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901:3-4-01 **Definitions.**

As used in this chapter:

- ~~(A)~~ "Adulteration" has the meaning given in section 3715.59 of the Revised Code.
- ~~(B)~~ "aw" 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 aw.
- ~~(C)~~ Catering food service operation means a food service operation where food is prepared for serving at a function or event held at an off-premises site, for a charge determined on a per-function or per-event basis.
- ~~(D)~~(A) "Certified in food protection" means an individual has met the certification requirements pursuant to Chapter 3717. of the Revised Code.
- ~~(E)~~(B) "Director" means the director of agriculture 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 or retail food establishment.
- ~~(G)~~ "Equipment" means an article that is used in the operation of a food service operation or retail food establishment such as a freezer, grinder, hood, icemaker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, bulkwater 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 eased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, or skids.
- ~~(H)~~ "Food" means any 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)~~ "Licensor" means one of the following:
 - ~~(1)~~ A 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;

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~~(2) The director of agriculture acting under section 3717.11 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 or 3717.111 of the Revised Code with respect to the licensing of food service operations.~~

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

~~(K) "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.~~

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

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

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

~~(O) "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 (O)(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~~

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~~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.~~

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

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

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

~~(S) "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 (S)(2)(d) of this rule, a food that because of the interaction of its aw and pH values is designated as product assessment required (PA) in table A or B of this rule.~~

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

	pH 4.6 or less	pH greater than 4.6 up to 5.6	pH greater than 5.6
aw less than or equal to 0.92	non-TCS food	non-TCS food	non-TCS food
aw greater than 0.92 up to 0.95	non-TCS food	non-TCS food	PA
aw greater than 0.95	non-TCS food	PA	PA

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

	pH less than 4.2	pH 4.2 up to 4.6	pH 4.6 up to 5.0	pH greater than 5.0

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aw less than 0.88	non-TCS food	non-TCS food	non-TCS food	non-TCS food
aw 0.88 to 0.90	non-TCS food- m	non-TCS food	non-TCS food	PA
aw greater than 0.90 up to 0.92	non-TCS food	non-TCS food	PA	PA
aw greater than 0.92	non-TCS food	PA	PA	PA

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

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901:3-4-02 **License.**

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

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

- (B) An application for a license to operate a new retail food establishment during any part of the year shall be filed as hereinafter provided not less than ten days before the retail food establishment is opened for business. If proper application has been made, the facility layout and equipment specifications have been approved and complied with on the final inspection, and all items are in compliance with Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter; the ten-day waiting period may be waived and the license issued. The operator of a mobile retail food establishment shall make application for a license to the board of health of the health district in which the operator's business headquarters are located. The operator of a mobile retail food establishment whose business address is located outside of Ohio shall make application for a license to the board of health having jurisdiction over the operator's first Ohio location in any one licensing year. A retail food establishment license issued to an operator of a mobile retail food establishment by an approved health district, as provided in Chapter 3717. of the Revised Code, shall be recognized by all other licensors in this state.
- (C) The operator of a retail food establishment shall make written application for a license to the licensor on an application form prescribed or approved by the director of agriculture which shall contain all pertinent information related to the premises utilized for the retail food establishment.
- (D) Fees for issuing and renewing retail food establishment licenses, determined by the licensor in accordance with section 3717.25 of the Revised Code, may be levied upon each retail food establishment. These fees shall be used solely for paying the expense of the administration and enforcement of Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter.
- (1) In determining the amount of the annual license fee, the licensor shall use the categories established by rule 901:3-4-03 of the Administrative Code and the cost analysis established by rule 901:3-4-04 of the Administrative Code.

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- (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 ~~or fifty dollars, whichever is less,~~ of any such fee shall be imposed and paid.
- (3) Fees authorized or charged under this paragraph shall be in lieu of all retail food establishment and inspection fees required by the licensor on or with respect to the operation of, ownership of or employment by retail food establishments within this state, except as provided in paragraph (C) of rule 901:3-4-03 of the Administrative Code.
- (E) For each retail food establishment license issued the following applicable amount shall be collected and transmitted by the licensor to the director of agriculture for deposit in the food safety fund created in section 915.24 of the Revised Code and used for administering and enforcing Chapter 3717. of the Revised Code, Chapter 3717-1 of the Administrative Code, and this chapter:
 - (1) Twenty-eight dollars for each license that the licensor issues under the fee category specified in paragraphs (A)(1), (A)(2), and (A)(4) of rule 901:3-4-03 of the Administrative Code; or
 - (2) Fourteen dollars for each license that the licensor issues under the fee category specified in paragraph (B)(1) of rule 901:3-4-03 of the Administrative Code.
- (F) The operator of a retail food establishment that also plans to cater shall apply for a catering food service operation endorsement to their retail food establishment license. A retail food establishment license with such an endorsement shall be recognized by all other licensors in this state. The operator of such an establishment shall maintain a copy of the license at each catered event.
- (G) A license holder shall display the license for that retail food establishment at all times at the licensed location.

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

- (A) Persons seeking approval for a course of study for persons to be certified in food protection, shall make application to the Ohio department of health in accordance with Chapter 3701-21 of the Administrative Code.
- (B) Any person recognized by the Ohio department of health as "certified in food protection" shall also be recognized as such by the Ohio department of agriculture and any other licensor of retail food establishments in Ohio.
- (C) The licensor shall mandate level one certification in food protection training for risk level I, II, III, and IV retail food establishments for the reasons provided in 3701-21-25(I) of the Administrative Code.