

As Passed by the House

136th General Assembly

Regular Session

2025-2026

Sub. H. B. No. 134

Representatives Gross, Humphrey

Cosponsors: Representatives Fischer, Brennan, Denson, Synenberg, Jarrells, McClain, Ferguson, Deeter, Barhorst, Swearingen, Workman, Dean, Mullins, Sims, McNally, Brewer, Klopfenstein, Newman, Schmidt, Abdullahi, Abrams, Bryant Bailey, Callender, Claggett, Dovilla, Fowler Arthur, Ghanbari, Glassburn, Hall, D., Holmes, John, LaRe, Mathews, A., Miller, M., Mohamed, Peterson, Plummer, Ray, Robb Blasdel, Sigrist, Stephens, Upchurch, White, E., Young

To amend sections 3715.01, 3715.021, 3715.022,	1
3715.023, and 3717.22 and to enact sections	2
3715.026 and 3715.21 of the Revised Code to	3
authorize the sale of certain homemade foods	4
under a microenterprise home kitchen operation	5
registration.	6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3715.01, 3715.021, 3715.022,	7
3715.023, and 3717.22 be amended and sections 3715.026 and	8
3715.21 of the Revised Code be enacted to read as follows:	9

Sec. 3715.01. (A) As used in this chapter:	10
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(1) "Person" means an individual, partnership,	11
corporation, or association.	12

(2) "Food" means:	13
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(a) Articles used for food or drink for humans or animals;	14
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(b) Chewing gum;	15
(c) Articles used for components of any such articles.	16
(3) "Drug" means:	17
(a) Articles recognized in the United States pharmacopoeia and national formulary, or any supplement to them;	18 19
(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;	20 21 22
(c) Articles, other than food, intended to affect the structure or any function of the body of humans or other animals;	23 24 25
(d) Articles intended for use as a component of any of the foregoing articles, other than devices or their components, parts, or accessories.	26 27 28
(4) "Device," except when used in division (B) (1) of this section and in division (A) (10) of section 3715.52, division (F) of section 3715.60, division (A) (5) of section 3715.64, and division (C) of section 3715.67 of the Revised Code, means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is any of the following:	29 30 31 32 33 34 35
(a) Recognized in the United States pharmacopoeia and national formulary, or any supplement to them;	36 37
(b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in humans or animals;	38 39 40
(c) Intended to affect the structure or any function of	41

the body of humans or animals, and that does not achieve any of 42
its principal intended purposes through chemical action within 43
or on the body of humans or animals and is not dependent upon 44
being metabolized for the achievement of any of its principal 45
intended purposes. 46

(5) "Cosmetic" means: 47

(a) Articles intended to be rubbed, poured, sprinkled, or 48
sprayed on, introduced into, or otherwise applied to the human 49
body or any part thereof for cleansing, beautifying, promoting 50
attractiveness, or altering the appearance; 51

(b) Articles intended for use as a component of any such 52
article, except that "cosmetic" does not include soap. 53

(6) "Label" means a display of written, printed, or 54
graphic matter upon the immediate container, exclusive of 55
package liners, of any article. 56

Any word, statement, or other information required by this 57
chapter to appear on the label must appear on the outside 58
container or wrapper, if any, of the retail package of the 59
article, or the label must be easily legible through the outside 60
container or wrapper. 61

(7) "Labeling" means all labels and other written, 62
printed, or graphic matter: 63

(a) Upon an article or any of its containers or wrappers; 64

(b) Accompanying such article. 65

(8) "Advertisement" means all representations disseminated 66
in any manner or by any means, other than by labeling, for the 67
purpose of inducing, or that are likely to induce, directly or 68
indirectly, the purchase of food, drugs, devices, or cosmetics. 69

- (9) "New drug" means: 70
- (a) Any drug the composition of which is such that the 71
drug is not generally recognized among experts qualified by 72
scientific training and experience to evaluate the safety of 73
drugs, as safe for use under the conditions prescribed, 74
recommended, or suggested in the labeling thereof; 75
- (b) Any drug the composition of which is such that the 76
drug, as a result of investigation to determine its safety for 77
use under such conditions, has become so recognized, but that 78
has not, other than in an investigation, been used to a material 79
extent or for a material time under such conditions. 80
- (10) "Contaminated with filth" applies to any food, drug, 81
device, or cosmetic that has not been protected as far as may be 82
necessary by all reasonable means from dust, dirt, and all 83
foreign or injurious substances. 84
- (11) "Honey" means the nectar and saccharine exudation of 85
plants that has been gathered, modified, and stored in a 86
honeycomb by honeybees. 87
- (12) "Finished dosage form" means the form of a drug that 88
is, or is intended to be, dispensed or administered to humans or 89
animals and requires no further manufacturing or processing 90
other than packaging, reconstituting, or labeling. 91
- (13) (a) "Manufacture" means the planting, cultivating, 92
harvesting, processing, making, preparing, or otherwise engaging 93
in any part of the production of a drug by propagating, 94
compounding, converting, or processing, either directly or 95
indirectly by extracting from substances of natural origin, or 96
independently by means of chemical synthesis, or by a 97
combination of extraction and chemical synthesis, and includes 98

the following:	99
(i) Any packaging or repackaging of the drug or labeling	100
or relabeling of its container, the promotion and marketing of	101
the drug, and other activities incident to production;	102
(ii) The preparation and promotion of commercially	103
available products from bulk compounds for resale by pharmacies,	104
licensed health professionals authorized to prescribe drugs, or	105
other persons.	106
(b) "Manufacture" does not include the preparation,	107
compounding, packaging, or labeling of a drug by a pharmacist as	108
an incident to either of the following:	109
(i) Dispensing a drug in the usual course of professional	110
practice;	111
(ii) Providing a licensed health professional authorized	112
to prescribe drugs with a drug for the purpose of administering	113
to patients or for using the drug in treating patients in the	114
professional's office.	115
(14) "Dangerous drug" has the same meaning as in section	116
4729.01 of the Revised Code.	117
(15) "Generically equivalent drug" means a drug that	118
contains identical amounts of the identical active ingredients,	119
but not necessarily containing the same inactive ingredients,	120
that meets the identical compendial or other applicable standard	121
of identity, strength, quality, and purity, including potency,	122
and where applicable, content uniformity, disintegration times,	123
or dissolution rates, as the prescribed brand name drug and the	124
manufacturer or distributor holds, if applicable, either an	125
approved new drug application or an approved abbreviated new	126
drug application unless other approval by law or from the	127

federal food and drug administration is required. 128

No drug shall be considered a generically equivalent drug 129
for the purposes of this chapter if it has been listed by the 130
federal food and drug administration as having proven 131
bioequivalence problems. 132

(16) "Licensed health professional authorized to prescribe 133
drugs" and "prescriber" have the same meanings as in section 134
4729.01 of the Revised Code. 135

(17) "Home" means the primary residence occupied by the 136
residence's owner, on the condition that the residence contains 137
only one stove or oven used for cooking, which may be a double 138
oven, designed for common residence usage and not for commercial 139
usage, and that the stove or oven be operated in an ordinary 140
kitchen within the residence. 141

(18) "Potentially hazardous food" means a food that is 142
natural or synthetic, to which any of the following apply: 143

(a) It has a pH level greater than 4.6 when measured at 144
seventy-five degrees fahrenheit or twenty-four degrees celsius. 145

(b) It has a water activity value greater than 0.85. 146

(c) It requires temperature control because it is in a 147
form capable of supporting the rapid and progressive growth of 148
infectious or toxigenic microorganisms, the growth and toxin 149
production of clostridium botulinum, or in the case of raw 150
shell eggs, the growth of salmonella enteritidis. 151

(19) "Cottage food production operation" means a person 152
who, in the person's home, produces food items that are not 153
potentially hazardous foods, including bakery products, jams, 154
jellies, candy, fruit butter, and similar products specified in 155

rules adopted pursuant to section 3715.025 of the Revised Code. 156

(20) "Biological product" means, except as provided in 157
section 3715.011 of the Revised Code, a drug that is a 158
biological product, as defined on ~~the effective date of this~~ 159
~~amendment~~ March 21, 2017, in subsection (i) of section 351 of 160
the "Public Health Service Act," 42 U.S.C. 262(i). 161

(21) "Interchangeable biological product" means, except as 162
provided in section 3715.011 of the Revised Code, both of the 163
following: 164

(a) A biological product that, on ~~the effective date of~~ 165
~~this amendment~~ March 21, 2017, has been determined by the United 166
States food and drug administration to meet the standards for 167
interchangeability set forth in subsection (k) of section 351 of 168
the "Public Health Service Act," 42 U.S.C. 262(k), as amended, 169
and has been licensed under that subsection; 170

(b) A biological product that, prior to ~~the effective date~~ 171
~~of this amendment~~ March 21, 2017, was determined by the United 172
States food and drug administration to be therapeutically 173
equivalent as set forth in its publication titled "Approved Drug 174
Products with Therapeutic Equivalence Evaluations." 175

(22) "Microenterprise home kitchen operation" means a 176
person who registers with the department of agriculture to sell 177
and deliver food that is produced at the person's home in 178
accordance with section 3715.026 of the Revised Code. 179

(B) For the purposes of sections 3715.52 to 3715.72 of the 180
Revised Code: 181

(1) If an article is alleged to be misbranded because the 182
labeling is misleading, or if an advertisement is alleged to be 183
false because it is misleading, then in determining whether the 184

labeling or advertisement is misleading, there shall be taken 185
into account, among other things, not only representations made 186
or suggested by statement, word, design, device, sound, or in 187
any combination thereof, but also the extent to which the 188
labeling or advertisement fails to reveal facts material in the 189
light of such representations or material with respect to 190
consequence which may result from the use of the article to 191
which the labeling or advertisement relates under the conditions 192
of use prescribed in the labeling or advertisement thereof or 193
under such conditions of use as are customary or usual. 194

(2) The provisions regarding the selling of food, drugs, 195
devices, or cosmetics include the manufacture, production, 196
processing, packing, exposure, offer, possession, and holding of 197
any such article for sale; and the sale, dispensing, and giving 198
of any such article, and the supplying or applying of any such 199
articles in the conduct of any food, drug, or cosmetic 200
establishment. The provisions do not prohibit a licensed health 201
professional authorized to prescribe drugs from administering or 202
personally furnishing a drug or device to a patient. 203

(3) The representation of a drug, in its labeling or 204
advertisement, as an antiseptic is a representation that it is a 205
germicide, except in the case of a drug purporting to be, or 206
represented as, an antiseptic for inhibitory use as a wet 207
dressing, ointment, dusting powder, or other use that involves 208
prolonged contact with the body. 209

(4) Whenever jurisdiction is vested in the director of 210
agriculture or the state board of pharmacy, the jurisdiction of 211
the board shall be limited to the sale, offering for sale, 212
giving away, delivery, or dispensing in any manner of drugs at 213
the wholesale and retail levels or to the consumer and shall be 214

exclusive in the case of such sale, offering for sale, giving 215
away, delivery, or dispensing in any manner of drugs at the 216
wholesale and retail levels or to the consumer in any place 217
where prescriptions are dispensed or compounded. 218

(5) To assist in effectuating the provisions of those 219
sections, the director of agriculture or state board of pharmacy 220
may request assistance or data from any government or private 221
agency or individual. 222

Sec. 3715.021. (A) As used in this section: 223

(1) "Food processing establishment" means a premises or 224
part of a premises where food is processed, packaged, 225
manufactured, or otherwise held or handled for distribution to 226
another location or for sale at wholesale. "Food processing 227
establishment" includes the activities of a bakery, 228
confectionery, cannery, bottler, warehouse, or distributor, and 229
the activities of an entity that receives or salvages distressed 230
food for sale or use as food. A "food processing establishment" 231
does not include a cottage food production operation; a 232
microenterprise home kitchen operation; a small egg producer; a 233
processor of tree syrup who boils sap when a minimum of seventy- 234
five per cent of the sap used to produce the syrup is collected 235
directly from trees by that processor; a processor of sorghum 236
who processes sorghum juice when a minimum of seventy-five per 237
cent of the sorghum juice used to produce the sorghum is 238
extracted directly from sorghum plants by that processor; a 239
beekeeper who jars honey when a minimum of seventy-five per cent 240
of the honey is from that beekeeper's own hives; or a processor 241
of apple syrup or apple butter who directly harvests from trees 242
a minimum of seventy-five per cent of the apples used to produce 243
the apple syrup or apple butter. 244

(2) "Small egg producer" means any person that is engaged 245
in the operation of egg production and annually maintains five 246
hundred or fewer birds. 247

(B) The director of agriculture shall adopt rules in 248
accordance with Chapter 119. of the Revised Code that establish, 249
when otherwise not established by the Revised Code, standards 250
and good manufacturing practices for food processing 251
establishments, including the facilities of food processing 252
establishments and their sanitation. The rules shall conform 253
with or be equivalent to the standards for foods established by 254
the United States food and drug administration in Title 21 of 255
the Code of Federal Regulations. 256

A business or that portion of a business that is regulated 257
by the department of agriculture under Chapter 917. or 918. of 258
the Revised Code is not subject to regulation under this section 259
as a food processing establishment. 260

Sec. 3715.022. (A) All food products, including those 261
produced and packaged by a cottage food production operation or 262
microenterprise home kitchen operation, and all packaged maple 263
syrup, sorghum, and honey, are subject to food sampling 264
conducted by the director of agriculture, or a representative 265
the director authorizes, to determine if a food product is 266
misbranded or adulterated. A component of the food sampling 267
conducted under this section may include the performance of 268
sample analyses in accordance with section 3715.02 of the 269
Revised Code. 270

The director of agriculture shall adopt rules as the 271
director considers necessary to establish standards for food 272
sampling and procedures for administration of this section. The 273
rules shall be adopted in accordance with Chapter 119. of the 274

Revised Code. 275

(B) Labeling requirements do not apply to fruit butter 276
produced at a festival or celebration, if the festival or 277
celebration is organized by a political subdivision of this 278
state and the fruit butter is sold during the festival or 279
celebration from the production site. 280

Sec. 3715.023. (A) A cottage food production operation, a 281
microenterprise home kitchen operation, and a maple syrup or 282
sorghum processor and beekeeper described in division (A) of 283
section 3715.021 of the Revised Code shall label each of their 284
food products and include the following information on the label 285
of each of their food products: 286

(1) The name and address of the business of the cottage 287
food production operation, microenterprise home kitchen 288
operation, processor, or beekeeper; 289

(2) The name of the food product; 290

(3) The ingredients of the food product, in descending 291
order of predominance by weight; 292

(4) The net weight and volume of the food product; 293

(5) In the case of a cottage food production operation or 294
microenterprise home kitchen operation, the following statement 295
in ten-point type: "This product is home produced." 296

(B) ~~Food~~ Except as provided in section 3715.026 of the 297
Revised Code, food products identified and labeled in accordance 298
with division (A) of this section are acceptable food products 299
that a retail food establishment or food service operation 300
licensed under Chapter 3717. of the Revised Code may offer for 301
sale or use in preparing and serving food. 302

<u>Sec. 3715.026. (A) As used in this section:</u>	303
<u>(1) "Homemade food item" means any food made at the home</u>	304
<u>of a microenterprise home kitchen operation.</u>	305
<u>"Homemade food item" does not include any of the</u>	306
<u>following:</u>	307
<u>(a) Low-acid canned foods;</u>	308
<u>(b) Alcoholic beverages;</u>	309
<u>(c) Foods prepared through smoking or curing as a</u>	310
<u>preservation method;</u>	311
<u>(d) Juices unless produced by a microenterprise home</u>	312
<u>kitchen operation in accordance with the standards that apply to</u>	313
<u>a food service operation or retail food establishment specified</u>	314
<u>in section 3715.21 of the Revised Code;</u>	315
<u>(e) Custom processed meats or poultry;</u>	316
<u>(f) Shellfish from the operation of a molluscan shellfish</u>	317
<u>life-support system display tank used to store or display</u>	318
<u>shellfish that are offered for human consumption;</u>	319
<u>(g) Potentially hazardous foods prepared using reduced</u>	320
<u>oxygen methods;</u>	321
<u>(h) Food containing any drug.</u>	322
<u>(2) "Home kitchen" means the home kitchen in which the</u>	323
<u>microenterprise home kitchen operation does or will prepare all</u>	324
<u>homemade food items for sale to a consumer.</u>	325
<u>(B) (1) The director of agriculture shall issue an</u>	326
<u>microenterprise home kitchen operation registration to a</u>	327
<u>microenterprise home kitchen operation when application is made</u>	328
<u>by an operation in accordance with procedures established by the</u>	329

director of agriculture. Such registration shall be valid from 330
the date it is issued through the last day of January of the 331
following year; however registrations issued between the first 332
day of January through the thirtieth day of January of a year 333
expire on the thirty-first day of January of that year. An 334
application for registration shall be accompanied by a 335
registration fee of twenty-five dollars. However, if a person 336
submits an application for registration within six months of the 337
expiration date of the registration, the fee shall be one-half 338
of the registration fee. 339

(2) The department shall renew a microenterprise home 340
kitchen operation registration if the operation is in compliance 341
with this section, submits a renewal application in accordance 342
with procedures established by the director of agriculture, and 343
pays a twenty-five-dollar renewal fee. A renewed registration 344
shall be valid from the first day of February through the last 345
day of January of the following year. 346

(C) (1) The director or the director's designee shall 347
inspect the premises of every microenterprise home kitchen 348
operation. Inspections shall be limited to the home kitchen in 349
the home, locations of the home where homemade food items and 350
ingredients are stored, and bathrooms in the home for the 351
purpose of ensuring that there is a functioning hand washing 352
sink and liquid soap. 353

(2) The director or the director's designee shall obtain a 354
search warrant when required by law to enter a home if a 355
microenterprise home kitchen operation does not consent to an 356
inspection. A search warrant or administrative warrant is 357
otherwise not required to conduct an inspection under this 358
section. 359

(3) The director may charge a fee to a microenterprise 360
home kitchen operation to cover the administrative costs of 361
conducting inspections that shall not exceed fifty dollars 362
annually. 363

(4) The department shall publish its inspection standards 364
on its web site. 365

(D) A microenterprise home kitchen operation shall do all 366
of the following: 367

(1) Allow the department to conduct home kitchen 368
inspections in accordance with division (C) of this section; 369

(2) Produce all homemade food items in the inspected 370
kitchen; 371

(3) Label the homemade food items in accordance with 372
section 3715.023 of the Revised Code; 373

(4) Operate the home kitchen and premises in which the 374
home kitchen is located in accordance with the requirements 375
described in division (E) of this section; 376

(5) Sell and deliver homemade food items in accordance 377
with the requirements in division (F) of this section. 378

(E) Except as specified in division (D)(3) of this 379
section, a microenterprise home kitchen operation shall not 380
operate unless the operation is in compliance with those food 381
safety standards set forth in the Ohio uniform food safety code 382
that could reasonably apply to a microenterprise home kitchen 383
operation. The director or the director's designee shall publish 384
on its web site the food safety standards that apply to 385
microenterprise home kitchen operations. The director or the 386
director's designee shall not require a microenterprise home 387

<u>kitchen operation to do any of the following:</u>	388
<u>(1) Use commercial kitchen equipment or other specialized</u>	389
<u>kitchen equipment such as a three-compartment sink;</u>	390
<u>(2) Alter the structure or design of the home kitchen;</u>	391
<u>(3) Install or modify venting in the home kitchen;</u>	392
<u>(4) Require a certain countertop be used in a home</u>	393
<u>kitchen;</u>	394
<u>(5) Prevent the presence of pets from parts of the home</u>	395
<u>where food is not being stored or prepared, including the</u>	396
<u>kitchen when homemade food items to be sold are not being</u>	397
<u>prepared.</u>	398
<u>(F) A microenterprise home kitchen operation shall comply</u>	399
<u>with all of the following sale and delivery requirements:</u>	400
<u>(1) A homemade food item that is not a dairy product or</u>	401
<u>does not contain meat, poultry, or seafood may be sold by the</u>	402
<u>microenterprise home kitchen operation to the consumer in person</u>	403
<u>or remotely, including by telephone or internet, or by an agent</u>	404
<u>of the microenterprise home kitchen operation or a third-party</u>	405
<u>vendor, such as a retail shop or grocery store, and may be</u>	406
<u>delivered by the microenterprise home kitchen operation or</u>	407
<u>third-party carrier, such as the United States postal service.</u>	408
<u>(2) Homemade food items that are dairy products or contain</u>	409
<u>meat, poultry, or seafood shall be sold by the microenterprise</u>	410
<u>home kitchen operation to the consumer, either in person or</u>	411
<u>remotely, including by telephone or internet, or by an agent of</u>	412
<u>the microenterprise home kitchen operation or a third-party</u>	413
<u>vendor, but shall be delivered by the microenterprise home</u>	414
<u>kitchen operation to the consumer in person.</u>	415

(3) If a potentially hazardous food item is transported 416
before final delivery to the consumer, the food shall be 417
maintained at an appropriate temperature during transport, shall 418
not be transported more than once, and shall not be transported 419
for longer than two hours. 420

(4) Before selling any food under this section, a 421
microenterprise home kitchen operation shall complete food 422
safety training approved by the director or the director's 423
designee. The director or the director's designee shall ensure 424
that low-cost and online options for training are available for 425
microenterprise home kitchen operations. 426

(G) A microenterprise home kitchen operation's gross 427
receipts for sales of potentially hazardous homemade food items 428
under the registration shall not exceed one hundred fifty 429
thousand dollars per calendar year. This section shall not be 430
construed to interfere with a microenterprise home kitchen 431
operation's ability to also sell food as a cottage food 432
operation or a licensed home bakery. 433

(H) The director or the director's designee may issue a 434
fine not to exceed seventy-five dollars to a microenterprise 435
home kitchen operation that is found to be in violation of any 436
of the requirements of this section. The director or the 437
director's designee shall first issue a warning and give the 438
microenterprise home kitchen operation the opportunity to 439
correct a violation before issuing a fine. 440

(I) (1) The director or the director's designee may issue 441
an order suspending or revoking a microenterprise home kitchen 442
operation registration for a violation of this section. Except 443
as provided in division (I) (2) of this section, a registration 444
shall not be suspended or revoked until the registration holder 445

is provided a warning and has had an opportunity to correct the 446
violation. The microenterprise home kitchen operation may appeal 447
the suspension or revocation in accordance with Chapter 119. of 448
the Revised Code. 449

(2) If the director or the director's designee determines 450
that a microenterprise home kitchen operation presents an 451
immediate danger to the public health, the director may issue an 452
order immediately suspending the operation's registration 453
without affording the registration holder a warning or an 454
opportunity for a hearing. The director then shall afford the 455
registration holder an opportunity for a hearing for 456
registration reinstatement in accordance with Chapter 119. of 457
the Revised Code not later than ten days after the date of 458
suspension. 459

(J) This section does not prohibit a person from operating 460
as an exempt cottage food operation if the person only sells and 461
delivers food permitted under this chapter for a cottage food 462
operation. 463

(K) This section does not prohibit a local government from 464
enforcing a generally applicable zoning law. 465

Sec. 3715.21. (A) As used in this section, "meat" means 466
game animals, migratory waterfowl, and game birds. 467

(B) A food service operation or retail food establishment 468
shall not custom process meat unless such processing is done at 469
the end of the work shift or day to prevent any cross 470
contamination of product for sale or service. 471

(C) Prior to entry into the food service operation or 472
retail food establishment, a food service operation or retail 473
food establishment shall ensure that, with respect to custom 474

process meat, any animal carcass is skinned, beheaded, 475
eviscerated, and free of hair, and any bird carcass is 476
eviscerated and free of feathers. 477

(D) If the hide and head of a custom meat product is to be 478
retained for the owner, the food service operation or retail 479
food establishment shall package and segregate the product from 480
all food. 481

(E) A food service operation or retail food establishment 482
that custom processes any meat product shall ensure that the 483
product is wrapped or containerized and stored segregated from 484
all retail products so as to prevent contamination. 485

(F) Immediately after custom meat processing, a food 486
service operation or retail food establishment shall ensure that 487
all knives, tables, hooks, grinders, tenderizers, lugs, inedible 488
barrels, saws, or any other equipment soiled during custom meat 489
processing are thoroughly cleaned as specified in divisions (F) 490
to (I) of rule 3717-1-04.5 of the Administrative Code, rinsed as 491
specified in division (J) of rule 3717-1-04.5 of the 492
Administrative Code, and sanitized as specified in rule 3717-1- 493
04.6 of the Administrative Code. 494

(G) When a department of natural resources inspection tag 495
is required for an animal subject to custom meat processing, a 496
food service operation or retail food establishment shall ensure 497
that the tag or tag number remains with the animal throughout 498
the custom process period and returned with the meat product to 499
the owner. 500

(H) A food service operation or retail food establishment 501
shall identify all products for custom meat processing in the 502
facility as not for sale. 503

Sec. 3717.22. (A) The following are not retail food 504
establishments: 505

(1) A food service operation licensed under this chapter, 506
including a food service operation that provides the services of 507
a retail food establishment pursuant to an endorsement issued 508
under section 3717.44 of the Revised Code; 509

(2) An entity exempt under divisions (B)(1) to (9), (11) 510
to (13), or (15) of section 3717.42 of the Revised Code from the 511
requirement to be licensed as a food service operation and an 512
entity exempt under division (B)(10) of that section if the 513
entity is regulated by the department of agriculture as a food 514
processing establishment under section 3715.021 of the Revised 515
Code; 516

(3) A business or that portion of a business that is 517
regulated by the federal government or the department of 518
agriculture as a food manufacturing or food processing business, 519
including a business or that portion of a business regulated by 520
the department of agriculture under Chapter 911., 913., 915., 521
917., 918., or 925. of the Revised Code. 522

(B) All of the following are exempt from the requirement 523
to be licensed as a retail food establishment: 524

(1) An establishment with commercially prepackaged foods 525
that are not potentially hazardous and contained in displays, 526
the total space of which equals less than two hundred cubic 527
feet; 528

(2) A person at a farmers market that offers for sale only 529
one or more of the following: 530

(a) Fresh unprocessed fruits or vegetables; 531

(b) Products of a cottage food production operation or 532
microenterprise home kitchen operation; 533

(c) Tree syrup, sorghum, honey, apple syrup, or apple 534
butter that is produced by a tree syrup or sorghum producer, 535
beekeeper, or apple syrup or apple butter processor described in 536
division (A) of section 3715.021 of the Revised Code; 537

(d) Wine as authorized under section 4303.2010 of the 538
Revised Code; 539

(e) Commercially prepackaged food that is not potentially 540
hazardous, on the condition that the food is contained in 541
displays, the total space of which equals less than one hundred 542
cubic feet on the premises where the person conducts business at 543
the farmers market. 544

(3) A person who offers for sale at a roadside stand only 545
fresh fruits and fresh vegetables that are unprocessed; 546

(4) A nonprofit organization exempt from federal income 547
taxation under section 501(c)(3) of the "Internal Revenue Code 548
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises 549
funds by selling foods and that, if required to be licensed, 550
would be classified as risk level one in accordance with rules 551
establishing licensing categories for retail food establishments 552
adopted under section 3717.33 of the Revised Code, if the sales 553
occur inside a building and are for not more than seven 554
consecutive days or more than fifty-two separate days during a 555
licensing period. This exemption extends to any individual or 556
group raising all of its funds during the time periods specified 557
in division (B)(4) of this section for the benefit of the 558
nonprofit organization by selling foods under the same 559
conditions. 560

(5) An establishment that offers food contained in 561
displays of less than five hundred square feet, and if required 562
to be licensed would be classified as risk level one pursuant to 563
rules establishing licensing categories for retail food 564
establishments adopted under section 3717.33 of the Revised 565
Code, on the condition that the establishment offers the food 566
for sale at retail not more than six months in each calendar 567
year; 568

(6) A cottage food production operation, on the condition 569
that the operation offers its products directly to the consumer 570
from the site where the products are produced; 571

(7) A tree syrup and sorghum processor, beekeeper, or 572
apple syrup and apple butter processor described in division (A) 573
of section 3715.021 of the Revised Code, on the condition that 574
the processor or beekeeper offers only tree syrup, sorghum, 575
honey, apple syrup, or apple butter directly to the consumer 576
from the site where those products are processed; 577

(8) A person who annually maintains five hundred or fewer 578
birds, on the condition that the person offers the eggs from 579
those birds directly to the consumer from the location where the 580
eggs are produced or at a farm product auction to which division 581
(B) (11) of this section applies; 582

(9) A person who annually raises and slaughters one 583
thousand or fewer chickens, on the condition that the person 584
offers dressed chickens directly to the consumer from the 585
location where the chickens are raised and slaughtered or at a 586
farm product auction to which division (B) (11) of this section 587
applies; 588

(10) A person who raises, slaughters, and processes the 589

meat of nonamenable species described in divisions (A) and (B) 590
of section 918.12 of the Revised Code, on the condition that the 591
person offers the meat directly to the consumer from the 592
location where the meat is processed or at a farm product 593
auction to which division (B) (11) of this section applies; 594

(11) A farm product auction, on the condition that it is 595
registered with the director pursuant to section 3717.221 of the 596
Revised Code that offers for sale at the farm product auction 597
only one or more of the following: 598

(a) The products described in divisions (B) (8) to (10) of 599
this section that are produced, raised, slaughtered, or 600
processed, as appropriate, by persons described in divisions (B) 601
(8) to (10) of this section; 602

(b) Fresh unprocessed fruits or vegetables; 603

(c) Products of a cottage food production operation or 604
microenterprise home kitchen operation; 605

(d) Tree syrup, sorghum, honey, apple syrup, or apple 606
butter that is produced by a tree syrup or sorghum producer, 607
beekeeper, or apple syrup or apple butter processor described in 608
division (A) of section 3715.021 of the Revised Code. 609

(12) An establishment that, with respect to offering food 610
for sale, offers only alcoholic beverages or prepackaged 611
beverages that are not potentially hazardous; 612

(13) An establishment that, with respect to offering food 613
for sale, offers only alcoholic beverages, prepackaged beverages 614
that are not potentially hazardous, or commercially prepackaged 615
food that is not potentially hazardous, on the condition that 616
the commercially prepackaged food is contained in displays, the 617
total space of which equals less than two hundred cubic feet on 618

the premises of the establishment; 619

(14) An establishment that, with respect to offering food 620
for sale, offers only fountain beverages that are not 621
potentially hazardous; 622

(15) A person who offers for sale only one or more of the 623
following foods at a festival or celebration, on the condition 624
that the festival or celebration is organized by a political 625
subdivision of the state and lasts for a period not longer than 626
seven consecutive days: 627

(a) Fresh unprocessed fruits or vegetables; 628

(b) Products of a cottage food production operation or 629
microenterprise home kitchen operation; 630

(c) Tree syrup, sorghum, honey, apple syrup, or apple 631
butter if produced by a tree syrup or sorghum processor, 632
beekeeper, or apple syrup or apple butter processor as described 633
in division (A) of section 3715.021 of the Revised Code; 634

(d) Commercially prepackaged food that is not potentially 635
hazardous, on the condition that the food is contained in 636
displays, the total space of which equals less than one hundred 637
cubic feet; 638

(e) Fruit butter produced at the festival or celebration 639
and sold from the production site. 640

(16) A farm market on the condition that it is registered 641
with the director pursuant to section 3717.221 of the Revised 642
Code that offers for sale at the farm market only one or more of 643
the following: 644

(a) Fresh unprocessed fruits or vegetables; 645

(b) Products of a cottage food production operation or 646
microenterprise home kitchen operation; 647

(c) Tree syrup, sorghum, honey, apple syrup, or apple 648
butter that is produced by a tree syrup or sorghum producer, 649
beekeeper, or apple syrup or apple butter processor described in 650
division (A) of section 3715.021 of the Revised Code; 651

(d) Commercially prepackaged food that is not potentially 652
hazardous, on the condition that the food is contained in 653
displays, the total space of which equals less than one hundred 654
cubic feet on the premises where the person conducts business at 655
the farm market; 656

(e) Cider and other juices manufactured on site at the 657
farm market; 658

(f) The products or items described in divisions (B) (8) to 659
(10) of this section, on the condition that those products or 660
items were produced by the person offering to sell them, and 661
further conditioned that, with respect to eggs offered, the 662
person offering to sell them annually maintains five hundred or 663
fewer birds, and with respect to dressed chickens offered, the 664
person annually raises and slaughters one thousand or fewer 665
chickens. 666

(17) (a) An establishment to which all of the following 667
apply: 668

(i) The establishment has been issued an A-2 permit under 669
section 4303.03 of the Revised Code or an A-2f permit under 670
section 4303.031 of the Revised Code, annually produces ten 671
thousand gallons or less of wine, and sells that wine in 672
accordance with Chapter 4303. of the Revised Code on the 673
premises of the establishment. 674

(ii) The establishment serves unopened commercially 675
prepackaged food, other than wine. 676

(iii) The amount of the establishment's commercially 677
prepackaged food sales, other than wine sales, for the previous 678
calendar year did not exceed five per cent of the 679
establishment's total gross receipts. 680

(b) The owner or operator of the establishment shall 681
notify the director that it is exempt from licensure because it 682
qualifies under division (B) (17) (a) of this section. The owner 683
or operator also shall display a notice in a place conspicuous 684
to all of its guests informing them that the establishment is 685
not required to be licensed as a retail food establishment. 686

(18) A microenterprise home kitchen operation that sells 687
and delivers food in accordance with section 3715.026 of the 688
Revised Code. 689

Section 2. That existing sections 3715.01, 3715.021, 690
3715.022, 3715.023, and 3717.22 of the Revised Code are hereby 691
repealed. 692