1) In the case of infant formula, the “use by” date required by 21 C.F.R. 107.20 has passed; or

(2) In the case of baby food, that any expiration date, “use by” date, or sale date established by state or federal law or marked on the container by the manufacturer, processor, or packager has passed.

(B) Whenever a licensor finds or has cause to believe within a retail food establishment or food service operation in their jurisdiction that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, or that infant formula, or baby food is expired, the licensor shall affix to the item a tag giving notice that the item is, or is suspected of being, adulterated, misbranded, or expired and has been embargoed. The tag shall warn all persons not to remove or dispose of the item by sale or otherwise until permission for removal or disposal is given by the licensor or the court. No person may remove or dispose of a detained or embargoed item by sale or otherwise without such permission.

(C) When a food, infant formula, or baby food that has been embargoed has been found by the licensor to be adulterated, misbranded, or expired, the licensor shall petition the municipal or county court in whose jurisdiction the item is embargoed for an order for condemnation of the item. When the licensor has not found within ten days that an item embargoed is adulterated, misbranded, or expired, the licensor shall remove the tag or other marking.

(D) If the court finds that an embargoed item is adulterated, misbranded, or expired, the item shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of the licensor, and all court costs, fees, storage, and other proper expenses shall be taxed against the claimant of the item or the claimant’s agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the item, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the item shall be so labeled or processed, has been executed, may by order direct that the item be delivered to the claimant thereof for labeling or processing under the supervision of the licensor. The expense of supervision shall be paid by the claimant. The bond shall be returned to the claimant of the item on representation to the court by the licensor that the item is no longer in violation of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, and that the expenses of supervision have been paid.

(E) Whenever the licensor finds in any retail food establishment or food service operation, any meat, seafood, poultry, vegetable, fruit, or other perishable foods that are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the foods are declared to be a nuisance, and the licensor shall forthwith condemn or destroy the foods, or in any other manner render the items unsalable as human food.

(F) Any action that may be taken by a licensor under paragraphs (A) to (E) of this rule may be taken by a health commissioner or other person employed by the licensor if the person or health commissioner is authorized by the licensor to take the action.

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Statutory Authority: 3715.551

Rule Amplifies: 3715.05, 3717.27, 3717.47, 3717.52

Prior Effective Dates: 2-1-01; 6-16-03

901:3-4-16 Certification in food protection.

(A) Persons seeking approval for a course of study for persons to be certified in food protection, shall make application to the Ohio department of health in accordance with Chapter 3701-21 of the Administrative Code.

(B) Any person recognized by the Ohio department of health as “certified in food protection” shall also be recognized as such by the Ohio department of agriculture and any other licensor of retail food establishments in Ohio.

(C) The licensor shall mandate level one certification in food protection training for risk level I, II, III, and IV retail food establishments for the reasons provided in 3701-21-25(I) of the Administrative Code.

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Statutory Authority: 3717.33

Rule Amplifies: 3717.09

Prior Effective Dates: 2/1/01

901:3-4-17 State survey procedures for program evaluation.

(A) Pursuant to section 3717.11 of the Revised Code the director of agriculture shall survey at least once every three years the retail food establishment program of every licensor for retail food establishments. The licensor shall provide the director of agriculture with all requested information to complete the survey.

(B) The director of agriculture shall provide the survey methodology to all licensors. The methodology shall include:

(1) A review of the administrative aspects of the retail food establishment program;

(2) A field review of the application of the requirements set forth in Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code and this chapter; and

(3) A review of other performance standards relevant to the conduct of the retail food establishment program.

(C) The director of agriculture shall survey the retail food establishment program in accordance with the survey methodology and shall determine whether the licensor is qualified to administer and enforce Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code and the applicable rules of this chapter. After the survey is complete, the director of agriculture shall classify the licensor as approved or provisional and provide a survey report to the licensor. If the licensor is classified as provisional, the director of agriculture shall provide it with:

(1) A set time frame for correcting the deficiencies;

(2) Procedures for program disapproval that the department of agriculture will pursue if the licensor fails to correct the major deficiencies revealed by the survey; and

(3) An opportunity to request a meeting with a representative of the director of agriculture to discuss the deficiencies.

(D) The department of agriculture shall reevaluate a board or authority's provisional retail food establishment program in the established time frame to determine if the program is in compliance. If in compliance, the director of agriculture shall classify the licensor as approved. If the deficiencies have not been corrected, the director of agriculture shall propose to disapprove the licensor, or shall propose to revoke the approval, whichever is appropriate.

(E) The licensor may request an informal hearing on the director of agriculture's proposed determination if a written request is received by the director of agriculture no later than fifteen days after the date of mailing the proposed determination. The informal hearing shall be conducted before the director of agriculture or the director of agriculture's authorized representative no later than thirty days after the director of agriculture received the request for hearing. At the hearing, a representative of the licensor may present information orally and in writing. The director of agriculture shall issue a written decision no later than thirty days after the conclusion of the informal hearing.

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Promulgated Under: 119.03

Statutory Authority: 3717.33

Rule Amplifies: 3717.11

Prior Effective Dates: 2/1/01

901:3-4-18 Reinstatement of a licensor.

The director of agriculture may reinstate a licensor if all the conditions in division (D) of section 3717.11 of the Revised Code are met. Upon reinstatement, the director of agriculture shall provide the licensor a set-time frame for survey which shall be no later than one year after reinstatement. The licensor shall be classified as provisional until the licensor has successfully passed the survey. If the director of agriculture determines that the licensor is qualified to administer and enforce Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and the applicable rules of this chapter, the director of agriculture shall classify the licensor as approved. If the director of agriculture determines that the licensor is not qualified, the director of agriculture may propose to revoke the approval in accordance with paragraph (D) of rule 901:3-4-17 of the Administrative Code.

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Rule Amplifies: 3717.11

Prior Effective Dates: 2/1/01