

**Ohio Revised Code Chapter
3717.**

Retail Food Establishment

&

Food Service Operation

Chapter 3717: RETAIL FOOD ESTABLISHMENTS; FOOD SERVICE OPERATIONS

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3717.01 Retail food establishments – food safety operations definitions

As used in this chapter:

- (A) "Ohio uniform food safety code" means the food safety and related standards adopted under section 3717.05 of the Revised Code.
- (B) "Food" means any raw, cooked, or processed edible substance used or intended for use in whole or in part for human consumption. "Food" includes ice, water or any other beverage, food ingredients, and chewing gum.
- (C) "Retail food establishment" means a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. Except when expressly provided otherwise, "retail food establishment" includes a mobile retail food establishment, seasonal retail food establishment, and temporary retail food establishment.

As used in this division:

- (1) "Retail" means the sale of food to a person who is the ultimate consumer.
- (2) "Prepared" means any action that affects a food, including receiving and maintaining it at the temperature at which it was received.
- (D) "Seasonal retail food establishment" means a retail food establishment, other than a mobile retail food establishment, that is operated for not more than six months in a licensing period.
- (E) "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.
- (F) "Food service operation" means a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. As used in this division, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.

Except when expressly provided otherwise, "food service operation" includes a catering food service operation, food delivery sales operation, mobile food service operation, seasonal food service operation, temporary food service operation, and vending machine location.

- (G) "Catering food service operation" means a food service operation where food is prepared for serving at a function or event held at an off-premises site, for a charge determined on a per-function or per-event basis.
- (H) "Food delivery sales operation" means a food service operation from which individual portions of food are ordered by a customer, prepared at another food service operation or a retail food establishment, and delivered to the customer by a person

other than an employee of the food service operation or retail food establishment that prepared the food.

- (I) "Mobile food service operation" means a food service operation that is operated from a movable vehicle, portable structure, or watercraft and that routinely changes location, except that if the operation remains at any one location for more than forty consecutive days, the operation is no longer a mobile food service operation. "Mobile food service operation" includes a food service operation that does not remain at any one location for more than forty consecutive days and serves, in a manner consistent with division (F) of this section, only frozen desserts; beverages, nuts, popcorn, candy, or similar confections; bakery products identified in section 911.01 of the Revised Code; or any combination of those items.
- (J) "Seasonal food service operation" means a food service operation, other than a mobile food service operation, that is operated for not more than six months in a licensing period.
- (K) "Temporary food service operation" means a food service operation 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 3717.43 of the Revised Code.
- (L) "Vending machine location" means an area or room where one or more vending machines are installed and operated, except that if the machines within an area are separated by more than one hundred fifty feet, each area separated by that distance constitutes a separate vending machine location. As used in this division, "vending machine" means a self-service device that automatically dispenses on the insertion of currency, tokens, or similar means a predetermined unit serving of food, either in bulk or in package, without having to be replenished after each use.
- (M) "Board of health" means a board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code.
- (N) "Government entity" means this state, a political subdivision of this state, another state, or a political subdivision or other local government body of another state.
- (O) "Licensor" means one of the following:
 - (1) A board of health approved under section 3717.11 of the Revised Code;
 - (2) The director of agriculture acting pursuant to section 3717.11 of the Revised Code with respect to the licensing of retail food establishments;
 - (3) The director of health acting pursuant to section 3717.11 of the Revised Code with respect to the licensing of food service operations.
- (P) "Licensing period" means the first day of March to the last day of February of the next succeeding year.
- (Q) "Mobile retail food establishment" means a retail food establishment that is operated from a movable vehicle or other portable structure, and that routinely changes location, except that if the establishment operates from any one location for more than forty consecutive days, the establishment is no longer a mobile retail food establishment.

- (R) "Unprocessed," when used with respect to fruits and vegetables, means that the fruits and vegetables are not processed beyond merely rough trimming and rinsing.
- (S) "Cottage food production operation" has the same meaning as in division (A)(19) of section 3715.01 of the Revised Code.

3717.02 Retail food safety advisory council.

- (A) There is hereby created the retail food safety advisory council. The council shall consist of the director of agriculture or a person the director designates to serve on the director's behalf, the director of health or a person the director designates to serve on the director's behalf, and twelve additional members appointed jointly by the director of agriculture and the director of health, as follows:
 - (1) Three persons representing the interests of retail food establishments;
 - (2) Three persons representing the interests of food service operations;
 - (3) Four persons representing boards of health or the health departments operated by boards of health;
 - (4) One person representing the academic community who is knowledgeable in food science or food technology;
 - (5) One person representing the general public who is not employed by this state or any of its political subdivisions and has no pecuniary interest in a retail food establishment or food service operation.
- (B) In making appointments to the council, the director of agriculture and director of health shall jointly consult with statewide trade and professional organizations that represent the interests of retail food establishments and food service operations. The organizations may nominate persons to be considered for appointment as council members.
- (C) Of the initial appointments made to the council, five shall be for terms ending three years after appointment, four shall be for terms ending two years after appointment, and three shall be for terms ending one year after appointment. Thereafter, terms of office shall be three years. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed.

Vacancies shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office after the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

- (D) A member may be removed from office for failing to attend two consecutive council meetings without showing good cause for the absences. Removal from office requires joint action by the director of agriculture and director of health.
- (E) The director of agriculture or the person the director designates to serve on the director's behalf, and the director of health or the person the director designates to

serve on the director's behalf, shall serve as the council's co-chairpersons without voting rights. A two-thirds majority vote of the council's voting members is necessary for the council to act on any matter.

- (F) Members shall be reimbursed for actual and necessary expenses incurred in performing duties as members. The expenses shall be shared equally by the department of agriculture and the department of health. Both departments shall provide administrative support to the council.
- (G) The retail food safety advisory council is not subject to sections 101.82 to 101.87 of the Revised Code.

3717.03 Council meetings - duties.

- (A) The retail food safety advisory council shall meet as necessary to fulfill its duties, which include all the following:
 - (1) Making recommendations for the Ohio uniform food safety code;
 - (2) Examining specific food safety issues raised by the director of agriculture or director of health and making recommendations regarding those issues;
 - (3) Mediating unresolved issues among state agencies about the interpretation of rules adopted under this chapter and making recommendations regarding the issues;
 - (4) Reviewing all comments on and requests for interpretation of the Ohio uniform food safety code, as submitted by any holder of a license issued under this chapter or any other person or government entity;
 - (5) Making recommendations to the director of agriculture and director of health for use in issuing joint letters of opinion pursuant to section 3717.041 of the Revised Code;
 - (6) Making recommendations to the director of agriculture and director of health with respect to improving the food safety awareness of consumers and their confidence in the state's food supply;
 - (7) Making recommendations to the director of agriculture and director of health regarding the licensing categories and inspection frequencies to be used in regulating retail food establishments and food service operations;
 - (8) Making recommendations to the director of health with respect to the program for certification of individuals in food protection and approval of courses in food protection.
- (B) The council shall hold a meeting at the request of the director of agriculture, at the request of the director of health, or on written request of three or more voting members of the council.
- (C) In fulfilling its duties under division (A)(4) of this section, the council shall accept comments and requests regardless of whether they are made publicly or anonymously. For purposes of accepting comments and requests at times other than council meetings, the council shall maintain and publicize a mailing address.

3717.04 Rules regarding retail food establishments and food service operations

The director of agriculture and the director of health have the exclusive power in this state to adopt rules regarding retail food establishments and food service operations. The rules adopted under this chapter shall be applied uniformly throughout this state.

All rules adopted under this chapter shall be adopted in accordance with Chapter 119. of the Revised Code. Subject to the approval of the joint committee on agency rule review, portions of the rules may be adopted by referencing all or any part of any federal regulations pertaining to food safety.

3717.041 Joint letter of opinion from directors of agriculture and health.

To assist in the uniform application of the rules adopted under this chapter, the director of agriculture and director of health shall jointly issue a letter of opinion when issuance of a letter of opinion is recommended by the retail food safety advisory council under section 3717.03 of the Revised Code. A letter of opinion shall be issued not later than sixty days after the date the recommendation is received from the council.

Each letter of opinion shall provide a detailed interpretation of the rules that are the subject of the retail food safety advisory council's recommendation. Unless rules are adopted under this chapter that override the interpretation expressed in a letter of opinion, the interpretation shall be binding and applied uniformly throughout this state.

3717.05 Uniform food safety code

- (A) The director of agriculture and the director of health shall adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations. The rules shall be compiled as the Ohio uniform food safety code, which shall be used by the licensors of retail food establishments and food service operations in ensuring the safe handling of food in this state. All scientific provisions of the Ohio uniform food safety code that are relevant to both retail food establishments and food service operations shall be adopted by the director of agriculture and the director of health with each other's concurrence.

The Ohio uniform food safety code shall include the following:

- (1) Criteria for sanitation in retail food establishments and food service operations;
- (2) Criteria for equipment in retail food establishments and food service operations;
- (3) Criteria for reviewing the facility layout and equipment specifications of retail food establishments and food service operations;
- (4) A definition of "potentially hazardous" as it pertains to food in retail food establishments and to food in food service operations;
- (5) Criteria to be used in evaluating the primary business of a person or government entity for purposes of determining whether the person or entity should be licensed as a retail food establishment or food service operation.

- (B)(1) Except as provided in divisions (B)(2) and (3) of this section, if a model food code is established by the United States food and drug administration, the Ohio uniform food safety code shall be based on the most current version of the food and drug administration's model food code. If the food and drug administration adopts, modifies, or rescinds a provision in the model food code, not later than twelve months after the administration's action, the director of agriculture and director of health shall adopt, amend, or rescind provisions in the Ohio uniform food safety code to ensure that it continues to conform with the model food code.
- (2) The Ohio uniform food safety code may contain or omit provisions that do not correspond to the food and drug administration's model food code if the director of agriculture or the director of health, with each other's concurrence, determines either of the following:
- (a) That rules can be adopted under this chapter that provide protection at least as effective as that which would be provided by basing the rules on the model food code;
 - (b) That local conditions warrant the adoption of standards that are different from the model food code.
- (3) The Ohio uniform food safety code shall contain the rules adopted under section 3717.14 of the Revised Code notwithstanding the content of the United States food and drug administration's model food code.

3717.06 Agriculture and health department liaisons to be knowledgeable in food safety and foodborne illnesses.

The director of agriculture shall create within the department of agriculture a position to be filled by an individual knowledgeable in food safety and the epidemiology of foodborne illness. The director of health shall create within the department of health a position to be filled by an individual knowledgeable in food safety rules concerning food service operations and the epidemiology of foodborne illness. The individuals appointed to these positions shall serve as liaisons between the departments. They shall also serve as the departments' liaisons with other state agencies, boards of health, representatives of retail and other food establishments, representatives of food service operations, and the federal government.

3717.07 Uniform methodologies for calculating costs of licensing

- (A) For purposes of establishing a licensing fee under sections 3717.25 and 3717.45 of the Revised Code, the director of agriculture and the director of health shall adopt rules establishing uniform methodologies for use in calculating the costs of licensing retail food establishments in the categories specified by the director of agriculture and the costs of licensing food service operations in the categories specified by the director of health. In adopting the rules, the director of agriculture and the director of health shall consider any recommendations received from advisory boards or other entities representing the interests of retail food establishments and food service operations.
- (B) The rules shall include provisions that do all of the following:
- (1) Provide for calculations to be made according to fiscal years rather than licensing periods;

- (2) Limit the direct costs that may be attributed to the use of sanitarians by establishing appropriate statewide averages that may not be exceeded;
- (3) Limit the indirect costs that may be included in the calculation of fees to an amount that does not exceed thirty per cent of the cost of the licensing program;
- (4) Provide for a proportionate reduction in the fees to be charged if a licensor included anticipated costs in the immediately preceding calculation of licensing fees and the total amount of the anticipated costs was not incurred;
- (5) Provide for a proportionate reduction in the fees to be charged if it is discovered through an audit by the auditor of state or through any other means that the licensor has charged or is charging a licensing fee that exceeds the amount that should have been charged;
- (6) Provide for a twenty per cent reduction in the fees to be charged when the reduction is imposed as a penalty under division (C) of section 3717.071 of the Revised Code;
- (7) With regard to any fees charged for licensing vending machine locations, the rules shall prohibit a licensor from increasing fees by a percentage of increase over the previous year's fee that exceeds the percentage of increase in the consumer price index for all urban consumers (United States city average, all items), prepared by the United States department of labor, bureau of labor statistics, for the immediately preceding calendar year.

3717.071 Forms for calculating licensing fees.

- (A) The director of agriculture and director of health shall prescribe forms for use in calculating the licensing fees that may be charged under sections 3717.25 and 3717.45 of the Revised Code. Each licensor that charges licensing fees shall use the forms in calculating its costs according to the uniform methodologies established in rules adopted under section 3717.07 of the Revised Code.
- (B)(1) If the licensor is a board of health, the board shall submit the form to the director of agriculture in the case of fees being charged for retail food establishment licenses, and to the director of health in the case of fees being charged for food service operation licenses. The board shall submit the form to the appropriate director not later than the first day of the fiscal year in which the fees will apply. A form that is mailed to the director shall be considered to have been submitted on its postmark date.
- (2) On receipt of a form from a board of health, the director of agriculture or director of health shall review the form to determine if the board has calculated its fees in accordance with the uniform methodologies. The director may request that the auditor of state conduct an audit of the board to determine if the fees it established are appropriate. The audit is in addition to the annual or biennial audit conducted pursuant to division (A) of section 117.11 of the Revised Code, and the cost of the audit is the responsibility of the board of health. If at any time the director of agriculture or director of health has reasonable cause to believe that a different audit of a board of health is in the public interest, the director may request that the auditor of state conduct the audit. If the audit is conducted, the cost of the audit is the responsibility of the board of health.

- (C)(1) If a board of health fails to submit the forms as required under division (B)(1) of this section and the failure has occurred not more than twice in the immediately preceding five-year period, the board is subject to the following penalties:
- (a) If the form is late by one but not more than five working days, a fine of fifty dollars for each working day the form is late;
 - (b) If the form is late by six working days but not more than ten working days, a fine of one hundred dollars for each working day the form is late;
 - (c) If the form is late by more than ten working days, the board shall reduce by twenty per cent the fees it charges under section 3717.25 or 3717.45 of the Revised Code during the next succeeding fiscal year.
- (2) If a board fails to submit the forms and the failure has occurred more than twice in the immediately preceding five-year period, the board shall reduce by twenty per cent the fees it charges under section 3717.25 or 3717.45 of the Revised Code during the next succeeding fiscal year.
- (3) A board of health that is required to pay a fine or reduce its licensing fees shall not include any part of the cost of the penalty in the fees it charges under section 3717.25 or 3717.45 of the Revised Code or the fees it charges in operating any other licensing program.

3717.08 Director to promote food safety awareness and education.

- (A) The director of agriculture and director of health shall strive to increase consumer confidence in the state's food supply by promoting food safety awareness and education. The efforts of the director of agriculture and director of health shall be made, when appropriate and available, through partnerships with representatives of retail food establishments, representatives of food service operations, and representatives of the academic community, including the Ohio state university extension service.
- (B) As part of their promotion of food safety awareness, the director of agriculture and the director of health shall do the following:
- (1) Develop training programs regarding the Ohio uniform food safety code. The directors may offer the training programs separately but shall coordinate the content of the programs to the greatest extent practicable. The training programs shall be made available to the employees of the department of agriculture, employees of the department of health, representatives of boards of health and the health officials employed by the boards, representatives of retail food establishments, and representatives of food service operations.
 - (2) Co-sponsor a biennial statewide food safety conference. Additional statewide food safety conferences may be held as considered appropriate by the director of agriculture and director of health.

3717.09 Certification in food protection.

In accordance with rules adopted under section 3717.51 of the Revised Code, the director of health shall approve courses of study for certification in food protection as it pertains to

retail food establishments and as it pertains to food service operations. The director shall certify individuals in food protection who successfully complete a course of study approved under this section and meet all other certification requirements specified in rules adopted under section 3717.51 of the Revised Code.

3717.11 Board of health surveys.

- (A) Each board of health shall be surveyed for the purpose of determining whether the board is qualified and has the capacity to administer and enforce this chapter and the rules adopted under it and to abide by the Ohio uniform food safety code. If the board licenses or proposes to license retail food establishments, the survey shall be conducted by the director of agriculture. If the board licenses or proposes to license food service operations, the survey shall be conducted by the director of health.

Each board shall be surveyed by each director at least once every three years. Surveys shall be conducted in accordance with rules adopted under sections 3717.33 and 3717.52 of the Revised Code, as applicable. The directors shall schedule and conduct their surveys in a manner that minimizes, to the extent practicable, intrusion on and inconvenience to the board.

If a survey demonstrates that the board is qualified and has the requisite capacity, the director conducting the survey shall approve the board as the licensor of retail food establishments or food service operations, whichever is being considered, for the district the board serves. If a survey demonstrates that a board is not qualified or does not have the requisite capacity, the director conducting the survey shall not approve the board as a licensor, or shall revoke the director's approval, whichever is appropriate. The board may appeal the decision to deny or revoke approval to the director taking the action. The appeal shall be conducted in accordance with rules adopted under section 3717.33 or 3717.52 of the Revised Code, as applicable.

If approval is denied or revoked, the director taking the action shall designate an alternative licensor for the health district served by the board. The alternative licensor shall be a board of health that is qualified and has the requisite capacity to serve as alternative licensor, except that if a qualified and capable board is not available from a health district within reasonable proximity, the director that denied or revoked the board's approval shall act as the alternative licensor.

- (B) When the approval of a board is revoked, all valid licenses issued by that board for retail food establishments or food service operations, whichever have been affected, shall be treated as though issued by the alternative licensor. The licenses shall remain valid until scheduled to expire unless earlier suspended or revoked by the alternative licensor.
- (C) All fees charged under section 3717.25 or 3717.45 of the Revised Code that have not been expended by a board that has had its approval revoked shall be transferred to the alternative licensor. A board of health acting as alternative licensor shall deposit the fees into a special fund it establishes for receipt of funds pertaining to the district for which it is acting as licensor. If the director of agriculture is acting as licensor, the director shall deposit the fees in the food safety fund created in section 915.24 of the Revised Code. If the director of health is acting as licensor, the director shall deposit the fees in the general operations fund created in section 3701.83 of the Revised Code. All subsequent fees charged in the district by the alternative licensor shall be deposited in the same manner. Moneys deposited under this division shall be used solely for the administration and enforcement of this chapter and the rules adopted under it in the district for which the alternative licensor is acting as licensor.

- (D)(1) A board that has had its approval to act as a licensor revoked may submit a request to the director who revoked the approval to be reinstated as a licensor. The request shall be in writing and shall specify the corrective measures the board has taken and a proposed plan of action to remedy any remaining causes of the revocation. The director may reinstate the board as a licensor if all of the following occur:
- (a) The board pays or arranges to pay the alternative licensor or director, as applicable, for costs incurred in acting as licensor for the district and in transferring responsibility for the district to the board, if those costs exceed the moneys available under division (C) of this section for the district;
 - (b) The board corrects all causes of the revocation;
 - (c) The alternative licensor consents to the reinstatement.
- (2) The reinstatement of a board as a licensor shall be conducted in accordance with procedures established in rules adopted under this chapter by the director who revoked the approval.

3717.111 Board of health may withdraw as licensor.

- (A) A board of health acting as a licensor of retail food establishments or food service operations may withdraw from serving as licensor of either or both. Before withdrawing as licensor, the board shall provide written notice of its intent to withdraw. If the withdrawal applies to the licensing of retail food establishments, the board shall provide the notice to the director of agriculture. If the withdrawal applies to the licensing of food service operations, the board shall provide the notice to the director of health. On receipt of the notice, the responsible director shall designate an alternative licensor for the health district served by the board. The alternative licensor shall be a board of health that is qualified and has the requisite capacity to serve as alternative licensor, except that if a qualified and capable board is not available from a health district within reasonable proximity, the director of agriculture or director of health, as appropriate, shall act as the alternative licensor.
- (B) When a board withdraws as licensor, all valid licenses issued by that board for retail food establishments or food service operations, whichever have been affected, shall be treated as though issued by the alternative licensor. The licenses shall remain valid until scheduled to expire unless earlier suspended or revoked by the alternative licensor.
- (C) All fees charged under section 3717.25 or 3717.45 of the Revised Code that have not been expended by a board that has withdrawn as licensor shall be transferred to the alternative licensor. A board of health acting as alternative licensor shall deposit the fees into a special fund it establishes for receipt of funds pertaining to the district for which it is acting as licensor. If the director of agriculture is acting as licensor, the director shall deposit the fees in the food safety fund created in section 915.24 of the Revised Code. If the director of health is acting as licensor, the director shall deposit the fees in the general operations fund created in section 3701.83 of the Revised Code. All subsequent fees charged in the district by the alternative licensor shall be deposited in the same manner. Moneys deposited under this division shall be used solely for the administration and enforcement of this chapter and the rules adopted under it in the district for which the alternative licensor is acting as licensor.

3717.12 Jurisdiction change - licenses to remain valid.

If all or part of the territory within a health district becomes subject to the jurisdiction of a different board of health, all valid retail food establishment or food service operation licenses issued by the original board of health shall be treated as though issued by the board of health with jurisdiction over the territory and shall remain valid until scheduled to expire unless earlier suspended or revoked by the board under this chapter.

3717.13 Contracts to conduct inspections and assist licensor by performing routine services.

A licensor may employ or enter into contracts with qualified persons and government entities to conduct inspections and to assist the licensor by performing routine services in the administration and enforcement of this chapter and the rules adopted under it.

3717.14 Dogs in outdoor dining areas

(A)

- (1) A retail food establishment or food service operation may allow a person to bring a dog in an outdoor dining area of the establishment or operation in accordance with this section. However, if the dog is a service animal, no establishment or operation shall refuse to allow the dog in the outdoor dining area unless such refusal is authorized under federal and state laws governing service animals.
- (2) The director of agriculture and the director of health shall adopt rules allowing dogs in an outdoor dining area of a retail food establishment or food service operation. The rules shall include authorization for the directors to prohibit dogs in an outdoor dining area of an establishment or operation during a public health emergency.

(B) If an establishment or operation allows a person to bring a dog in an outdoor dining area of the establishment or operation, the establishment or operation shall do all of the following:

- (1) Adopt a policy that requires patrons to control their dog, whether with a leash or otherwise, while the dog is in the outdoor dining area. The establishment or operation shall enforce the policy adopted under division (B)(1) of this section.
- (2) Not allow the person to take the dog into the outdoor dining area through any of the establishment's or operation's indoor areas;
- (3) Comply with both of the following:
 - (a) All sanitation standards established in the Ohio uniform food safety code other than those standards that prohibit dogs in an outdoor dining area of an establishment or operation;
 - (b) Any other standard established under this chapter.

(C) No person shall bring a dog in an outdoor dining area of an establishment or operation if the dog is not properly vaccinated in accordance with all state and local laws.

- (D) As used in this section, "service animal " means any dog that is individually trained for the benefit of an individual with a disability to do work or perform tasks that are directly related to the individual's disability.

3717.21 License required for retail food establishments - separate licenses.

Except as provided in section 3717.22 of the Revised Code, no person or government entity shall operate a retail food establishment without a license. A separate license is required for each retail food establishment that a person or government entity operates.

No person or government entity shall fail to comply with any other requirement of this chapter applicable to retail food establishments.

3717.22 Excluded operations and entities.

- (A) The following are not retail food establishments:
- (1) A food service operation licensed under this chapter, including a food service operation that provides the services of a retail food establishment pursuant to an endorsement issued under section 3717.44 of the Revised Code;
 - (2) An entity exempt under divisions (B)(1) to (9) or (11) to (13) of section 3717.42 of the Revised Code from the requirement to be licensed as a food service operation and an entity exempt under division (B)(10) of that section if the entity is regulated by the department of agriculture as a food processing establishment under section 3715.021 of the Revised Code;
 - (3) A business or that portion of a business that is regulated by the federal government or the department of agriculture as a food manufacturing or food processing business, including a business or that portion of a business regulated by the department of agriculture under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code.
- (B) All of the following are exempt from the requirement to be licensed as a retail food establishment:
- (1) An establishment with commercially prepackaged foods that are not potentially hazardous and contained in displays, the total space of which equals less than two hundred cubic feet;
 - (2) A person at a farmers market ~~that is registered with the director of agriculture pursuant to section 3717.221 of the Revised Code~~ that offers for sale only one or more of the following:
 - (a) Fresh unprocessed fruits or vegetables;
 - (b) Products of a cottage food production operation;
 - (c) ~~Maple-Tree~~ syrup, sorghum, ~~or honey,~~ apple syrup, or apple butter that is produced by a ~~maple-tree~~ maple tree syrup or sorghum producer, ~~or~~ or ~~beekeeper,~~ or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code;
 - (d) Wine as authorized under section 4303.2010 of the Revised Code;

- (e) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farmers market.
- (3) A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed;
- (4) A nonprofit organization exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises funds by selling foods and that, if required to be licensed, would be classified as risk level one in accordance with rules establishing licensing categories for retail food establishments adopted under section 3717.33 of the Revised Code, if the sales occur inside a building and are for not more than seven consecutive days or more than fifty-two separate days during a licensing period. This exemption extends to any individual or group raising all of its funds during the time periods specified in division (B)(4) of this section for the benefit of the nonprofit organization by selling foods under the same conditions.
- (5) An establishment that offers food contained in displays of less than five hundred square feet, and if required to be licensed would be classified as risk level one pursuant to rules establishing licensing categories for retail food establishments adopted under section 3717.33 of the Revised Code, on the condition that the establishment offers the food for sale at retail not more than six months in each calendar year;
- (6) A cottage food production operation, on the condition that the operation offers its products directly to the consumer from the site where the products are produced;
- (7) A ~~maple tree~~ syrup and sorghum processor, ~~and~~ beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code, on the condition that the processor or beekeeper offers only ~~maple tree~~ syrup, sorghum, ~~or~~ honey, apple syrup or apple butter directly to the consumer from the site where those products are processed;
- (8) A person who annually maintains five hundred or fewer birds, on the condition that the person offers the eggs from those birds directly to the consumer from the location where the eggs are produced or at a farm product auction to which division (B)(11) of this section applies;
- (9) A person who annually raises and slaughters one thousand or fewer chickens, on the condition that the person offers dressed chickens directly to the consumer from the location where the chickens are raised and slaughtered or at a farm product auction to which division (B)(11) of this section applies;
- (10) A person who raises, slaughters, and processes the meat of nonamenable species described in divisions (A) and (B) of section 918.12 of the Revised Code, on the condition that the person offers the meat directly to the consumer from the location where the meat is processed or at a farm product auction to which division (B)(11) of this section applies;

- (11) A farm product auction, on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm product auction only one or more of the following:
- (a) The products described in divisions (B)(8) to (10) of this section that are produced, raised, slaughtered, or processed, as appropriate, by persons described in divisions (B)(8) to (10) of this section;
 - (b) Fresh unprocessed fruits or vegetables;
 - (c) Products of a cottage food production operation;
 - (d) ~~Maple-Tree~~ syrup, sorghum, ~~or~~ honey, apple syrup, or apple butter that is produced by a ~~maple-tree~~ syrup or sorghum producer, ~~or~~ beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code.
- (12) An establishment that, with respect to offering food for sale, offers only alcoholic beverages or prepackaged beverages that are not potentially hazardous;
- (13) An establishment that, with respect to offering food for sale, offers only alcoholic beverages, prepackaged beverages that are not potentially hazardous, or commercially prepackaged food that is not potentially hazardous, on the condition that the commercially prepackaged food is contained in displays, the total space of which equals less than two hundred cubic feet on the premises of the establishment;
- (14) An establishment that, with respect to offering food for sale, offers only fountain beverages that are not potentially hazardous;
- (15) A person who offers for sale only one or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political subdivision of the state and lasts for a period not longer than seven consecutive days:
- (a) Fresh unprocessed fruits or vegetables;
 - (b) Products of a cottage food production operation;
 - (c) ~~Maple-Tree~~ syrup, sorghum, ~~or~~ honey, apple syrup, or apple butter if produced by a ~~maple-tree~~ syrup or sorghum processor, ~~or~~ beekeeper, or apple syrup or apple butter processor as described in division (A) of section 3715.021 of the Revised Code;
 - (d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet;
 - (e) Fruit butter produced at the festival or celebration and sold from the production site.

- (16) A farm market on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm market only one or more of the following:
- (a) Fresh unprocessed fruits or vegetables;
 - (b) Products of a cottage food production operation;
 - (c) ~~Maple-Tree~~ syrup, sorghum, ~~or honey,~~ apple syrup, or apple butter that is produced by a ~~maple-tree~~ syrup or sorghum producer, ~~or~~ beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code;
 - (d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farm market;
 - (e) Cider and other juices manufactured on site at the farm market;
 - (f) The products or items described in divisions (B)(8) to (10) of this section, on the condition that those products or items were produced by the person offering to sell them, and further conditioned that, with respect to eggs offered, the person offering to sell them annually maintains five hundred or fewer birds, and with respect to dressed chickens offered, the person annually raises and slaughters one thousand or fewer chickens.

(17) (a) - An establishment to which all of the following apply:

~~(a) - An establishment to which all of the following apply:~~

- ~~(i) The establishment has been issued an A-2 permit under section 4303.03 of the Revised Code or an A-2f permit under section 4303.031 of the Revised Code, annually produces ten thousand gallons or less of wine, and sells that wine in accordance with Chapter 4303. of the Revised Code on the premises of the establishment.~~
- (ii) The establishment serves unopened commercially prepackaged food, other than wine, ~~in a form that prevents direct human contact prior to and during service;~~
- (iii) The amount of the establishment's commercially prepackaged food sales, other than wine sales, for the previous calendar year did ~~of the prepackaged food do~~ not exceed more than five per cent of the establishment's total gross receipts, ~~of the establishment;~~
- ~~(iii) The establishment has been issued an A-2 permit under section 4303.03 or an A-2f permit under section 4303.031 of the~~

~~Revised Code and annually produces ten thousand gallons or less of wine;~~

- (b) The owner or operator of the establishment shall notify the director that it is exempt from licensure because it qualifies under division (B)(17)(a) of this section. The owner or operator also shall display a notice in a place conspicuous to all of its guests informing them that the establishment is not required to be licensed as a retail food establishment. ~~disclose to customers that the establishment is exempt from licensure.~~

3717.221 Voluntary registration of farm market, farmers market, or farm product auction.

- (A) ~~Any of~~Either the following may register with the director of agriculture:
 - (1) A farm market, which is a location where a producer offers fruits, vegetables, and other items for sale;
 - ~~(2) A farmers market, which is a location where producers congregate to offer fruits, vegetables, and other items for sale;~~
 - ~~(3)~~ (2) A farm product auction, which is a location where agricultural products, including food products, are offered for sale at auction.
- (B) The director shall inspect each farm market, ~~farmers market,~~ and farm product auction that registers under this section. Inspections shall occur at a frequency considered appropriate by the director and shall be conducted in accordance with sanitation standards established in rules adopted under this section.
- (C) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to administer this section.

3717.23 Applying for license or renewal of license.

- (A) Each person or government entity seeking a retail food establishment license or the renewal of a license shall apply to the appropriate licensor on a form provided by the licensor. A licensor shall use a form prescribed and furnished to the licensor by the director of agriculture or a form prescribed by the licensor that has been approved by the director. The applicant shall include with the application all information necessary for the licensor to process the application, as requested by the licensor.

An application for a retail food establishment license, other than an application for a mobile retail food establishment license, shall be submitted to the licensor for the health district in which the retail food establishment is located. An application for a mobile retail food establishment license shall be submitted to the licensor for the health district in which the applicant's business headquarters are located, or, if the headquarters are located outside this state, to the licensor for the district where the applicant will first operate in this state.

- (B) The licensor shall review all applications received. The licensor shall issue a license for a new retail food establishment when the applicant submits a complete

application and the licensor determines that the applicant meets all other requirements of this chapter and the rules adopted under it for receiving the license. The licensor shall issue a renewed license on receipt of a complete renewal application.

The licensor shall issue licenses for retail food establishments on forms prescribed and furnished by the director of agriculture. If the license is for a mobile retail food establishment, the licensor shall post the establishment's layout, equipment, and items to be sold on the back of the license.

A mobile retail food establishment license issued by one licensor shall be recognized by all other licensors in this state.

- (C)(1) A retail food establishment license expires at the end of the licensing period for which the license is issued, except as follows:
 - (a) A license issued to a new retail food establishment after the first day of December does not expire until the end of the licensing period next succeeding issuance of the license.
 - (b) A temporary retail food establishment license expires at the end of the period for which it is issued.
- (2) All retail food establishment licenses remain valid until scheduled to expire unless earlier suspended or revoked under section 3717.29 or 3717.30 of the Revised Code.
- (D) A retail food establishment license may be renewed, except that a temporary retail food establishment license is not renewable. A person or government entity seeking license renewal shall submit an application for renewal to the licensor not later than the first day of March, except in the case of a mobile or seasonal retail food establishment, when the renewal application shall be submitted before commencing operation in a new licensing period. A licensor may renew a license prior to the first day of March or the first day of operation in a new licensing period, but not before the first day of February immediately preceding the licensing period for which the license is being renewed.

If a person or government entity does not file a renewal application with the licensor postmarked on or before the first day of March or, in the case of a mobile or seasonal retail food establishment, the first day of operation in a new licensing period, the licensor shall assess a penalty if the licensor charges a license renewal fee. The amount of the penalty shall be twenty-five per cent of the fee charged for renewing the license. If an applicant is subject to a penalty, the licensor shall not renew the license until the applicant pays the penalty.

- (E)(1) A licensor may issue not more than ten temporary retail food establishment licenses per licensing period to the same person or government entity to operate at different events within the licensor's jurisdiction. For each particular event, a licensor may issue only one temporary retail food establishment license to the same person or government entity.
- (2) A licensor may issue a temporary retail food establishment license to operate for more than five consecutive days if both of the following apply:

- (a) The establishment will be operated at an event organized by a county agricultural society or independent agricultural society organized under Chapter 1711. of the Revised Code.
 - (b) The person who will receive the license is a resident of the county or one of the counties for which the agricultural society was organized.
- (3) A person may be granted only one temporary retail food establishment license per licensing period pursuant to division (E)(2) of this section.
- (F) The licensor may place restrictions or conditions on a retail food establishment license, based on the equipment or facilities of the establishment, limiting the types of food that may be stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. Limitations pertaining to a mobile retail food establishment shall be posted on the back of the license.
- (G) The person or government entity holding a license for a retail food establishment shall display the license for that retail food establishment at all times at the licensed location.
- (H) With the assistance of the department of agriculture, the licensor, to the extent practicable, shall computerize the process for licensing retail food establishments.

3717.24 License endorsement to provide food service operation services.

- (A) The person or government entity holding a license for a retail food establishment may provide the services of a food service operation within the retail food establishment without obtaining a food service operation license if the person or entity has received from the licensor of retail food establishments an endorsement to provide the services of a food service operation.
- (B) When the activities of a retail food establishment and a food service operation are carried on within the same facility by the same person or government entity, the determination of whether the person or entity must be licensed as a retail food establishment or food service operation shall be made according to the primary business of the person or entity. If the primary business is that of a retail food establishment, the person or entity shall be licensed as a retail food establishment operation with an endorsement from the licensor issued under this section to provide the services of a food service operation. If the primary business is that of a food service operation, the person or entity shall be licensed as a food service operation and is subject to the endorsement provisions of section 3717.44 of the Revised Code.

The licensor of retail food establishments and food service operations for the area in which a facility is located shall make the determination of whether the primary business carried on within a facility is that of a retail food establishment or food service operation. If the licensor of retail food establishments for the area is not the same as the licensor of food service operations, the determination shall be made jointly by both licensors. Each determination shall be made according to criteria specified in the Ohio uniform food safety code.

- (C) A request to have a retail food establishment license include an endorsement may be submitted with an application for issuance or renewal of a retail food establishment or may be submitted separately. Procedures for making separate requests shall be

the same as the license application procedures established under section 3717.23 of the Revised Code.

An endorsement may be suspended or revoked in the same manner as a license may be suspended or revoked under section 3717.29 or 3717.30 of the Revised Code. The suspension or revocation of an endorsement does not affect the retail food establishment license that includes the endorsement. If the retail food establishment license is suspended or revoked, the endorsement included on the license is also suspended or revoked.

- (D) If a food service operation is operated within a retail food establishment by a person or government entity other than the person or entity holding the license to operate the retail food establishment, the food service operation may not be operated under an endorsement issued under this section. The operation shall be licensed as a separate food service operation.

3717.25 Fees.

- (A) A licensor may charge fees for issuing and renewing retail food establishment licenses. Any licensing fee charged shall be used solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to retail food establishments.

Any licensing fee charged under this section shall be based on the licensor's costs of regulating retail food establishments, as determined according to the uniform methodologies established under section 3717.07 of the Revised Code. If the licensor is a board of health, a fee may be disapproved by the district advisory council in the case of a general health district or the legislative authority of the city in the case of a city health district. A disapproved fee shall not be charged by the board of health.

Except when a licensing fee is established as an emergency measure, the licensor shall hold a public hearing regarding the proposed fee. At least twenty days prior to holding a public hearing, the licensor shall give written notice of the hearing to each person or government entity holding a retail food establishment license that may be affected by the proposed fee. The notice shall be mailed to the last known address of the licensee and shall specify the date, time, and place of the hearing and the amount of the proposed fee. On request, the licensor shall provide the completed uniform methodology used in the calculation of the licensor's costs and the proposed fee.

- (B) In addition to licensing fees, a licensor may charge fees for any of the following:
- (1) Review of facility layout and equipment specifications pertaining to retail food establishments, other than mobile and temporary retail food establishments;
 - (2) Any necessary collection and bacteriological examination of samples from retail food establishments or similar services specified in rules adopted under this chapter by the director of agriculture;
 - (3) Attendance at a course of study offered by the licensor in food protection as it pertains to retail food establishments, if the course is approved under section 3717.09 of the Revised Code.
- (C)(1) The director may determine by rule an amount to be collected from applicants for retail food establishment licenses for use by the director in administering

and enforcing the provisions of this chapter and the rules adopted under it applicable to retail food establishments. Licensors shall collect the amount prior to issuing an applicant's new or renewed license. If a licensing fee is charged under this section, the licensor shall collect the amount at the same time the fee is collected. Licensors are not required to provide notice or hold public hearings regarding amounts to be collected.

- (2) A licensor shall certify the amount collected under division (C)(1) of this section and transmit the amount to the treasurer of state according to the following schedule:
 - (a) For amounts received by the licensor on or after the first day of January but not later than the thirty-first day of March, transmit the amounts not later than the fifteenth day of May;
 - (b) For amounts received by the licensor on or after the first day of April but not later than the thirtieth day of June, transmit the amounts not later than the fifteenth day of August;
 - (c) For amounts received by the licensor on or after the first day of July but not later than the thirtieth day of September, transmit the amounts not later than the fifteenth day of November;
 - (d) For amounts received by the licensor on or after the first day of October but not later than the thirty-first day of December, transmit the amounts not later than the fifteenth day of February of the following year.
- (3) All amounts received under division (C)(2) of this section shall be deposited into the food safety fund created in section 915.24 of the Revised Code. The director shall use the amounts solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to retail food establishments.
- (4) When adopting rules regarding the amounts collected under division (C)(1) of this section, the director shall make available during the rule making process the current and projected expenses of administering and enforcing the provisions of this chapter and the rules adopted under it applicable to retail food establishments and the total of all amounts that have been deposited in the food safety fund pursuant to division (C)(3) of this section.

3717.26 Transfer of license.

- (A) A licensor may transfer a retail food establishment license under either of the following circumstances:
 - (1) The sale or disposition of the retail food establishment;
 - (2) The relocation of the retail food establishment.
- (B) A person or government entity may request to receive a retail food establishment license by transfer. A licensor may transfer a license only on determining that the person or government entity requesting the transfer is in compliance with the provisions of this chapter and the rules adopted under it applicable to retail food establishments. In the case of the sale or disposition of a retail food establishment,

the licensor may transfer a license only if the licensee consents to the transfer. A licensor may not transfer a license more than once in a licensing period. A license for a temporary retail food establishment is not transferable.

3717.27 Inspections.

- (A) All inspections of retail food establishments conducted by a licensor under this chapter shall be conducted according to the procedures and schedule of frequency specified in rules adopted under section 3717.33 of the Revised Code. An inspection may be performed only by an individual registered as a sanitarian or sanitarian-in-training under Chapter 4736. of the Revised Code. Each inspection shall be recorded on a form prescribed and furnished by the director of agriculture or a form approved by the director that has been prescribed by a board of health acting as licensor. With the assistance of the director, a board acting as licensor, to the extent practicable, shall computerize the inspection process and standardize the manner in which its inspections are conducted.
- (B) A person or government entity holding a retail food establishment license shall permit the licensor to inspect the retail food establishment for purposes of determining compliance with this chapter and the rules adopted under it or investigating a complaint concerning the establishment. On request of the licensor, the license holder shall permit the licensor to examine the records of the retail food establishment to obtain information about the purchase, receipt, or use of food, supplies, and equipment.

A licensor may inspect any mobile retail food establishment being operated within the licensor's district. If an inspection of a mobile retail food establishment is conducted by a licensor other than the licensor that issued the license for the establishment, a report of the inspection shall be sent to the issuing licensor. The issuing licensor may use the inspection report to suspend or revoke the license under section 3717.29 or 3717.30 of the Revised Code.

- (C) An inspection may include the following:
- (1) An investigation to determine the identity and source of a particular food;
 - (2) Removal from use of any equipment, utensils, hand tools, or parts of facilities found to be maintained in a condition that presents a clear and present danger to the public health.

3717.28 Confidentiality of information.

Trade secrets and other forms of information that under this chapter are required to be furnished to or are procured by a licensor of retail food establishments shall be for the exclusive use and information of the licensor in the discharge of the licensor's official duties. The information shall not be open to the public or used in any action or proceeding in any court. If the licensor is a board of health, the board may share the information with the director of agriculture and director of health if the licensor is the director of agriculture, the director may share the information with the director of health.

The licensor shall maintain the confidentiality of the information, except that the information may be consolidated in statistical tables and published by the licensor in statistical form for the use and information of state and local agencies and the public, if the statistics do not disclose details about a particular person or government entity that provided information to the licensor. An individual employed by the licensor or assisting the licensor in the

administration of the retail food establishment licensing requirements of this chapter shall not willfully divulge any information that is confidential under this section to any person or government entity other than the licensor or the individual's superior.

3717.29 Board of health may suspend or revoke retail food establishment license.

- (A) This section applies when the licensor of retail food establishments is a board of health.
- (B) A board of health may suspend or revoke a retail food establishment license on determining that the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to retail food establishments, including a violation evidenced by documented failure to maintain sanitary conditions within the establishment.
- (C)(1) Except in the case of a violation that presents a clear and present danger to the public health, before initiating action to suspend or revoke a retail food establishment license, the board shall give the license holder written notice specifying each violation and a reasonable time within which the license holder must correct each violation to avoid suspension or revocation of the license. The board may extend the time specified in the notice for correcting a violation if the license holder is making a good faith effort to correct it.

If the license holder fails to correct the violation in the time granted by the board, the board may initiate action to suspend or revoke the retail food establishment license by giving the license holder written notice of the proposed suspension or revocation. The board shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The license holder may appeal the proposed suspension or revocation by giving written notice to the board. The license holder shall specify in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (C)(3) of this section.

A health commissioner or other person employed by the board, if the health commissioner or person is authorized by the board to take the action, may take any action that the board may take under division (C)(1) of this section.

- (2) If a board initiates actions to revoke or, except in the case of a violation that presents a clear and present danger to the public health, to suspend a retail food establishment license, the board shall determine whether to revoke or suspend the license by a majority vote of the board members who are present at a meeting at which there is a quorum.

If the board decides to revoke or suspend the license, the board shall issue a formal written order revoking or suspending the license.

- (3) An appeal made under division (C)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of agriculture under section 3717.33 of the Revised Code. If a license holder requests a hearing, the board shall hold the hearing before issuing an order under division (C)(2) of this section but may hold the hearing at the same meeting at which issuance of the order is considered.

- (D)(1) On determining that a license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to retail food establishments

and that the violation presents a clear and present danger to the public health, the board may suspend the retail food establishment license without giving written notice or affording the license holder the opportunity to correct the violation. If the license holder is operating a mobile retail food establishment, either the licenser that issued the license or the licenser for the health district in which the establishment is being operated may suspend the license.

A suspension under division (D)(1) of this section takes effect immediately and remains in effect until the board rescinds the suspension. When a mobile retail food establishment license is suspended under this division, the licenser that suspended the license shall hold the license until the suspension is lifted and the licenser receives from the license holder written notice of the next location at which the license holder proposes to operate the retail food establishment.

After suspending a license under division (D)(1) of this section, the licenser shall give the license holder written notice of the procedure for appealing the suspension. The license holder may appeal the suspension by giving written notice to the board and specifying in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (D)(2) of this section.

A health commissioner, if authorized by the board to take the action, may take any action that may be taken by the board under division (D)(1) of this section. A health commissioner who suspends a license under this authority, on determining that there is no longer a clear and present danger to the public health, may rescind the suspension without consulting the board.

- (2) If the license holder appeals a suspension under division (D)(1) of this section, the board shall determine whether the clear and present danger to the public health continues to exist by majority vote of the board members who are present at a meeting at which there is a quorum.

If the board determines that there is no longer a clear and present danger to the public health, the board shall rescind the suspension. If the board determines that the clear and present danger continues to exist, the board shall issue an order continuing the suspension.

- (3) An appeal requested under division (D)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of agriculture under section 3717.33 of the Revised Code. If the license holder requests a hearing, the board shall hold the hearing not later than two business days after the board receives the request. The board shall hold the hearing before issuing an order under division (D)(2) of this section but may conduct the hearing at the same meeting at which issuance of the order is considered. In the case of a suspension of a mobile retail food establishment, the appeal shall be made to the licenser that suspended the license.

- (E) A license holder may appeal an order issued under division (C) or (D) of this section to the common pleas court of the county in which the licenser is located.

3717.30 Director of agriculture may suspend or revoke retail food establishment license.

- (A) This section applies when the licensor of retail food establishments is the director of agriculture.
- (B) The director of agriculture may suspend or revoke a retail food establishment license on determining that a license holder is in violation of the provisions of this chapter or the rules adopted under it pertaining to retail food establishments, including a violation evidenced by documented failure to maintain sanitary conditions within the establishment. Except as provided in division (C)(9) of this section, the suspension or revocation of a license is not effective until the license holder is given written notice of the violation, a reasonable amount of time to correct the violation, and an opportunity for a hearing.
- (C) All actions and proceedings undertaken pursuant to this section shall comply with Chapter 119. of the Revised Code, except as follows:
 - (1) The location of any adjudicatory hearing that the license holder requests shall be the director's offices in Licking county.
 - (2) The director shall notify a license holder by certified mail or personal delivery that the license holder is conditionally entitled to a hearing. The director shall specify in the notice that, in order to obtain a hearing, the license holder must request the hearing not later than ten days after the date of receipt of the notice.
 - (3) If the license holder requests a hearing, the date set for the hearing shall be not later than ten days after the date on which the director receives the request, unless the director and the license holder agree otherwise.
 - (4) The director shall not postpone or continue an adjudication hearing without the consent of the license holder. If the license holder requests a postponement or continuation of an adjudication hearing, the director shall not grant it unless the license holder demonstrates that an extreme hardship will be incurred in holding the adjudication hearing on that hearing date. If the director grants a postponement or continuation on the grounds of extreme hardship, the record shall document the nature and cause of the extreme hardship.
 - (5) In lieu of having a hearing and upon the license holder's written request to the director, the license holder may submit to the director, not later than the date of the hearing set pursuant to division (C)(3) of this section, documents, papers, and other written evidence to support the license holder's claim.
 - (6) If the director appoints a referee or examiner to conduct the hearing, the following apply:
 - (a) A copy of the written adjudication report and recommendations of the referee or examiner shall be served by certified mail upon the director and the license holder not later than three business days following the conclusion of the hearing.
 - (b) Not later than three business days after receipt of the report and recommendations, the license holder may file with the director written objections to the report and recommendations.

- (c) The director shall consider the objections submitted by the license holder before approving, modifying, or disapproving the report and recommendations. The director shall serve the director's order upon the license holder by certified mail not later than six business days after receiving the report and recommendations.
- (7) If the director conducts the hearing, the director shall serve the director's decision by certified mail upon the license holder not later than three business days following the close of the hearing.
- (8) If no hearing is held, the director shall issue an order by certified mail to the license holder not later than three business days following the last date possible for a hearing, based on the record that is available.
- (9) If the director determines that an emergency exists that presents a clear and present danger to the public health, the director may suspend a license, effective without a hearing. Thereafter, without delay, the director shall afford the license holder an opportunity for hearing. On determining that there is no longer a clear and present danger to the public health, the director may rescind the suspension without a hearing.

3717.31 Prosecution and other remedies when board of health is licensor.

- (A) This section applies when the licensor of retail food establishments is a board of health.

As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

- (B) At the request of the board of health, the prosecutor with jurisdiction in the area where a person allegedly has violated section 3717.21 of the Revised Code shall commence a criminal prosecution against the person.

At the request of a board of health, the director of agriculture shall provide enforcement support to assist in the prosecution of a person who is not in compliance with the provisions of this chapter and the rules adopted under it applicable to retail food establishments. Requests shall be made and assistance shall be provided in accordance with rules adopted by the director of agriculture under section 3717.33 of the Revised Code.

- (C) At the request of the board of health, the prosecutor with jurisdiction in the area where a person or government entity allegedly has failed to comply with a requirement of this chapter or the rules adopted under it applicable to retail food establishments shall commence in common pleas court an action requesting the issuance of a temporary restraining order or a preliminary or permanent injunction or a mandamus action regarding the act of noncompliance. The court may grant the appropriate relief if it is shown that the respondent failed to comply with the requirement.

Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with a restraining order, injunction, or writ of mandamus issued pursuant to this division shall be fined not more than one thousand dollars for each offense. Each day the noncompliance continues is a separate offense.

- (D) Fifty per cent of all fines collected under this section shall be deposited in an appropriate fund created for the board's use in administering the provisions of this chapter and the rules adopted under it applicable to retail food establishments. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.
- (E) The remedies available under this section are in addition to any other remedies available under the law.

3717.32 Injunction.

- (A) This section applies when the licensor of retail food establishments is the director of agriculture.
- (B) In addition to other remedies provided by law and irrespective of whether an adequate remedy at law exists, the director of agriculture may apply to the court of common pleas for a temporary or permanent injunction or other appropriate relief concerning the violation of a provision of this chapter or the rules adopted under it pertaining to retail food establishments. Application shall be made to the court in the county in which the violation occurs.

Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with an injunction or other relief issued pursuant to this division shall be fined not more than one thousand dollars. Each day the noncompliance continues is a separate offense.

- (C) Fifty per cent of all fines collected under this section shall be deposited into the state treasury to the credit of the food safety fund created in section 915.24 of the Revised Code. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.

3717.33 Rules.

Pursuant to section 3717.04 of the Revised Code, the director of agriculture shall adopt rules regarding the following:

- (A) Licensing categories for retail food establishments and licensing requirements for each category, including appropriate practices for the activities performed by a retail food establishment;
- (B) Standards for collection of food samples from retail food establishments for purposes of identifying adulteration and misbranding;
- (C) Records to be generated and maintained by licensed retail food establishments;
- (D) Appeals of proposed suspensions and revocations of retail food establishment licenses and appeals of suspensions of licenses issued for violations presenting a clear and present danger to the public health;
- (E) Standards and procedures, including a schedule of frequency, for conducting inspections of retail food establishments;

- (F) Standards and procedures for determining during an inspection whether articles should be removed from use because of a clear and present danger to the public health;
- (G) Standards and procedures for conducting investigations of complaints pertaining to retail food establishments;
- (H) Surveys conducted by the director to determine whether boards of health are qualified and have the capacity to administer and enforce the provisions of this chapter and the rules adopted under it applicable to retail food establishments and to abide by the Ohio uniform food safety code;
- (I) Reinstatement of a board of health as a licenser after the director has revoked the approval of the board;
- (J) Procedures for resolving disputes between licensers and the holders of licenses for retail food establishments;
- (K) Procedures for providing enforcement support to a board of health requesting assistance in the prosecution of a person for a violation of the provisions of this chapter applicable to retail food establishments;
- (L) Any other matter the director considers relevant to the administration and enforcement of the provisions of this chapter applicable to retail food establishments.

3717.41 License required for food service operation - separate licenses.

Except as provided in section 3717.42 of the Revised Code, no person or government entity shall operate a food service operation without a license. A separate license is required for each food service operation a person or government entity operates.

No person or government entity shall fail to comply with any other requirement of this chapter applicable to food service operations.

3717.42 Exclusions - exemptions from license requirement.

- (A) The following are not food service operations:
 - (1) A retail food establishment licensed under this chapter, including a retail food establishment that provides the services of a food service operation pursuant to an endorsement issued under section 3717.24 of the Revised Code;
 - (2) An entity exempt from the requirement to be licensed as a retail food establishment under division (B) of section 3717.22 of the Revised Code;
 - (3) A business or that portion of a business that is regulated by the federal government or the department of agriculture as a food manufacturing or food processing business, including a business or that portion of a business regulated by the department of agriculture under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code.
- (B) All of the following are exempt from the requirement to be licensed as a food service operation:

- (1) A private home in which individuals related by blood, marriage, or law reside and in which the food that is prepared or served is intended only for those individuals and their nonpaying guests;
- (2) A private home operated as a bed-and-breakfast that prepares and offers food to guests, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, and the number of guests served does not exceed sixteen;
- (3) A stand operated on the premises of a private home by one or more children under the age of twelve, if the food served is not potentially hazardous;
- (4) A residential facility that accommodates not more than sixteen residents; is licensed, certified, registered, or otherwise regulated by the federal government or by the state or a political subdivision of the state; and prepares food for or serves food to only the residents of the facility, the staff of the facility, and any nonpaying guests of residents or staff;
- (5) A church, school, fraternal or veterans' organization, volunteer fire organization, or volunteer emergency medical service organization preparing or serving food intended for individual portion service on its premises for not more than seven consecutive days or not more than fifty-two separate days during a licensing period. This exemption extends to any individual or group raising all of its funds during the time periods specified in division (B)(5) of this section for the benefit of the church, school, or organization by preparing or serving food intended for individual portion service under the same conditions.
- (6) A common carrier that prepares or serves food, if the carrier is regulated by the federal government;
- (7) A food service operation serving thirteen or fewer individuals daily;
- (8) A type A or type B family day-care home, as defined in section 5104.01 of the Revised Code, that prepares or serves food for the children receiving day-care;
- (9) A vending machine location where the only foods dispensed are foods from one or both of the following categories:
 - (a) Prepackaged foods that are not potentially hazardous;
 - (b) Nuts, panned or wrapped bulk chewing gum, or panned or wrapped bulk candies.
- (10) A place servicing the vending machines at a vending machine location described in division (B)(9) of this section;
- (11) A commissary servicing vending machines that dispense only milk, milk products, or frozen desserts that are under a state or federal inspection and analysis program;
- (12) A "controlled location vending machine location," which means a vending machine location at which all of the following apply:

- (a) The vending machines dispense only foods that are not potentially hazardous;
 - (b) The machines are designed to be filled and maintained in a sanitary manner by untrained persons;
 - (c) Minimal protection is necessary to ensure against contamination of food and equipment.
- (13) A private home that prepares and offers food to guests, if the home is owner-occupied, meals are served on the premises of that home, the number of meals served does not exceed one hundred fifteen per week, and the home displays a notice in a place conspicuous to all of its guests informing them that the home is not required to be licensed as a food service operation;
- (14) An individual who prepares full meals or meal components, such as pies or baked goods, in the individual's home to be served off the premises of that home, if the number of meals or meal components prepared for that purpose does not exceed twenty in a seven-day period.

(15) The holder of an A-1-A permit issued under section 4303.021 of the Revised Code to which both of the following apply:

- (a) The A-1-A permit holder has also been issued an A-1c permit under section 4303.022 of the Revised Code;
- (b) The A-1-A permit holder serves only unopened commercially prepackaged meals and nonalcoholic beverages, as well as beer and intoxicating liquor.

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3717.43 Application for license or renewal required - temporary license - limitations, display.

- (A) Each person or government entity requesting a food service operation license or the renewal of a license shall apply to the appropriate licensor on a form provided by the licensor. Licensors shall use a form prescribed and furnished to the licensor by the director of health or a form prescribed by the licensor that has been approved by the director. The applicant shall include with the application all information necessary for the licensor to process the application, as requested by the licensor.

An application for a food service operation license, other than an application for a mobile or catering food service operation license, shall be submitted to the licensor for the health district in which the food service operation is located. An application for a mobile food service operation license shall be submitted to the licensor for the health district in which the applicant's business headquarters are located, or, if the headquarters are located outside this state, to the licensor for the district where the applicant will first operate in this state. An application for a catering food service operation license shall be submitted to the licensor for the district where the applicant's base of operation is located.

- (B) The licensor shall review all applications received. The licensor shall issue a license for a new food service operation when the applicant submits a complete application and the licensor determines that the applicant meets all other requirements of this chapter and the rules adopted under it for receiving the license. The licensor shall issue a renewed license on receipt of a complete renewal application.

The licensor shall issue licenses for food service operations on forms prescribed and furnished by the director of health. If the license is for a mobile food service operation, the licensor shall post the operation's layout, equipment, and menu on the back of the license.

A mobile or catering food service operation license issued by one licensor shall be recognized by all other licensors in this state.

- (C)(1) A food service operation license expires at the end of the licensing period for which the license is issued, except as follows:
 - (a) A license issued to a new food service operation after the first day of December shall not expire until the end of the licensing period next succeeding issuance of the license.
 - (b) A temporary food service operation license expires at the end of the period for which it is issued.
- (2) All food service operation licenses remain valid until they are scheduled to expire unless earlier suspended or revoked under section 3717.49 of the Revised Code.
- (D) A food service operation license may be renewed, except that a temporary food service operation license is not renewable. A person or government entity seeking license renewal shall submit an application for renewal to the licensor not later than the first day of March, except that in the case of a mobile or seasonal food service operation the renewal application shall be submitted before commencing operation in a new licensing period. A licensor may renew a license prior to the first day of March or the first day of operation in a new licensing period, but not before the first day of February immediately preceding the licensing period for which the license is being renewed.

If a renewal application is not filed with the licensor or postmarked on or before the first day of March or, in the case of a mobile or seasonal food service operation, the first day of operation in a new licensing period, the licensor shall assess a penalty if the licensor charges a license renewal fee. The amount of the penalty shall be twenty-five per cent of the renewal fee , . If an applicant is subject to a penalty, the licensor shall not renew the license until the applicant pays the penalty.

- (E)(1) A licensor may issue not more than ten temporary food service operation licenses per licensing period to the same person or government entity to operate at different events within the licensor's jurisdiction. For each particular event, a licensor may issue only one temporary food service operation license to the same person or government entity.
- (2) A licensor may issue a temporary food service operation license to operate for more than five consecutive days if both of the following apply:
 - (a) The operation will be operated at an event organized by a county agricultural society or independent agricultural society organized under Chapter 1711. of the Revised Code;
 - (b) The person who will receive the license is a resident of the county or one of the counties for which the agricultural society was organized.

- (3) A person may be granted only one temporary food service operation license per licensing period pursuant to division (E)(2) of this section.
- (F) The licensor may place restrictions or conditions on a food service operation license limiting the types of food that may be prepared or served by the food service operation based on the equipment or facilities of the food service operation. Limitations pertaining to a mobile or catering food service operation shall be posted on the back of the license.
- (G) The person or government entity holding a license for a food service operation shall display the license for that food service operation at all times at the licensed location. A person or government entity holding a catering food service operation license shall also maintain a copy of the license at each catered event.
- (H) With the assistance of the department of health, the licensor, to the extent practicable, shall computerize the process for licensing food service operations.

3717.44 Endorsement to provide services of retail food establishment - determination of license required.

- (A) The person or government entity holding a license for a food service operation may provide the services of a retail food establishment within the food service operation without obtaining a retail food establishment license if the person or entity has received from the licensor of food service operations an endorsement to provide the services of a retail food establishment.
- (B) When the activities of a food service operation and a retail food establishment are carried on within the same facility by the same person or government entity, the determination of whether the person or entity must be licensed as a food service operation or retail food establishment shall be made according to the primary business of the person or entity. If the primary business is that of a food service operation, the person or entity shall be licensed as a food service operation with an endorsement from the licensor issued under this section to provide the services of a retail food establishment. If the primary business is that of a retail food establishment, the person or entity shall be licensed as a retail food establishment and is subject to the endorsement provisions of section 3717.24 of the Revised Code.

The licensor of food service operations and retail food establishments for the area in which a facility is located shall make the determination of whether the primary business carried on within a facility is that of a food service operation or retail food establishment. If the licensor of food service operations for the area is not the same as the licensor of retail food establishments, the determination shall be made jointly by both licensors. Each determination shall be made according to criteria specified in the Ohio uniform food safety code.

- (C) A request to have a food service operation license include an endorsement may be submitted with an application for issuance or renewal of a food service operation license or may be submitted separately. Procedures for making separate requests shall be the same as the license application procedures established under section 3717.43 of the Revised Code.

An endorsement may be suspended or revoked in the same manner as a license may be suspended or revoked under section 3717.48 of the Revised Code. The suspension or revocation of an endorsement does not affect the food service

operation license that includes the endorsement. If the food service operation license is suspended or revoked, the endorsement included on the license is also suspended or revoked.

- (D) If a retail food establishment is operated within a food service operation by a person or government entity other than the person or entity holding the license to operate the food service operation, the retail food establishment may not be operated under an endorsement. The establishment shall be licensed as a separate retail food establishment.

3717.45 Fees

- (A) A licensor may charge fees for issuing and renewing food service operation licenses. Any licensing fee charged shall be used solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to food service operations.

Any licensing fee charged under this section shall be based on the licensor's costs of regulating food service operations, as determined according to the uniform methodologies established under section 3717.07 of the Revised Code. If the licensor is a board of health, a fee may be disapproved by the district advisory council in the case of a general health district or the legislative authority of the city in the case of a city health district. A disapproved fee shall not be charged by the board of health.

Except when a licensing fee is established as an emergency measure, the licensor shall hold a public hearing regarding the proposed fee. At least twenty days prior to holding a public hearing, the licensor shall give written notice of the hearing to each person or government entity holding a food service operation license that may be affected by the proposed fee. The notice shall be mailed to the last known address of the licensee and shall specify the date, time, and place of the hearing and the amount of the proposed fee. On request, the licensor shall provide the completed uniform methodology used in the calculation of the licensor's costs and the proposed fee.

- (B) In addition to licensing fees, a licensor may charge fees for the following:
 - (1) Review of facility layout and equipment specifications pertaining to food service operations, other than mobile and temporary food service operations, or similar reviews conducted for vending machine locations;
 - (2) Any necessary collection and bacteriological examination of samples from food service operations, or similar services specified in rules adopted under this chapter by the director of health ;
 - (3) Attendance at a course of study offered by the licensor in food protection as it pertains to food service operations, if the course is approved under section 3717.09 of the Revised Code.
- (C)(1) The director may determine by rule an amount to be collected from applicants for food service operation licenses for use in administering and enforcing the provisions of this chapter and the rules adopted under it applicable to food service operations. Licensors shall collect the amount prior to issuing an applicant's new or renewed license. If a licensing fee is charged under this section, the licensor shall collect the amount at the same time the fee is

collected. Licensors are not required to provide notice or hold public hearings regarding amounts to be collected.

- (2) A licensor shall certify the amount collected under division (C)(1) of this section and transmit the amount to the treasurer of state according to the following schedule:
 - (a) For amounts received by the licensor on or after the first day of January but not later than the thirty-first day of March, transmit the amounts not later than the fifteenth day of May;
 - (b) For amounts received by the licensor on or after the first day of April but not later than the thirtieth day of June, transmit the amounts not later than the fifteenth day of August;
 - (c) For amounts received by the licensor on or after the first day of July but not later than the thirtieth day of September, transmit the amounts not later than the fifteenth day of November;
 - (d) For amounts received by the licensor on or after the first day of October but not later than the thirty-first day of December, transmit the amounts not later than the fifteenth day of February of the following year.
- (3) All amounts received under division (C)(2) of this section shall be deposited into the general operations fund created in section 3701.83 of the Revised Code. The director shall use the amounts solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to food service operations.

3717.46 Transfer of license.

- (A) A food service operation license may be transferred by the licensor under either of the following circumstances:
 - (1) The sale or disposition of the food service operation;
 - (2) The relocation of the food service operation.
- (B) A person or government entity may request to receive a food service operation license by transfer. A licensor may transfer a license only on determining that the person or government entity requesting the transfer is in compliance with the provisions of this chapter and the rules adopted under it applicable to food service operations. In the case of the sale or disposition of a food service operation, the license may not be transferred unless the licensee consents to the transfer. A license shall not be transferred more than once in a licensing period. Temporary food service operation licenses are not transferable.

3717.47 Inspections.

- (A) All inspections of food service operations conducted by a licensor under this chapter shall be conducted according to the procedures and schedule of frequency specified in rules adopted under section 3717.51 of the Revised Code. An inspection may be performed only by an individual registered as a sanitarian or sanitarian-in-training

under Chapter 4736. of the Revised Code. Each inspection shall be recorded on a form prescribed and furnished by the director of health or a form approved by the director that has been prescribed by a board of health acting as licensor. With the assistance of the director, a board acting as licensor, to the extent practicable, shall computerize the inspection process and shall standardize the manner in which its inspections are conducted.

- (B) A person or government entity holding a food service operation license shall permit the licensor to inspect the food service operation for purposes of determining compliance with this chapter and the rules adopted under it or investigating a complaint regarding foodborne disease. On request of the licensor, the license holder shall permit the licensor to examine the records of the food service operation to obtain information about the purchase, receipt, or use of food, supplies, and equipment.

A licensor may inspect any mobile food service operation or catering food service operation being operated within the licensor's district. If an inspection of a mobile or catering food service operation is conducted by a licensor other than the licensor that issued the license for the operation, a report of the inspection shall be sent to the issuing licensor. The issuing licensor may use the inspection report to suspend or revoke the license under section 3717.49 of the Revised Code.

- (C) An inspection may include an investigation to determine the identity and source of a particular food.

3717.48 Confidentiality of information.

Trade secrets and other forms of information that, under this chapter, are required to be furnished to or are procured by a licensor of food service operations shall be for the exclusive use and information of the licensor in the discharge of the licensor's official duties. The information shall not be open to the public or used in any action or proceeding in any court. If the licensor is a board of health, the board may share the information with the director of health and director of agriculture. If the licensor is the director of health, the director may share the information with the director of agriculture.

The licensor shall maintain the confidentiality of the information, except that the information may be consolidated in statistical tables and published by the licensor in statistical form for the use and information of state and local agencies and the public, if the statistics do not disclose details about a particular person or government entity that provided information to the licensor. An individual employed by the licensor or assisting the licensor in the administration of the food service operation licensing requirements of this chapter shall not willfully divulge any information that is confidential under this section to any person or government entity other than the licensor or the individual's superior.

3717.49 Licensor may suspend or revoke food service operation license.

- (A) A licensor may suspend or revoke a food service operation license on determining that the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations, including a violation evidenced by the documented failure to maintain sanitary conditions within the operation.
- (B)(1) Except in the case of a violation that presents an immediate danger to the public health, prior to initiating action to suspend or revoke a food service operation license, the licensor shall give the license holder written notice

specifying each violation and a reasonable time within which each violation must be corrected to avoid suspension or revocation of the license. The licensor may extend the time specified in the notice for correcting a violation if the license holder is making a good faith effort to correct it.

If the license holder fails to correct the violation in the time granted by the licensor, the licensor may initiate action to suspend or revoke the food service operation license by giving the license holder written notice of the proposed suspension or revocation. The licensor shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The license holder may appeal the proposed suspension or revocation by giving written notice to the licensor. The license holder shall specify in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (B)(3) of this section.

Any action that may be taken by a licensor under division (B)(1) of this section 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.

- (2)(a) If actions are initiated to revoke or, except in the case of a violation that presents an immediate danger to the public health, to suspend a food service operation license, the licensor shall determine whether to revoke or suspend the license as follows:
 - (i) If the licensor is a board of health, by a majority vote of the members of the board present at a meeting at which there is a quorum;
 - (ii) If the director of health is acting as the licensor, by decision of the director.
- (b) If the licensor determines to revoke or suspend the license, the licensor shall issue an order revoking or suspending the license.
- (3) An appeal made under division (B)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of health under section 3717.52 of the Revised Code. If a hearing is requested, it shall be held prior to the issuance of an order under division (B)(2) of this section, but may be conducted at the meeting at which issuance of the order is considered.

(C)(1) On determining that a license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations and that the violation presents an immediate danger to the public health, the licensor may suspend the food service operation license without giving written notice or affording the license holder the opportunity to correct the violation. If the license holder is operating a mobile or catering food service operation, either the licensor that issued the license or the licensor for the health district in which the operation is being operated may suspend the license.

A suspension under division (C)(1) of this section takes effect immediately and remains in effect until the licensor lifts the suspension. When a mobile food service operation license is suspended under this division, the licensor that suspended the license shall hold the license until the suspension is lifted

and the licensor receives from the license holder written notice of the next location at which the license holder proposes to operate the food service operation.

After suspending a license under division (C)(1) of this section, the licensor shall give the license holder written notice of the procedure for appealing the suspension. The license holder may appeal the suspension by giving written notice to the licensor and specifying in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (C)(2) of this section.

Any action that may be taken by a licensor under division (C)(1) of this section may be taken by a health commissioner if the health commissioner is authorized by the licensor to take the action. A health commissioner who suspends a license under this authority may, on determining that there is no longer an immediate danger to the public health, lift the suspension without consulting the licensor.

- (2)(a) If the license holder appeals a suspension under division (C)(1) of this section, the licensor shall determine whether the immediate danger to the public health continues to exist as follows:
 - (i) If the licensor is a board of health, by majority vote of the members of the board present at a meeting at which there is a quorum;
 - (ii) If the director of health is acting as the licensor, by decision of the director.
 - (b) If the licensor determines that there is no longer an immediate danger to the public health, the licensor shall lift the suspension. If the licensor determines that the immediate danger continues to exist, the licensor shall issue an order continuing the suspension.
 - (3) An appeal requested under division (C)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of health under section 3717.52 of the Revised Code. If a hearing is requested, it shall be held not later than two business days after the request is received by the licensor. The hearing shall be held prior to the issuance of an order under division (C)(2) of this section, but may be conducted at the meeting at which issuance of the order is considered. In the case of a suspension of a mobile or catering food service operation license, the appeal shall be made to the licensor that suspended the license.
- (D) A license holder may appeal an order issued under division (B) or (C) of this section as follows:
- (1) If the order was issued by a board of health, to the common pleas court of the county in which the licensor is located;
 - (2) If the order was issued by the director of health, to the Franklin county court of common pleas.

3717.50 Prosecution and other remedies for violations.

- (A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.
- (B) At the request of the licensor, when a person allegedly has violated section 3717.41 of the Revised Code, a criminal prosecution shall be commenced against the person. If the licensor is the director of health, the prosecution shall be commenced by the attorney general. If the licensor is a board of health, the prosecution shall be commenced by the prosecutor with jurisdiction in the area where the alleged violation occurred.

At the request of a board of health acting as licensor, the director of health shall provide enforcement support to assist in the prosecution of a person who is not in compliance with the provisions of this chapter and the rules adopted under it applicable to food service operations. Requests shall be made and assistance shall be provided in accordance with rules adopted by the director of health under section 3717.52 of the Revised Code.

- (C) At the request of the licensor, the attorney general or the prosecutor with jurisdiction in the area where a person or government entity allegedly has failed to comply with a requirement of this chapter or the rules adopted under it applicable to food service operations shall commence in common pleas court an action requesting the issuance of a temporary restraining order or a preliminary or permanent injunction or a mandamus action regarding the act of noncompliance. The court may grant the appropriate relief if it is shown that the respondent failed to comply with the requirement.

Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with a restraining order, injunction, or writ of mandamus issued pursuant to this division shall be fined not more than one thousand dollars for each offense. Each day the noncompliance continues is a separate offense.

- (D) Of the fines collected under this section, if the licensor is a board of health, fifty per cent shall be deposited in an appropriate fund created for the board's use in administering the provisions of this chapter and the rules adopted under it applicable to food service operations; if the licensor is the director of health, fifty per cent shall be deposited in the general operations fund created under section 3701.83 of the Revised Code. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.
- (E) The remedies available under this section are in addition to any other remedies available under the law.

3717.51 Director of health to adopt rules

Pursuant to section 3717.04 of the Revised Code, the director of health shall adopt rules regarding food service operations, as follows:

- (A) Licensing categories for food service operations and licensing requirements for each category;
- (B) Standards and procedures, including a schedule of frequency, for conducting inspections of food service operations;

- (C) Standards and procedures for conducting investigations of complaints pertaining to food service operations;
- (D) Procedures to be used by the director of health in approving courses of study for persons seeking certification in food protection, standards that must be met to receive and maintain the director's approval, and procedures for withdrawing the director's approval of a course if the standards for approval are no longer being met;
- (E) Standards for the provision of assistance to choking victims;
- (F) Any other matter the director considers relevant to the administration and enforcement of the provisions of this chapter applicable to food service operations.

3717.52 Director of health to adopt rules.

Pursuant to section 3717.04 of the Revised Code, the director of health shall adopt rules establishing procedures for the following:

- (A) Appeals of proposed suspension or revocation of food service operation licenses and appeals of suspension of licenses issued for violations presenting immediate danger to the public health;
- (B) Surveys conducted by the director to determine whether boards of health are qualified and have the capacity to administer and enforce the provisions of this chapter and the rules adopted under it applicable to food service operations and to abide by the Ohio uniform food safety code;
- (C) Reinstatement of a board of health as a licenser after the director has revoked the approval of the board;
- (D) Procedures for providing enforcement support to a board of health requesting assistance in the prosecution of a person for a violation of the provisions of this chapter applicable to food service operations;
- (E) Procedures for resolving disputes between licensors and the holders of licenses for food service operations.

3717.53 Provision of food nutrition information and consumer incentive items.

- (A) As used in this section:
 - (1) "Food nutrition information" includes, but is not limited to, the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, allergen, and sodium content of food. "Food nutrition information" also includes the designation of food as healthy or unhealthy.
 - (2) "Political subdivision" and "local legislation" have the same meanings as in section 905.501 of the Revised Code.
 - (3) "Consumer incentive item" means any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemat, or other premium, prize, or consumer product

that is associated with a meal served by or acquired from a food service operation.

- (B) The director of agriculture has sole and exclusive authority in this state to regulate the provision of food nutrition information and consumer incentive items at food service operations. The director may adopt rules for that purpose in accordance with Chapter 119. of the Revised Code, including rules that establish a schedule of civil penalties for violations of this section and rules adopted under it. Subject to the approval of the joint committee on agency rule review, portions of the rules may be adopted by referencing all or any part of any federal regulations pertaining to the provision of food nutrition information and consumer incentive items.

The regulation of the provision of food nutrition information and consumer incentive items at food service operations and how food service operations are characterized are matters of general statewide interest that require statewide regulation, and rules adopted under this section constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information and consumer incentive items at food service operations in this state. Rules adopted under this section shall be applied uniformly throughout this state.

- (C) No political subdivision shall do any of the following:
- (1) Enact, adopt, or continue in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;
 - (2) Condition a license, a permit, or regulatory approval on the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;
 - (3) Ban, prohibit, or otherwise restrict food at food service operations based on the food nutrition information or on the provision or nonprovision of consumer incentive items;
 - (4) Condition a license, a permit, or regulatory approval for a food service operation on the existence or nonexistence of food-based health disparities;
 - (5) Where food service operations are permitted to operate, ban, prohibit, or otherwise restrict a food service operation based on the existence or nonexistence of food-based health disparities as recognized by the department of health, the national institute of health, or the centers for disease control.

3717.99 Penalty.

Whoever violates section 3717.21 or 3717.41 of the Revised Code is guilty of a misdemeanor of the third degree on a first offense; for a second offense or subsequent offense, such person is guilty of a misdemeanor of the second degree. Each day the violation continues is a separate offense.