

# Ohio Food Safety Regulations and Labeling Requirements

In 1999, the Ohio General Assembly passed, and Governor Taft signed, Sub. H.B. 223, which created Chapter 3717 of the Ohio Revised Code. Chapter 3717 is known as the Retail Food Establishment and Food Service Operation Law. This law created the Retail Food Safety Advisory Council. One of the key duties of this council was to make recommendations for the Ohio Uniform Food Safety Code. Through the recommendations of this council and other public input, Chapter 3717 of the Ohio Administrative Code (actual regulations known as the Ohio Uniform Food Safety Code) became effective March 1, 2001.

This law and resulting regulations created a sweeping change in the approach to regulating retail food establishments and food service operations in Ohio. It was intended to streamline the licensing and inspection process and create one licenser and inspector (local health department) for each retail food establishment/food service operation. While this law and subsequent regulations were created with good intents, there have been some unanticipated, negative impacts.

Sub. S.B. 136 was passed by the Ohio General Assembly and signed by Governor Taft in Nov. 2001. This law will fix numerous negative impacts for farmers, beekeepers, maple syrup and sorghum processors, direct agricultural marketers and those involved in cottage food production. As of this date, we are working with the Ohio Department of Agriculture to develop rules that will become part of the Ohio Administrative Code and provide further detail on how to carry out the new laws approved in Sub. S.B. 136.

***The following information should help you better understand the current Ohio Food Safety Regulations for farmers, beekeepers, maple syrup and sorghum processors, direct agricultural marketers and those involved in cottage food production.***

## 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. **Section 3717.01**

This provision may assist farmers who are licensable through the Ohio Uniform Food Safety Code and participate in multiple farmers' markets. This license would be recognized in all health districts and require only one license for the mobile aspect of the operation. The license should be obtained in the health district that is the base of operation for the business. The licensee would need to list all food products that may be sold throughout the season when applying for the license.

## Unprocessed Fruits and Vegetables

“Unprocessed,” when used with respect to fruits and vegetables, means that the fruits and vegetables are not processed beyond merely rough trimming and rinsing. **Section 3717.01**

## Cottage Food Production Operation

### What is a Cottage Food Production Operation?

A "Cottage Food Production Operation" is defined in Chapter 3715 of the Ohio Revised Code to mean a person who, *in the person's home*, produces food items that are not potentially hazardous foods, including bakery products, jams, jellies, candy, and fruit butter. These foods must be labeled properly or they will be considered misbranded or adulterated.

"Home" means the primary residence occupied by the residence's owner, on the condition that the residence contains only one stove or oven used for cooking, which may be a double oven, designed for common residence usage and not for commercial usage, and that the stove or oven be operated in an ordinary kitchen within the residence.

### What Foods are Not Allowed to be Manufactured for Sale or Distribution by a Cottage Food Production Operation?

A "Cottage Food Production Operation" is **not** permitted to process acidified foods, low-acid canned foods, or potentially hazardous foods. *Low acid food* means any food with a finished equilibrium pH greater than 4.6 and a water activity greater than 0.85. *Acidified food* means a low acid food to which acids or acid foods are added (Ex. Beans, cucumbers, cabbage, puddings, etc.). *Potentially hazardous food* means it requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms (Ex. Raw or cooked animal products, cooked vegetables, garlic in oil, cheese cakes, pumpkin pies, custard pies, cream pies, etc.)

### What are the Requirements for the Labeling of Cottage Food Products?

A "Cottage Food Production Operation" is required to label all food products and include the following information on the label of each unit of food product offered or distributed for sale:

1. The name and address of the business of the "Cottage Food Production Operation";
2. The name of the food product;
3. The ingredients of the food product, in descending order of predominance by weight;
4. The net weight or net volume of the food product;
5. The following statement in ten-point type: **"This Product is Home Produced."**

Note: If a nutritional claim is made (i.e. low fat, salt free, etc.) federal labeling requirements must be met. See food labeling section for more details on this and other labeling requirements.

### What Does the Statement "This Product is Home Produced" Mean?

The statement means that the food product was produced in a private home that is not subject to inspection by a food regulatory authority.

### Where may Cottage Food Production Operations Sell their Food Products?

Cottage Food Products that are properly identified and labeled may be sold directly to the consumer from the site where the products are produced; sold through grocery stores, farm markets, farmers markets, etc.; sold and/or used in preparing food in a restaurant.

### Does A Cottage Food Production Operation Need to Acquire a License to Process and Package Food Products?

No: A "Cottage Food Production Operation" is exempt from inspection and licensing by the Ohio Department of Agriculture. However, all food products, including those produced and packaged by a "Cottage Food Production Operation", are subject to food sampling conducted by the Ohio Department of Agriculture to determine if a food product is misbranded or adulterated. **Section 3717.01**

## Maple Syrup and Sorghum Processors and Beekeepers (Honey)

### Section 3715.021

“Food processing establishment” does not include a processor of maple syrup who boils sap when a minimum of seventy-five per cent of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of seventy-five per cent of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of seventy-five per cent of the honey is from that beekeeper's own hives.

This would exempt maple syrup and sorghum processors and beekeepers, as defined, from more stringent “Good Manufacturing Practices.”

### Section 3715.022

All packaged maple syrup, sorghum, and honey, are subject to food sampling conducted by the director of agriculture, or a representative the director authorizes, to determine if a food product is misbranded or adulterated. A component of the food sampling conducted under this section may include the performance of sample analyses in accordance with section 3715.02 of the Revised Code.

### Section 3715.023

(A) Except as provided in division (B) of this section a maple syrup or sorghum processor and beekeeper described in division (B) section 3715.021 of the Revised Code shall label each of their food products and include the following information on the label of each of their food products:

- (1) The name and address of the business of the processor or beekeeper;
- (2) The name of the food product;
- (3) The ingredients of the food product, in descending order of predominance by weight;
- (4) The net weight or net volume of the food product.

(B) The requirements of division (A) of this section do not apply to fruit butter that is produced at a festival or celebration, if the festival or celebration is organized by a political subdivision of this state and the fruit butter is sold during the festival or celebration from the production site.

(C) Food products identified and labeled in accordance with division (A) of this section are acceptable food products that a retail food establishment or food service operation licensed under Chapter 3717 of the Revised Code may offer for sale or use in preparing and serving food. ***(This will make these food items considered an approved source.)***

### Section 3715.024

(A) A maple syrup or sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code may request that the director conduct a voluntary inspection of the processor's or beekeeper's facilities. After the inspection is completed, if the inspector determines that the facilities comply with the rules adopted by the director pursuant to division (B) of this section, the processor or beekeeper may place upon the label required under section 3715.023 of the Revised Code a seal of conformity and inspection of the department of agriculture.

### Section 3717.22

A maple syrup and sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code is exempt from the requirement to be licensed as a retail food establishment, 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.

# Farm Markets / Farmer's Markets / Farm Product Auctions Exemptions from the Requirement to be Licensed as Retail Food Establishments

## Section 3717.22

These exemptions are based upon the foods being offered for sale. A synopsis of these specific exemptions are detailed below:

- A person at a farmers market that offers for sale only one or more of the following:
  - 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; fresh unprocessed fruits or vegetables; maple syrup, sorghum, or honey; products of a cottage food production operation.
  
- A farm product auction, on the condition that only one or more of the following are offered for sale:
  - Eggs from an exempt farm (500 or less hens); poultry from an exempt farm (1,000 or less chickens/year); non-amenable meats (rabbit, bison, etc.); fresh unprocessed fruits or vegetables; maple syrup, sorghum, or honey; products of a cottage food production operation.
  
- A farm market that offers for sale only one or more of the following:
  - 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; fresh unprocessed fruits or vegetables; maple syrup, sorghum, or honey; products of a cottage food production operation; cider and other juices manufactured on site at the farm market; eggs on the condition that the person offering to sell them annually maintains five hundred or fewer birds; poultry on the condition that the person offering to sell them annually raises and slaughters one thousand or fewer chickens; non-amenable meats (rabbit, bison, etc.) on the condition that the person offering to sell the meat raises and slaughters the animals.

Please note that Farm Markets, Farmer's Markets and Farm Product Auctions are exempt only if registered with the Ohio Department of Agriculture. The registered exempt facilities will be inspected by ODA. **Therefore, if you wish to be exempt from the retail license you should contact the Ohio Department of Agriculture using the contact information at the end of this document.** Farm Markets, Farmer's Markets and Farm Product Auctions that do not meet the requirements for exemption are to be licensed as Retail Food Establishments.

## **Additional Miscellaneous Exemptions from the Requirement to be Licensed as a Retail Food Establishment**

### **Section 3717.22**

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;

A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed;

An establishment that offers food contained in displays of less than five hundred square feet, and that is 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 food for sale at retail not more than six months in each calendar year;

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.

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.

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. ***(Nonamenable species include bison, cervidea, other bovidea, camelidae and hybrids thereof, ratites, domestic rabbits, domestic deer.)***

A person who offers for sale only 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 food, on the condition that the commercially prepackaged nonpotentially hazardous 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.

# Food Labeling Requirements

**I. Product of Identity - Reference: CFR 21, Part 101.3: Name of product that provides proper description.**

**II. Statement of Ingredients - Reference: CFR 21, Part 101.4**

A. Complete breakdown of Ingredients (with sub-ingredients) listed by common or usual name in descending order of predominance by weight.

B. An ingredient which itself contains two or more ingredients shall be designated in the statement of ingredients on the label of such food:

*By declaring the established common or usual name of the ingredient followed by a parenthetical listing of all ingredients contained therein in descending order of predominance.*

C. When listing vegetable shortening or oil, the type shall also be listed, e.g., Soybean, Cottonseed and/or Canola Oil. If Hydrogenated, this must be specified.

**III. Statement of Responsibility - Reference: CFR 21, Part 101.5**

The label of a food in packaged form shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor. Where the food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such food; e.g., AManufactured for@ ADistributed by@, or any other wording that expresses the facts. The statement of the place of business shall include the street address, city, state and zip code; however, the street address may be omitted if it is shown in a current telephone directory. A Telephone Number is not required. It is their prerogative if they wish to display a telephone number. Note: A telephone no., Email address, or web site cannot be used in lieu of the statement of responsibility requirement.

**IV. Declaration of net quantity of contents - Reference: CFR 21, Part 101.105**

**Dual declaration – Reference: Fair Packaging and Labeling Act, Title 15 – Chapter 39, §1453 (a)(2)**

Net quantity of contents shall be separately and accurately stated in a uniform location upon the principal display panel of the label, using the most appropriate units in both the customary inch/pound system of measure and the SI metric system. Either one may follow the other parenthetically. SI means – International System of Units

The term 'Net Wt.' is used to represent solid/mass type products. Use of the terms "Net" or "Net Contents" in terms of fluid measure or numerical count is optional. It is sufficient to distinguish avoirdupois ounce (system of weights and measure that is based on a pound containing 16 ounces or 7,000 grains and equal to 453.59 grams) from fluid ounce through association of terms; for example, "Net wt. 6 oz" or "6 oz Net wt." and "6 fl oz" or "Net contents 6 fl oz".

The quantity of contents shall be placed on the principal display panel. It shall be within the bottom 30 percent of the area of the label panel in lines that are generally parallel to the bottom of the package as it is designed to be displayed.

*A declaration of net quantity of contents is permitted to be blown, molded or embossed on a glass or plastic surface of the container as long as all other required labeling information is available on the principal display panel.*

Exemption: Net content of dual declaration for consumer packages does not apply to:

§ Foods packaged at the retail store level

§ Meat and poultry products subject to the Federal Meat and Poultry Products Inspection Act

§ Nutrition labeling information

**Note:** Labeling requirements for Net Quantity of Contents is under the purview of the ODA Division of Weights and Measures. Local enforcement is provided by Weights and Measures located in the Auditor's office at the county court house of that particular county.

## V. Refrigeration or Frozen

A. If a product is required to be refrigerated during display or after opening, the label must provide the following phrases respectively on display panel: Keep Refrigerated or Refrigerate after Opening

B. If a product should be kept frozen for proper storage, then the label should provide this information on the principal display panel.

## VI. Nutritional Labeling – Exemptions - Reference: CFR 21, Part 101.9 (j)

A. Retail exemption:

Food offered for sale by a retailer who has annual gross sales of food to consumers of not more than \$50,000; or has total annual gross sales, of food/non-food items to consumers of not more than \$500,000 is exempt from nutritional labeling provided no nutritional claims are made.

<u>SALES IN FOOD</u>	<u>TOTAL SALES (FOOD &amp; NON-FOOD)</u>	<u>STATUS</u>
\$50,000 or less	\$500,000 or less	Exempt
\$50,001 or more	\$500,000 or less	Exempt
\$50,000 or less	\$500,001 or more	Exempt
\$50,001 or more	\$500,001 or more	Not Exempt

**Ready-to-eat** food products that are manufactured on site by the retail firm and not sold outside of that retail firm is exempt **provided no nutritional claims are made.**

B. Manufacturer/Wholesaler exemption:

A firm with fewer than 100 full time employees (FTE's) and less than 100,000 units sold in the previous year is exempt from nutritional labeling **provided no nutritional claims are made.** An establishment that wholesales product must submit annual notification to FDA to maintain existing exemption.

**NOTE:** a firm with less than 10 employees and less than 10,000 units sold does not have to apply to FDA for an exemption.

## VII. Sale Dates:

“Best if Used By,” “best before,” “best if used before,” “Sell by,” “use by,” and “use before” means the date by which the manufacturer, processor, or packager of a packaged food product recommends that the food product be sold for consumption based on the food product's quality assurance period. These types of products may be sold past this date.

Expiration Date – the specific products that are not permitted to be sold past this date include: OTC drugs, baby food, and infant formula\*.

\*The term required on infant formula products is "use by" date, not "expiration" date.

## VIII. UPC Code: ODA does not regulate the UPC code. The following address and number is provided if you wish further information:

Uniform Code Council, 7051 Corporate Way, Dayton, Ohio 44459  
(937) 435-3870 or 1-800-543-8137

The ODA Division of Food Safety should be notified when labeling violations are identified on food products that were not packaged at the retail level; and food products packaged at retail for distribution.

Labels may be submitted to the Ohio Department of Agriculture for review and approval to the: Ohio Department of Agriculture, Division of Food Safety, 8995 E. Main Street, Reynoldsburg, Ohio 43068

Email – [foodsafety@odant.agri.state.oh.us](mailto:foodsafety@odant.agri.state.oh.us)

## **Where to get information about the current Ohio Uniform Food Safety Code and other Ohio Food Safety Regulations**

Direct agricultural marketers and farmers who are licensable through the Ohio Uniform Food Safety Code will need to work with local health department officials. Initial communication should always be directed to the local health department. As with any new program, there will be problems that arise and need to be resolved. Consumers, academia, industry, local health department personnel, etc. are encouraged to contact the Ohio Department of Agriculture, Division of Food Safety with questions related to this new program that are not resolved locally. Anyone exempt from provisions of, or not covered by the Ohio Uniform Food Safety Code should contact the Ohio Department of Agriculture directly for assistance with food safety regulations. The following communication vehicles are available.

E-mail: [foodsafety@odant.agri.state.oh.us](mailto:foodsafety@odant.agri.state.oh.us)

Phone: 1-614-728-6250

Toll-free: 1-800-282-1955 and ask receptionist or follow instructions to connect to Food Safety

Fax: 1-614-644-0720

### **Current laws and Ohio Uniform Food Safety Code**

<http://www.state.oh.us/agr/FoodSafetyrfsac.html>

### ***Keeping Perspective...***

- It is important to remember that a number of problems being experienced are due to improper application of the existing Ohio Uniform Food Safety Code. Local health departments are still learning about the program and about the nature of the food industry that has not been regulated through local health departments in the past. Ask the Ohio Department of Agriculture (see above) for help in situations that cannot be resolved locally.
- Approximately one-half of local health districts had local food establishment programs prior to the new Ohio Uniform Food Safety Code. The fees were generally less and inspection requirements may have been less stringent.
- Exempting entities from the Ohio Uniform Food Safety Code does open the door for local health districts to establish local ordinances that could regulate where the state code does not.
- Potentially hazardous foods (meat, milk, eggs, cream pies, sliced melons, sprouts, etc.) are not exempted at all in the current law except in very limited cases.
- Are you experiencing problems with the Ohio Uniform Food Safety Code that have not been addressed by working through local your health district and the Ohio Department of Agriculture? If so, contact your county Farm Bureau (if a FB member) and ask them to forward your issue to me.
- All citizens are welcome to attend regular meetings of the Retail Food Safety Advisory Council or to communicate directly with one or more members of the Council. Meeting information and Council information is available on the web site listed above.

### ***Compiled by:***

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***Reviewed by the Ohio Department of Agriculture, Division of Food Safety.***