

# **Chapter 3701-21**

## **Food Service Operations**

### **3701-21-01 Definitions.**

As used in Chapter 3701-21 of the Administrative Code:

(A) "a<sub>w</sub>" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a<sub>w</sub> .

(B) "Board of health" means the board of health of any city or general health district, or the authority having the duties of a board of health as authorized by section 3709.05 of the Revised Code.

(C) "Catering food service operation" means a food service operation, as defined in section 3717.01 of the Revised Code where food is prepared for serving at a function or event held at an off-premise site, for a charge determined on a per-function or per-event basis. The charge is contracted for on the basis of the entire luncheon, banquet, or event and not on the basis of an individual meal or lunch.

(D) "Critical control point inspection" means an inspection designed to identify and prevent food handling procedures that epidemiological data have shown to lead to outbreaks of foodborne disease.

(E) "Director" means the director of health or an authorized designee of the director.

(F) "Employee" means the license holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food service operation.

(G) "Equipment" means an article that is used in the operation of a food service operation such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, bulk water machine, or warewashing machine. "Equipment" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, or skids.

(H) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(I) "Food service operation" means an operation as defined in section 3717.01 of the Revised Code. Two or more food serving areas, each supplied by separate kitchens, are considered two or more separate food service operations and must be licensed individually even though located in the same building or structure.

(J) "Health district" means each city and general health district established by section 3709.01 of the Revised Code.

(K) "Licensor" means one of the following:

(1) The board of health of any city or general health district, or the authority having the duties of a board of health as authorized by section 3709.05 of the Revised Code, approved under section 3717.11 of the Revised Code;

(2) The director of agriculture acting under section 3717.11 of the Revised Code or 3717.111 of the Revised Code with respect to the licensing of retail food establishments; or

(3) The director of health acting under section 3717.11 of the Revised Code or 3717.111 of the Revised Code with respect to the licensing of food service operations.

(L) "Mobile food service operation" means an operation as defined in section 3717.01 of the Revised Code.

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

(N) "Noncommercial temporary food service operation" means a temporary food service operation as described in Chapter 3717. of the Revised Code, conducted by any of the following: an agency of the government, a church, school, fraternal organization, service club organization, veterans' organization, volunteer fire organization, non-profit youth group whose membership consists primarily of persons aged eighteen or younger, volunteer emergency medical service organization, or an organization which is described in subsection 501(c)(3) and are tax exempt under subsection 501(a) of the Internal Revenue Code or any individual or group raising all of its funds for the benefit of one of these organizations if such operation is operated at an event for no more than five consecutive days, except when operated for more than five consecutive days under division (E)(2) of section 3717.43 of the Revised Code.

(O) "Operator" means the person, firm, association, corporation, or governmental operation that is in responsible charge of conducting a food service operation.

(P) "Potentially hazardous food" : means time/temperature controlled for safety food as defined in paragraph (T) of this rule.

(Q) "Premises" means:

(1) The physical facility, its contents, and the contiguous land or property under the control of the license holder; or

(2) The physical facility, its contents, and the land or property not described under paragraph (Q)(1) of this rule if its facilities and contents are under the control of the license holder and may impact food service operation or retail food establishment personnel, facilities, or operations, and a food service operation or retail food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

(R) "Seasonal food service operation" means an operation as defined in section 3717.01 of the Revised Code.

(S) "Standard inspection" means an inspection designed to determine compliance with Chapter 3717. of the Revised Code and the rules adopted under it.

(T) "Time/temperature controlled for safety food" or "TCS food" means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(1) TCS food includes:

(a) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(b) Except as specified in paragraph (T)(2)(d) of this rule, a food that because of the interaction of its  $a_w$  and pH values is designated as product w assessment required (PA) in table A or B of this rule.

Table A. Interaction of pH and  $a_w$  for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

Table B. Interaction of pH and  $a_w$  for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

(2) TCS food does not include:

(a) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(b) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(c) A food that because of its pH or  $a_w$  value, or interaction of  $a_w$  and pH values, is designated as a non-TCS food in table A or B of paragraph (T)(1) of this rule;

(d) A food that is designated as product assessment required (PA) in table A or B of paragraph (T)(1) of this rule and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(i) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,

(ii) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or

(iii) A combination of intrinsic and extrinsic factors; or

(e) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with paragraph (T)(2)(a), (T)(2)(b), (T)(2)(c) or (T)(2)(d) of this rule even though the food may

contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(U) "Temporary food service operation" means an operation as defined in section 3717.01 of the Revised Code.

(V) "Variance review" means a determination by the licenser of compliance with a food processing variance issued by the department of health.

In the administration and enforcement of Chapter 3717. of the Revised Code and Chapter 3701-21 of the Administrative Code, all adjectives and adverbs such as adequate, approved, clean, convenient, effectively, good, sanitary, satisfactory, sufficient, safe, or suitable shall be interpreted in a manner consistent with the published interpretation and recommendations in the usage of the words, as they relate to food service operations, by the food and drug administration, public health service, of the United States department of health and human services, or consistent with the usage and understanding of the words by the food service industry and the food service regulatory agencies or other appropriate regulatory agencies, to the extent that these interpretations are not in conflict with the laws of this state.

Effective: 03/01/2010

## **3701-21-02 License.**

(A) During the month of February of each year, and not later than March first, except as hereinafter provided, every operator of a food service operation proposing to operate during any part of the licensing year shall apply for a license for that year from the board of health of the health district in which the food service operation is located.

This provision shall apply to all food service operations except seasonal food service operations, mobile food service operations, temporary food service operations, and new food service operations opened for business subsequent to March first of each year. All licenses issued to a food service operation expire pursuant to division (C) of section 3717.43 of the Revised Code.

(B) An application for a license to operate a new food service operation during any part of the year shall be filed as hereinafter provided not less than ten days before the food service operation is opened for business. If proper application has been made, the facility layout and equipment specifications have been approved and complied with on the final inspection, and all items are in compliance with Chapter 3717. of the Revised Code and agency 3717 of the Administrative Code, the ten-day waiting period may be waived and the license issued.

(C) The operator of a mobile food service operation shall make application for a license to the board of health of the health district in which the operator's business headquarters are located. The operator of a mobile food service operation whose business address is located outside of Ohio shall make application for a license to the board of health having jurisdiction over the operator's first Ohio location in any one licensing year. A food service license issued to an operator of a mobile food service operation by an approved health district, as provided in Chapter 3717. of the Revised Code, shall be recognized by all other licensors in this state.

(D) The operator of a food service operation shall make written application for a license to the licensor on an application form prescribed by the director of health which shall contain all pertinent information related to the portions of the premises utilized for the food service operation.

(E) Fees for issuing and renewing food service operation licenses, determined by the licensor in accordance with section 3717.45 of the Revised Code, may be levied upon each food service operation. These fees shall be used solely for paying the expense of the administration and enforcement of Chapter 3717. of the Revised Code and Chapter 3717-1 of the Administrative Code and this chapter.

(1) In determining the amount of the annual license fee, the licensor shall use the categories established by rule 3701-21-02.1 of the Administrative Code and the cost analysis established by rule 3701-21- 02.2 of the Administrative Code.

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

(3) Fees authorized or charged under this paragraph shall be in lieu of all food service operation license and inspection fees required by the licensor on or with respect to the operation of, ownership of or employment by food service operations within this state, except as provided in paragraph (C) of rule 3701-21- 02.1 of the Administrative Code.

(F) For each food service operation license issued the following applicable amount shall be collected and transmitted by the licensor to the director of health for deposit in the general operations fund created in section 3701.83 of the Revised Code and used for administering and enforcing Chapter 3717. of the Revised Code, agency 3717 of the Administrative Code, and this chapter:

(1) Twenty-eight dollars for each license that the licensor issues under the fee category specified in paragraphs (A)(1), (A)(2), and (A)(4) of rule 3701-21- 02.1 of the Administrative Code;

(2) Fourteen dollars for each license that the licensor issues under the fee category specified in paragraph (B)(1) of rule 3701-21- 02.1 of the Administrative Code; and

(3) Six dollars for each license that the licensor issues under the fee category specified in paragraph (A)(5) of rule 3701-21- 02.1 of the Administrative Code.

(G) The operator of a food service operation that caters shall make application for a license to the board of health of the health district in which the operator's kitchen is located. A food service license issued to an operator of a catering food service operation by a licensor, as provided in section 3717.43 of the Revised Code, shall be recognized by all other licensors in this state. The operator of a food service operation that caters shall maintain a copy of the license at each catered event.

(H) A licensee shall display the license for that food service operation at all times at the licensed location.

Each operator of a mobile food service operation shall conspicuously display the name of the operation, the city of origin, and area code and telephone number on the exterior of the mobile unit. The name and city of origin of the food service operation shall be displayed with individual lettering measuring at least three inches high and one inch wide.

Effective: 03/01/2010

## **3701-21-02.1 License fees and categories.**

(A) The licensor shall establish fees for:

(1) Food service operations in which the interior premises is under 25,000 square feet for each risk level specified in rule 3701-21- 02.3 of the Administrative Code;

(2) Food service operations in which the interior premises is 25,000 square feet or more for each risk level specified in rule 3701-21- 02.3 of the Administrative Code;

(3) Temporary food service operations as a per event fee or as a per day fee;

(4) Each mobile food service operation; and

(5) Each vending machine location. Additionally, as specified in section 3717.07 of the Revised Code, the license fee for vending machine locations shall not be increased by more than 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.

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

(1) Noncommercial food service operations in all risk level categories, which shall be fifty per cent of the fee established in paragraphs (A)(1) and (A)(2) of this rule, as applicable; and

(2) Noncommercial temporary food service operations, which shall be fifty

per cent of the fee established in paragraph (A)(3) of this rule.

(C) The licensor may establish fees for:

(1) Review of facility layout and equipment specifications for 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 section 3717.05 of the Revised Code;

(3) Attendance at a course of study offered by the licenser in food protection if the course is approved under section 3717.09 of the Revised Code.

Effective: 03/01/2010

## **3701-21-02.2 Cost analysis and calculation.**

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

(1) Risk level I, risk level II, risk level III, and risk level IV food service operations and retail food establishments;

(2) Mobile food service operations and mobile retail food establishments;

(3) Temporary food service operations and temporary retail food establishments; and

(4) Vending machine locations.

(B) Except as specified in paragraph (D) of this rule, the licensor shall calculate the cost attributable to each component listed in paragraph (A) of this rule for administering and enforcing Chapter 3717. of the Revised Code and the rules adopted thereunder for operations licensed by the licensor. Cost shall not exceed all reasonable and necessary direct cost and indirect cost determined in accordance with 2 C.F.R. 225 (as published on August 31, 2005). For the purpose of this rule, indirect cost means support cost which includes support staff cost plus overhead costs. The licensor shall use a form prescribed or approved by the director of agriculture and the director of health that includes the following data:

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

(b) Use of an indirect cost rate of thirty per cent of the wages or salaries and fringe benefits of inspecting sanitarians attributable to the component; or

(c) Application of a negotiated indirect cost rate and calculation method approved by an agency of the federal government for the licensor to the component;

(8) The sampling and laboratory costs for the component other than those costs specified in paragraph (C)(2) of rule 3701-21- 02.1 of the Administrative Code;

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

(C) The licensor shall calculate the license fee for each food service operation category listed in rule 3701-21- 02.1 of the Administrative Code as follows:

(1) The vending machine location category cost divided by the number of vending machine location licenses issued.

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

(3) For a temporary food service operation:

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

establishments plus fifty per cent of the number of licenses issued for noncommercial temporary food service operations and noncommercial temporary retail food establishments; or

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

(4) For food service operations classified as risk level I, risk level II, risk level III, and risk level IV food service operations:

(a) Determine support costs in accordance with paragraph (B)(7) of this rule.

Equally allocate support costs attributable to the risk level food service operations and retail food establishments component by dividing the support costs of the risk level food service operations and retail food establishments component by the total number of risk level I, risk level II, risk level III, and risk level IV commercial food service operations and retail food establishments plus fifty per cent of noncommercial operations classified by risk;

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

fifty per cent of the number of noncommercial risk level food service operations and noncommercial risk level retail food establishments.

(c) Determine the number of standard inspection periods for each risk level category using the inspection time factor. The inspection time factor is the ratio of the average amount of time per inspection for all risk levels relative to the average time per inspection for the risk level I less than 25,000 square feet operations. The inspection time factor for:

(i) Risk level I less than 25,000 square feet is 1.00 and 25,000 square feet or above is 1.88 ;

(ii) Risk level II less than 25,000 square feet is 1.25 and 25,000 square feet or above is 2.03 ;

(iii) Risk level III less than 25,000 square feet is 1.64 and 25,000 square feet or above is 4.84 ; and

(iv) Risk level IV less than 25,000 square feet is 2.21, and 25,000 square feet or above is 5.16.

The number of standard inspection periods is the minimum number of inspections required for each risk level category multiplied by the inspection time factor, the product of which is multiplied by the total number of food service operations and retail food establishments in each risk level category.

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

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

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

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

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

(D)

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

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

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

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

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

Effective: 03/01/2010

## **3701-21-02.3 Risk level of food service operations.**

The licensor shall determine the risk level based on the highest risk level activity of the food service operation in accordance with the following criteria:

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

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

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

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

- (1) Handling, heat treating, or preparing non-time/temperature controlled for safety food;
- (2) Holding for sale or serving time/temperature controlled for safety food at the same proper holding temperature at which it was received; or

(3) Heating individually packaged, commercially processed time/temperature controlled for safety foods for immediate service.

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

(1) Handling, cutting, or grinding raw meat products;

(2) Cutting or slicing ready-to-eat meats and cheeses;

(3) Assembling or cooking time/temperature controlled for safety food that is immediately served, held hot or cold, or cooled;

(4) Operating a heat treatment dispensing freezer;

(5) Reheating in individual portions only; or

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

(D) Risk level IV poses a higher potential risk to the public than risk level III because of concerns associated with: handling or preparing food using a procedure with several preparation steps that includes reheating of a product or ingredient of a product where multiple temperature controls are needed to preclude bacterial growth; offering as ready-to-eat a raw time/temperature controlled for safety meat, poultry product, fish, or shellfish or a food with these raw time/temperature controlled for safety items as ingredients; using freezing as a means to achieve parasite destruction; serving a primarily high risk clientele including immuno-compromised or elderly individuals in a facility that provides either health care or assisted

living; or using time in lieu of temperature as a public health control for time/temperature controlled for safety food or performs a food handling process that is not addressed, deviates, or otherwise requires a variance for the process. Examples of risk level IV activities include, but are not limited to:

- (1) Reheating bulk quantities of leftover time/temperature controlled for safety food more than once every seven days; or
- (2) Caterers or other similar food service operations that transport food.

Effective: 03/01/2010

### **3701-21-02.4 Food service operation inspection frequency.**

(A) Except as specified in paragraph (B) of this rule, a licensor shall inspect food service operations at least every fifteen months as follows:

- (1) Risk level I: at least one standard inspection each licensing period.
- (2) Risk level II: at least one standard inspection each licensing period.
- (3) Risk level III: at least two standard inspections each licensing period.
- (4) Risk level IV: at least two standard inspections and two critical control point inspections, and if applicable two variance reviews each licensing period. The licensor may conduct the critical control point inspections on the same visits as the standard inspections and when applicable verify the terms of any variance that may have been issued.
- (5) Mobile food service operations: at least one standard inspection each licensing period;

(6) Temporary food service operation: at least one inspection during the period of operation; and

(7) New food service operations: one standard inspection not later than thirty days after the license has been issued. If less than six months remain in a licensing period, the licensor may elect to eliminate one standard inspection, and one critical control inspection and one variance review for an operation classified as risk level III or IV. For the purpose of this rule, new food service operation means a food service operation that, in accordance with rule 3701-21-03 of the Administrative Code, the licensor requires a facility layout and equipment specifications review be submitted for approval.

(B) The licensor shall inspect at least fifty percent of an operator's vending machine locations each licensing period.

Eff 11-27-2000; 12-21-01 (Emer.); 3-21-02; 12-1-04

### **3701-21-02.5 Standards and procedures for conducting investigations of complaints pertaining to food service operations.**

(A) The licensor shall accept for investigation oral and written complaints regarding food service operations. The licensor may decline to investigate any complaint it determines is:

- (1) Frivolous;
- (2) Not made in good faith; or
- (3) Too old to be reasonably investigated.

(B) The licensor shall gather at a minimum the following information in response to a complaint received:

- (1) The full name, address, and telephone number of the complainant unless the complainant wishes to remain anonymous;

- (2) The name and address of the food service operation; and
  - (3) A statement of facts about the complaint including the date and time of any alleged occurrence.
- (C) The licensor:
- (1) Shall investigate the complaint based on the complaint's severity;
  - (2) Shall investigate each complaint in a fair and complete manner;
  - (3) Shall report the results to the complainant orally or in writing upon completion of the investigation; and
  - (4) Shall complete and maintain a report on file at the conclusion of the investigation.

### **3701-21-02.6 Procedures for resolving disputes between licensors and license holders.**

A license holder may request a meeting on a licensor's proposed action regarding a food service operation if the license holder believes that the action is in conflict with Chapter 3717. of the Revised Code or the rules adopted under it. The license holder shall submit a written request to the director of health no later than five days after receipt of the notice of the proposed action. After review of the written request, the director of health shall take whatever steps the director believes necessary to resolve the dispute in a mutually satisfactory manner including the appointment of a professional arbitrator or mediator at the licensor's and license holder's expense.

Effective: 03/01/2010

## **3701-21-02.7 Procedures for providing enforcement support.**

(A) For the purpose of this rule “enforcement support” means the provision of any of the following by the Ohio department of health:

(1) Assistance to the licensor to address an immediate danger to public health;

(2) Expert testimony;

(3) Review and comment on enforcement documentation concerning immediate danger to public health; or

(4) Assistance in the prosecution of a person who is not in compliance with Chapter 3717. of the Revised Code or the rules adopted under it; provided the legal representative of the licensor requests the assistance, in writing, and has the consent of the board of health or the authority having the duties of a board of health.

(B) To request enforcement support a board of health or the authority having the duties of a board of health must request assistance in writing to the director of health. The director of health shall provide all feasible enforcement support as soon as possible.

## **3701-21-03 Facility layout and equipment specifications.**

No person, firm, association, organization, corporation, or government operation shall construct, install, provide, equip, or extensively alter a food service operation until the facility layout and equipment specifications have been submitted to and approved in writing by the licensor. When the facility layout and equipment specifications are submitted to the licensor, they shall be acted upon within thirty days after date of receipt. The licensor shall use the facility layout and equipment specification criteria set forth in the rules adopted pursuant

to section 3717.05 of the Revised Code to approve or disapprove facility layout and equipment specifications.

### **3701-21-22 Food choking.**

(A) The director of health shall provide standards detailing first aid techniques designed and intended for use by a person without medical training in removing food which has become lodged in the throat of a choking victim. The director shall provide the standards by printing them for distribution.

(B) The food service operation shall ensure that the standards are readily accessible to the public and the employees of the food service operation.

### **3701-21-24 State survey procedures for program evaluation.**

(A) The director of health shall survey at least once every three years each food service operation program of a licensor pursuant to section 3717.11 of the Revised Code. The licensor shall provide the director of health with all requested information to complete the survey.

(B) The director of health shall provide the survey methodology, which shall include:

(1) A review of the administrative aspects of the food service operation program including application and licensing, certification, cost analysis and fee adoption, facility layout and equipment specification review, inspections and reports, and enforcement;

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

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

(C) The director of health shall survey the food service operation program in accordance with the survey methodology and shall determine whether the licenser is qualified to administer and enforce Chapter 3717. of the Revised Code and Chapters 3701-21 and 3717-1 of the Administrative Code. After the survey is complete, the director of health shall classify the licenser as approved or provisional and provide a survey report to the licenser. If the licenser is classified as provisional, the director of health shall provide :

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

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

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

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

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

(F) The director of health may reinstate a licenser if all the conditions in division (D) of section 3717.11 of the Revised Code are met. Upon reinstatement, the director of health shall provide the licenser a set time-frame for survey which shall be no later than one year after reinstatement. The licenser shall be classified as provisional until the licenser has successfully passed the survey. If the director of health determines that the licenser is qualified to administer and enforce Chapter 3717. of the Revised Code and Chapters 3701-21 and 3717-1 of the Administrative Code, the director of health shall classify the licenser as approved. If the director of health determines that the licenser is not qualified, the director of health may propose to revoke the approval in accordance with paragraph (D) of this rule.

Effective: 03/01/2010

### **3701-21-25 Certification in food protection.**

(A) In accordance with Section 3717.09 of the Revised Code, the director of health shall approve courses of study for level one and level two certification in food protection courses:

(1) A level one certification in food protection course is for basic food handler certification covering the principles of food protection.

(2) A level two certification in food protection course is for food protection manager certification.

(B) Any person may apply to the director for approval to conduct a certification in food protection course. Any person desiring to apply as an approved provider of a certification in food protection course shall complete an application prescribed by the director and submit the completed application to the director.

(C) The director shall not approve an application that is incomplete or that does not adequately contain the following criteria:

(1) The applicant's name, address, and telephone number;

(2) Contact hours and curriculum:

(a) Level one certification in food protection course contains a curriculum that includes a written or verbal exercise and at least the following as it relates to foodborne illness risk factors:

- (i) Food sources.
- (ii) Personal hygiene and handwashing.
- (iii) Cross contamination.
- (iv) Cleaning/sanitizing of equipment and utensils.
- (v) Proper cooking, cooling, and holding of food.

(b) Level two certification in food protection course contains at least fifteen verified contact hours, excluding the examination and contains a curriculum that includes at least the following:

- (i) Microbiology, foodborne illness.
- (ii) Personal hygiene.
- (iii) Food sources.
- (iv) Cleaning/sanitizing of equipment and utensils.
- (v) Facility design and construction and its relationship to managing food safety.
- (vi) Active managerial control of foodborne illness risk factors. "Active managerial control" means the purposeful incorporation of specific actions or procedures by industry management into the operation of their business to attain control over foodborne illness risk factors. Foodborne illness risk factors are unsafe food sources, inadequate cooking, improper food holding, contaminated equipment, and poor personal hygiene.

(vii) Proper cooking, cooling, and holding of food.

(viii) Cross contamination.

(c) A description of any methods of training to be used such as classroom instruction, guest speakers, interactive computer programming, interactive video, or distance learning.

(d) The name of the course instructor and verification that the instructor possesses the following qualifications:

(i) For level one certification in food protection a registered sanitarian working in food safety or related experience or an instructor that has successfully completed the level two certification in food protection course.

(ii) For level two certification in food protection:

(a) A minimum of four years of training or teaching experience, or food service industry, or public health, or a registered sanitarian working in food safety, or related experience; and

(b) Completion of an approved course in certification with a passing score.

(e) A copy of all course materials, including student manuals, written or verbal exercises, instructor notebooks, and handouts;

(f) For the level two certification in food protection course, the length, format and passing score of the examination including a detailed statement describing the examination and how the examination was developed including content validity, psychometric standards, and the provision for periodic review.

(g) An example of the certificates issued to individuals who attend the level one certification course and pass a level two certification course.

(D) An approved provider of a level one certification in food protection course shall:

(1) Submit to the director any changes to the course curriculum, instructor, or course materials for approval prior to changing the approved course.

(2) Provide adequate facilities, equipment and supplies necessary to conduct the approved course.

(3) Provide individuals who attend the course a certificate of completion.

(E) An approved provider of a level two certification in food protection course shall:

(1) Notify the director at least fifteen days in advance of holding each course of the time, place, and instructor of the course and certify that the course will be conducted in accordance with the course approved by the director;

(2) Within fifteen days of the course conclusion, send a copy of the final enrollment report for the course with each individual's name, passing grade, and certification that the individual attended the required classroom hours.

(3) Submit to the director any changes to the course curriculum, instructor, or course materials for approval prior to changing the approved course.

(4) Provide adequate facilities, equipment and supplies necessary to conduct the approved course.

(5) Promptly distribute the Ohio certification card to individuals successfully completing the certification program.

(F) The director may audit any certification in food protection course to determine compliance of this rule.

(G) The director shall not approve a certification in food protection course and shall disapprove a previously approved course anytime the course or course provider fails to meet the requirements of this rule. The applicant or course provider may request that the director reconsider the decision and may submit additional materials to the director in support, provided that the director receives the request for reconsideration and any additional materials within fifteen days of the date of the director's notice of disapproval. The director shall reconsider the disapproval and shall issue a final decision within fifteen days of receiving the request for reconsideration.

(H) An individual desiring level two certification in food protection shall:

(1) Attend a level two certification in food protection course and successfully pass the course examination that meets the requirements of this rule and is offered by an approved course provider; or

(2) Provide documentation to the director's satisfaction that the individual has successfully completed a similar certification in food protection program.

(I) The licensor shall mandate level one certification in food protection training for risk level I, II, III, and IV food service operations and retail food establishments for the following reasons:

(1) Except as provided in paragraphs (I)(3) and (I)(4) of the rule, at least one person in charge per shift of a food service operation or retail food establishment. Person in charge is defined as the individual present at a food service operation or retail food establishment who is responsible for the operation at the time of inspection.

(2) At least one person in charge per shift of a food service operation or retail food establishment that has been implicated in a foodborne disease outbreak.

(3) All persons in charge of a food service operation or retail food establishment when the licensor has documented a failure to maintain sanitary conditions as per section 3717.29 of the Revised Code for retail food establishments and section 3717.49 of the Revised Code for food service operations.

(4) A person in charge of a new food service operation or a new retail food establishment not subject to paragraph (I)(2) and (I)(3) of this rule, may provide documentation to the licensor's satisfaction that the individual has successfully completed a similar certification program equivalent to the level one standards established in this rule are not required to attend the mandatory level one certification in food protection training.

(5) Paragraph (I)(1) of this rule does not apply to any person in charge, as defined in section 3717-1-01(B)(74) of the Administrative Code, working in a retail food establishment or food service operation that was licensed prior to the effective date of this rule, provided that the retail food establishment or food service operation is not subject to paragraph (I)(2) or (I)(3) of this rule.

(J) As prescribed in section 3717.25(B)(3) of the Revised Code for retail food establishments and section 3717.45(B)(3) of the Revised Code for food service operations, a licensor that is an approved course provider may charge a fee.

Effective: 03/01/2010

## **3701-21-26 Appeal procedures.**

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

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

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

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

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

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

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

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

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

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

(C) In the case of a suspension of a license issued for a violation presenting an immediate danger to the public health, the licenser shall provide the license holder with written notice of the action, the cause for the action, and the effective date of the action. The written notice shall specify the procedure for appealing the suspension and shall list the address to which a hearing request shall be sent or delivered. The

license holder may appeal the suspension by mailing or hand-delivering a written request for a hearing to the address specified in the notice. If a hearing is requested, it shall be heard not later than two business days after the request is received by the licenser. At the hearing, the license holder shall have the opportunity to present its case orally or in writing and to confront and cross-examine witnesses. The license holder may be represented by counsel and may review the case record before the hearing. At the hearing, the licenser shall determine whether the immediate danger to the public health continues to exist.

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

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

(2) If the director of health is acting as the licenser pursuant to section 3717.11 of the Revised Code, by decision of the director.

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

Effective: 03/01/2010

## **3701-21-27 Embargo of food.**

Food to be embargoed shall be embargoed according to section 901:3-4-15 of the Ohio Administrative Code.

Effective 12/01/2004