



Ohio Revised Code

Section 3717.22 Excluded operations and entities.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

(A) The following are not retail food establishments:

(1) A food service operation licensed under this chapter, including a food service operation that provides the services of a retail food establishment pursuant to an endorsement issued under section 3717.44 of the Revised Code;

(2) An entity exempt under divisions (B)(1) to (9) or (11) to (13) of section 3717.42 of the Revised Code from the requirement to be licensed as a food service operation and an entity exempt under division (B)(10) of that section if the entity is regulated by the department of agriculture as a food processing establishment under section 3715.021 of the Revised Code;

(3) A business or that portion of a business that is regulated by the federal government or the department of agriculture as a food manufacturing or food processing business, including a business or that portion of a business regulated by the department of agriculture under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code.

(B) All of the following are exempt from the requirement to be licensed as a retail food establishment:

(1) An establishment with commercially prepackaged foods that are not potentially hazardous and contained in displays, the total space of which equals less than two hundred cubic feet;

(2) A person at a farmers market that is registered with the director of agriculture pursuant to section 3717.221 of the Revised Code that offers for sale only one or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;



- (c) Tree syrup, sorghum, honey, apple syrup, or apple butter that is produced by a tree syrup or sorghum producer, beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code;
- (d) Wine as authorized under section 4303.2010 of the Revised Code;
- (e) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farmers market.
- (3) A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed;
- (4) A nonprofit organization exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises funds by selling foods and that, if required to be licensed, would be classified as risk level one in accordance with rules establishing licensing categories for retail food establishments adopted under section 3717.33 of the Revised Code, if the sales occur inside a building and are for not more than seven consecutive days or more than fifty-two separate days during a licensing period. This exemption extends to any individual or group raising all of its funds during the time periods specified in division (B)(4) of this section for the benefit of the nonprofit organization by selling foods under the same conditions.
- (5) An establishment that offers food contained in displays of less than five hundred square feet, and if required to be licensed would be classified as risk level one pursuant to rules establishing licensing categories for retail food establishments adopted under section 3717.33 of the Revised Code, on the condition that the establishment offers the food for sale at retail not more than six months in each calendar year;
- (6) A cottage food production operation, on the condition that the operation offers its products directly to the consumer from the site where the products are produced;



- (7) A tree syrup and sorghum processor, beekeeper, or apple syrup and apple butter processor described in division (A) of section 3715.021 of the Revised Code, on the condition that the processor or beekeeper offers only tree syrup, sorghum, honey, apple syrup, or apple butter directly to the consumer from the site where those products are processed;
- (8) A person who annually maintains five hundred or fewer birds, on the condition that the person offers the eggs from those birds directly to the consumer from the location where the eggs are produced or at a farm product auction to which division (B)(11) of this section applies;
- (9) A person who annually raises and slaughters one thousand or fewer chickens, on the condition that the person offers dressed chickens directly to the consumer from the location where the chickens are raised and slaughtered or at a farm product auction to which division (B)(11) of this section applies;
- (10) A person who raises, slaughters, and processes the meat of nonamenable species described in divisions (A) and (B) of section 918.12 of the Revised Code, on the condition that the person offers the meat directly to the consumer from the location where the meat is processed or at a farm product auction to which division (B)(11) of this section applies;
- (11) A farm product auction, on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm product auction only one or more of the following:
- (a) The products described in divisions (B)(8) to (10) of this section that are produced, raised, slaughtered, or processed, as appropriate, by persons described in divisions (B)(8) to (10) of this section;
 - (b) Fresh unprocessed fruits or vegetables;
 - (c) Products of a cottage food production operation;
 - (d) Tree syrup, sorghum, honey, apple syrup, or apple butter that is produced by a tree syrup or sorghum producer, beekeeper, or apple syrup or apple butter processor described in division (A) of



section 3715.021 of the Revised Code.

(12) An establishment that, with respect to offering food for sale, offers only alcoholic beverages or prepackaged beverages that are not potentially hazardous;

(13) An establishment that, with respect to offering food for sale, offers only alcoholic beverages, prepackaged beverages that are not potentially hazardous, or commercially prepackaged food that is not potentially hazardous, on the condition that the commercially prepackaged food is contained in displays, the total space of which equals less than two hundred cubic feet on the premises of the establishment;

(14) An establishment that, with respect to offering food for sale, offers only fountain beverages that are not potentially hazardous;

(15) A person who offers for sale only one or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political subdivision of the state and lasts for a period not longer than seven consecutive days:

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;

(c) Tree syrup, sorghum, honey, apple syrup, or apple butter if produced by a tree syrup or sorghum processor, beekeeper, or apple syrup or apple butter processor as described in division (A) of section 3715.021 of the Revised Code;

(d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet;

(e) Fruit butter produced at the festival or celebration and sold from the production site.

(16) A farm market on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm market only one or more of the



following:

- (a) Fresh unprocessed fruits or vegetables;
 - (b) Products of a cottage food production operation;
 - (c) Tree syrup, sorghum, honey, apple syrup, or apple butter that is produced by a tree syrup or sorghum producer, beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code;
 - (d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farm market;
 - (e) Cider and other juices manufactured on site at the farm market;
 - (f) The products or items described in divisions (B)(8) to (10) of this section, on the condition that those products or items were produced by the person offering to sell them, and further conditioned that, with respect to eggs offered, the person offering to sell them annually maintains five hundred or fewer birds, and with respect to dressed chickens offered, the person annually raises and slaughters one thousand or fewer chickens.
- (17)(a) An establishment to which all of the following apply:
- (i) The establishment serves commercially prepackaged food in a form that prevents direct human contact prior to and during service;
 - (ii) Sales of the prepackaged food do not exceed more than five per cent of the total gross receipts of the establishment;
 - (iii) The establishment has been issued an A-2 permit under section 4303.03 or an A-2f permit under section 4303.031 of the Revised Code and annually produces ten thousand gallons or less of wine;



(b) The owner or operator of the establishment shall notify the director that it is exempt from licensure because it qualifies under division (B)(17)(a) of this section. The owner or operator also shall disclose to customers that the establishment is exempt from licensure.