

3717-1-03.1

Food: sources, specifications, and original containers.

[Comment: For publication dates of the C.F.R. referenced in this rule, see paragraph (B) (15)(b) of rule 3717-1-01 of the Administrative Code.]

(A) Sources - compliance with food law.

- (1) Food shall be obtained from sources that comply with law.
- (2) Except for products obtained from a home bakery registered by the Ohio department of agriculture, products from cottage food production operations, and maple syrup, honey, or sorghum products produced as provided in section 3715.021 of the Revised Code; food prepared in a private home may not be used or offered for human consumption in a food service operation or retail food establishment.
- (3) Packaged food shall be labeled as specified in law, including 21 C.F.R. 101, 9 C.F.R. 317, 9 C.F.R. 381 subpart N, and as specified under paragraphs (N) and (O) of this rule.
- (4) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in paragraph (A)(3)(a) of rule 3717-1-03.3 of the Administrative Code may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under paragraph (E) of rule 3717-1-03.3 of the Administrative Code; or if they are frozen on the premises as specified under paragraph (E) of rule 3717-1-03.3 of the Administrative Code and records are retained as specified under paragraph (F) of rule 3717-1-03.3 of the Administrative Code.
- (5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in paragraph (A) (2) of rule 3717-1-03.3 of the Administrative Code shall be:
 - (a) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or
 - (b) Deemed acceptable by the licenser based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and
 - (c) If individually cut in a food service operation or retail food establishment:

- (i) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in paragraph (A)(5)(a) of this rule or identified as specified in paragraph (A)(5)(b) of this rule;
 - (ii) Prepared so they remain intact; and
 - (iii) If packaged for undercooking in a food service operation or retail food establishment, labeled as specified in paragraph (A)(5)(a) of this rule or identified as specified in paragraph (A)(5)(b) of this rule.
 - (6) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in 9 C.F.R. 317.2(l) and 9 C.F.R. 381.125(b).
 - (7) A food service operation or retail food establishment that sells or serves horse meat as defined in Chapter 919. of the Revised Code shall comply with all applicable provisions of Chapter 919. of the Revised Code.
 - (8) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in 21 C.F.R. 101.17(h).
- (B) Food in a hermetically sealed container - source.
- Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
- (C) Fluid milk and milk products - source.
- Fluid milk and milk products shall be obtained from sources that comply with grade A standards and manufactured milk standards as specified in Chapter 917. of the Revised Code and the rules adopted thereunder.
- (D) Fish - source.
- (1) Fish that are received for sale or service shall be:
 - (a) Commercially and legally caught or harvested; or
 - (b) Approved for sale or service.
 - (2) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(E) Molluscan shellfish - source.

- (1) Molluscan shellfish shall be obtained from sources according to the requirements specified in the United States department of health and human services, public health service, food and drug administration, national shellfish sanitation program guide for the control of molluscan shellfish (2009).
- (2) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the interstate certified shellfish shippers list.

(F) Wild mushrooms - source.

Mushroom species picked in the wild are prohibited for sale or service in a food service operation or retail food establishment. This prohibition does not apply to:

- (1) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or
- (2) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(G) Game animals.

- (1) If game animals are received for sale or service they shall be:
 - (a) Commercially raised for food; and:
 - (i) Raised, slaughtered, and processed under a voluntary inspection program that is conducted under Chapter 918. of the Revised Code, 9 C.F.R. 352, or an equivalent program as determined by the director of agriculture; or
 - (ii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction.
 - (b) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 C.F.R. 352 or rabbits that are "inspected and certified" in accordance with 9 C.F.R. 354 or Chapter 918. of the Revised Code.

- (2) Wild game animals shall not be received for sale or service by a food service operation or retail food establishment.
- (3) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 C.F.R. 17.

(H) Temperature - specifications for receiving.

- (1) Refrigerated, time/temperature controlled for safety food shall be at a temperature of forty-one degrees Fahrenheit (five degrees Celsius) or below when received. This provision does not apply to raw eggs which must be received in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (seven degrees Celsius) or less, milk which may be received at an internal temperature of not more than forty-five degrees Fahrenheit (seven degrees Celsius), or to any other time/temperature controlled for safety food for which another temperature is specified by law governing its distribution, such as red meat and molluscan shellfish.
- (2) Time/temperature controlled for safety food that is cooked to a temperature and for a time specified under paragraph (A), (B), (C), or (D) of rule 3717-1-03.3 of the Administrative Code and received hot shall be at a temperature of one hundred thirty-five degrees Fahrenheit (fifty-seven degrees Celsius) or above.
- (3) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
- (4) Upon receipt, time/temperature controlled for safety food shall be free of evidence of previous temperature abuse.

(I) Additives - specifications for receiving.

Food may not contain unapproved food additives or additives that exceed amounts specified in 21 C.F.R. 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. 181-186, substances that exceed amounts specified in 9 C.F.R. 424.21(b), or pesticide residues that exceed provisions specified in 40 C.F.R. 180.

(J) Eggs - specifications for receiving.

Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States consumer grade B as specified in United States standards, grades, and weight classes for shell eggs, AMS 56.200 et seq., (as ~~published~~ amended on ~~December 31, 1984~~ July 20, 2000) administered by the agricultural marketing service of the USDA.

(K) Eggs and milk products - pasteurized.

- (1) Egg products shall be obtained pasteurized.
- (2) Fluid and dry milk and milk products shall:
 - (a) Be obtained pasteurized; and
 - (b) Comply with grade A or manufactured milk standards as specified in Chapter 917. of the Revised Code and the rules adopted thereunder.
- (3) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 C.F.R. 135.
- (4) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the C.F.R., such as 21 C.F.R. 133 for curing certain cheese varieties.

(L) Package integrity - specifications for receiving.

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(M) Ice - specifications.

Ice for use as a food or as a cooling medium shall be made from drinking water.

(N) Shucked shellfish - packaging and identification.

- (1) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
 - (a) Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and
 - (b) The "sell by" or "best if used by" date for packages with a capacity of less than one-half gallon (1.89 liter) or the date shucked for packages with a capacity of one-half gallon (1.89 liter) or more.
- (2) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under paragraph (N)(1) of this rule shall be subject to embargo, as allowed by rules adopted pursuant to section 3715.551 of the Revised Code, or seizure and destruction in accordance with 21 C.F.R. 1240.60(d).

(O) Shellstock identification - specification for receiving.

(1) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the national shellfish sanitation program guide for the control of molluscan shellfish, and that list:

(a) Except as specified under paragraph (O)(3) of this rule, on the harvester's tag or label, the following information in the following order:

(i) The harvester's identification number that is assigned by the shellfish control authority;

(ii) The date of harvesting;

(iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iv) The type and quantity of shellfish; and

(v) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for ninety days;" and

~~(b) On~~ Except as specified in paragraph (O)(4) of this rule, on each dealer's tag or label, the following information in the following order:

(i) The dealer's name and address, and the certification number assigned by the shellfish control authority;

(ii) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iii) The same information as specified for a harvester's tag under paragraphs (O)(1)(a)(ii) to (O)(1)(a)(iv) of this rule; and

(iv) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for ninety days."

~~If the harvester's tag or label is designed to accommodate each dealer's identification as specified under paragraphs (O)(1)(b)(i) and (O)(1)(b)(ii) of this rule, individual dealer tags or labels need not be provided.~~

- (2) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under paragraph (O)(1) of this rule shall be subject to embargo, as allowed by rules adopted pursuant to section 3715.551 of the Revised Code, or seizure, and destruction in accordance with 21 C.F.R. 1240.60(d).
- (3) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.
- (4) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under paragraphs (O)(1)(b)(i) and (O)(1)(b)(ii) of this rule, individual dealer tags or labels need not be provided.

(P) Shellstock - condition upon receipt.

When received by a food service operation or retail food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

(Q) Molluscan shellfish - original container.

- (1) Molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service except as provided in paragraphs (Q)(2) to (Q)(4) of this rule.
- (2) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
 - (a) The source of the shellstock on display is identified as specified under paragraph (O) of this rule and recorded as specified under paragraph (R) of this rule; and
 - (b) The shellstock are protected from contamination.
- (3) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

- (a) The labeling information for the shellfish on display as specified under paragraph (N) of this rule is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
 - (b) The shellfish are protected from contamination.
- (4) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers if:
 - (a) The labeling information for the shellfish is on each consumer self service container as specified under paragraph (N) of this rule and paragraphs (C)(1), (C)(2)(a) to (C)(2)(e) of rule 3717-1-03.5 of the Administrative Code;
 - (b) The labeling information as specified under paragraph (N) of this rule is retained and correlated with the date when, or dates during which, the shellfish are sold or served;
 - (c) The labeling information and dates specified under paragraph (Q)(4)(b) of this rule are maintained for ninety days; and
 - (d) The shellfish are protected from contamination.
- (R) Shellstock - maintaining identification.
 - (1) Except as specified under paragraph (R)(3)(b) of this rule, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty.
 - (2) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.
 - (3) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date that is recorded on the tag or label, as specified under paragraph (R)(2) of this rule, by:
 - (a) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under paragraph (R)(2) of this rule; and
 - (b) If shellstock are removed from their tagged or labeled container:
 - (i) Preserving source identification by using a record keeping system as specified under paragraph (R)(3)(a) of this rule; and

- (ii) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.

(S) Pre-packaged juice shall:

- (1) Be obtained from a processor with a HACCP system as specified in 21 C.F.R. 120; ~~and either~~or
- (2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. 120.24; or
- (3) Be obtained from a food processing establishment defined in paragraph (B) of rule 901:3-23-01 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 11/13/2018

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3717.04, 3717.05
Rule Amplifies: 3717.04, 3717.05
Prior Effective Dates: 03/01/2001, 03/01/2005, 03/01/2009, 01/01/2013,
06/01/2016