

RETAIL FOOD ESTABLISHMENTS

The Basics

Retail Food Establishment

Definition: REF. 3717-1-01

- (96) "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.
- It does not include those operations exempted in section 3717.22 of the Revised Code.

Retail Food Establishment

As used in this definition:

- (a) "Retail" means the sale of food to a person who is the ultimate consumer of the food.
- (b) "Prepared" means any action that affects a food, including receiving and maintaining it at the temperature at which it was received.

Mobile Retail Food Establishment

"[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

Retail Food Establishment

- A) Pursuant to section [3717.221](#) of the Revised Code, the director shall administer the applicable provisions of Chapter 901:3-6 of the Administrative Code to *farm markets, farmers' markets, and farm product auctions* that have registered with the Ohio department of agriculture. A farm market, farmers' market, or farm product auction defined in paragraph (B) of this rule that is not registered with the Ohio department of agriculture shall be licensed and regulated pursuant to Chapter 3717 of the Revised Code as a retail food establishment.

RFE Key Definitions:

REF. OAC 901:3-6

- A “**farm market**” is a producer operated facility where fresh fruits and vegetables and other food items are offered for sale.
- “**Farmers' market**” means a location where producers congregate to offer one or more of the following food items for sale:
- “**Farm product auction**” means a location where only one or more of the following products are offered for sale at auction:

RFE Exemptions:

- (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;

RFE Exemptions:



- (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.

RFE Exemptions:

- (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;

RFE Exemptions:

- (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 syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper 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 farmers market.

Ohio Department of Agriculture
FOOD SAFETY
 8995 East Main Street, Reynoldsburg, OH 43068-3399
 Telephone: (614) 728-6250 Fax: (614) 644-6720
 www.agri.ohio.gov/foodsafety Email: foodsafety@agri.ohio.gov

FARMERS' MARKET REGISTRATION

NAME OF FARMERS' MARKET: _____

LOCATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____

Date of first & last market days: _____ Day(s) & Hours of operation: _____

Approximate number of vendors: _____

CONTACT PERSON FOR FARMERS' MARKET (ORGANIZER): _____

ADDRESS FOR CONTACT PERSON: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____ TELEPHONE: _____

EMAIL: _____ FAX: _____

Submit to:
 Ohio Department of Agriculture
 Division of Food Safety
 8995 East Main Street
 Reynoldsburg, OH 43068-3399

If you have any questions, please call the Division of Food Safety at (614) 728-6250 or email us at foodsafety@agri.ohio.gov.

* Please note that this form must be renewed annually.

RFE Exemptions:

- (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 that are not potentially hazardous 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.

RFE Exemptions:



- (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;

RFE Exemptions:

- (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 syrup and sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code, on the condition that the processor or beekeeper offers only maple syrup, sorghum, or honey **directly to the consumer from the site where those products are processed**;

RFE Exemptions:

- (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;

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FARM PRODUCT AUCTION REGISTRATION

NAME OF FARM PRODUCT AUCTION: _____

LOCATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____

Farm product auction is generally in operation: _____ Day(s) & Hours of operation: _____
 From ___/___/___ To ___/___/___

FARM PRODUCT AUCTION OWNER: _____

ADDRESS FOR FARM PRODUCT AUCTION OWNER: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____ TELEPHONE: _____

EMAIL: _____ FAX: _____

List the food items to be auctioned.

Submit to:
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RFE Exemptions:

- 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;

RFE Exemptions:

- (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 syrup, sorghum, or honey** that is produced by a maple syrup or sorghum producer or beekeeper described in division (A) of section 3715.021 of the Revised Code.

RFE Exemptions:

- (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;

RFE Exemptions:

- (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 syrup, sorghum, or honey if produced by a maple syrup or sorghum processor or beekeeper 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.

RFE Exemptions:

- (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 syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper described in division (A) of section 3715.021 of the Revised Code;




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FARM MARKET REGISTRATION

NAME OF FARM MARKET: _____

LOCATION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____

Farm market is generally in operation: _____ Days(s) & hours of operation: _____
 From ___/___/___ To ___/___/___

FARM MARKET OWNER: _____

ADDRESS FOR FARM MARKET OWNER: _____

CITY: _____ STATE: _____ ZIP: _____

OHIO COUNTY: _____ TELEPHONE: _____

EMAIL: _____ FAX: _____

List the food items to be sold at the farm market. Please indicate the items that you produce on your farm.

Submit to:

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 Division of Food Safety
 8995 East Main Street
 Reynoldsburg, OH 43068-3399

If you have any questions, please call the Division of Food Safety at (614) 728-0250 or email us at foodsafety@agri.ohio.gov

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RFE Exemptions: (“THE END”, FINALLY)

- (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.

RFE Don't Fit Any of The Above Listings?

Not “exempt” under any of the above criteria?

- You need to be licensed as a :
Retail Food Establishment = RFE
- Three basic types of RFE's
 - Fixed Base: located in a structure
 - Mobile Unit: moves about to different locations
 - Temporary Set Up

RFE Licensing Fixed Base

Contact your Local Health Department

- Different Risk Levels 1 - 2 - 3 - 4
- Risk 1 lowest -- Risk 4 highest
- Risk level is determined based on product(s) you are selling. (more later)
- More detailed info see: 901:3-4-05 OAC, "Risk Levels of Retail Food Establishments"

RFE Licensing Fixed Base

Examples of Different Risk Levels and Activities:

- Risk 1 : prepackaged non-potentially hazardous foods, prepackaged refrigerated or frozen potentially hazardous foods.
- Risk 2 : handling or preparing non-potentially hazardous foods, holding for sale or serving potentially hazardous food at the same proper holding temperature at which it was received.
- Risk 3 : cutting or slicing ready-to-eat meats and cheeses, handling, cutting raw meat products.
- Risk 4 : performing a food handling process that is not addressed, deviates, or otherwise requires a variance for the process.

RFE Licensing Fixed Base

Facility Layout and Equipment Specifications details submitted to local HD

- FLES is sometimes incorrectly called a “plan review”
- FLES review fee based on percentage of local license fee
- See 3717-1-09 OAC (OUFSC) for FLES criteria

RFE Licensing Mobile RFE

Contact your Local Health Department

- FLES Details for a mobile RFE unit submitted to Local HD
- No FLES review fee for Mobile RFE units
- Mobile RFE units can be many types
 - a trailer type unit
 - a truck based unit
 - or a “knock down” mobile unit

RFE Licensing Mobile RFE

- Mobile RFE license must be obtained from your Local HD *each* license year before operating Mobile RFE unit for the first time
- Mobile RFE license can have “**limitations**” placed on it by issuing licensor
- Once issued, Mobile RFE license is good **ANYWHERE** in the state of Ohio!

RFE Inspection Mobile RFE

- Mobile RFE unit is subject to inspection at each location /jurisdiction (Health District) Mobile RFE unit is set up /operated in.
- If your Mobile RFE unit is inspected at other locations than your home HD, a copy of that inspection is mailed to your home HD.
Your local licensing HD knows when you've had violations!

RFE Inspections Fixed Base

- Once in operation, an RFE is normally inspected twice per year.
- If a complaint against the RFE is received, additional inspections may occur.
- Risk Level 4 RFE establishments have two additional “process review” inspections per year, due to increased “risk” processing steps their establishments have.

RFE Inspections Fixed Base & Mobile

- Inspection is done based on criteria in OUFSC.
- **Ohio Uniform Food Safety Code**
- OUFSC is 129 pages in length.
- Inspection sheet copy given to operator by inspecting Sanitarian will reference specific code sections your establishment is in violation of.
- OUFSC is available online from ODA or you can obtain a hard copy from your local HD.

RFE Inspections Fixed Base & Mobile

Some items looked at during the inspection process:

- Proper transport : protection of food items against contamination.
- Display : food items wrapped/covered to protect from environmental contamination such as insects, customer handling, sneezes , etc...
- Holding **temperature controlled food items:**
 - cold foods held at/below 41 degrees Fahrenheit,
 - frozen foods maintained in a frozen state.
 - hot foods held at/above 135 degrees Fahrenheit.

RFE Inspections Fixed Base & Mobile

Some items looked at during the inspection process:

- Cross-contamination issues: proper storage of food items, use of gloves , tongs, or deli tissue to handle ready-to-eat foods.
- Onsite Storage: food items stored six inches off ground.
- **Proper Labeling:** all ingredients listed in descending order of predominance by weight, **statement of responsibility** on each packaged food item.
- Cottage Foods Only: **“This Product is Home Produced”** must be on each packaged food item.

RFE Inspections Fixed Base & Mobile

- Inspection is done to see if you are complying with all applicable rules.
- Protection of the Public's Health is goal.
- Compliance with rules, such as OUFSC, etc... is the key.
- Not:
 - To make life difficult for you.
 - To cost you lots of money.
 - To put you out of business.

RFE ENFORCEMENT

LICENSE SUSPENSION:

- You don't operate, usually for a set amount of days, and/or until violations are corrected.
- You usually are in the news.
- You may be placed on increased inspection frequency, example: once per week, until licenser is satisfied you will continue to correctly follow the rules.
- Ref. 3717.29 ORC or 3717.30 ORC

RFE ENFORCEMENT

LICENSE REVOCATION :

- you no longer have an RFE license
- You are ***CLOSED/SHUT DOWN***
- ***You have NO MONEY coming in***
- ***You are in*** (you get the idea)
- You may not be able to get another RFE license from that licensor, **EVER-----!**

DON'T EVER GET TO THIS POINT!!!!

RFE ENFORCEMENT

- There are Appeal Procedures for:
 - License Denial
 - License Suspension
 - License RevocationRef. OAC 901:3-4-08, Appeal Procedures

Local HD can get help with enforcement support from ODA.

Ref. OAC 901:3-4-11

RFE ENFORCEMENT

PROSECUTION:

- If you continue to try to operate your RFE you will probably face criminal prosecution.
- Fine(s)/ Possible Jail Time
- Ref. 3717.31 ORC or 3717.32 ORC

RFE Embargo

REF. 901:3-4-15

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

RFE Embargo

REF. 901:3-4-15

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

RETAIL FOOD ESTABLISHMENTS

Contact Information:

Contact your local health department for additional information, see your local phone book for the phone number.

Contact Ohio Department of Agriculture,
Division of Food Safety, at 614-728-6250

RETAIL FOOD ESTABLISHMENTS

All Rules/Law are available at ODA's website:

www.agri.ohio.gov

– then go to Food Safety, Regulation, Retail Food

ORC 3717

Retail Food Establishment & Food Service Operation

OAC 901:3-4

Retail Food Establishment Licensing

OAC 3717 Ohio Uniform Food Safety Code

Market/Auction Forms also available here.

RETAIL FOOD ESTABLISHMENTS

QUESTIONS?

Presenter:

Thomas R. Cassell, R.S., Sanitarian,
Licking County Health Department

tcassell@lickingcohealth.org

740-349-6501