

POLICY AND PROCEDURE

SUBJECT/TITLE:	Embargo & Destruction Procedures
SCOPE:	Food Safety Program, Environmental Health
CONTACT PERSON & DIVISION:	Stephanie Zmuda, RS, Environmental Health Director
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PURPOSE

The intent of this document is to set forth a policy and procedures for the destruction and/or embargo of food products that are misbranded, expired, or adulterated; not from an approved source; or unsound, filthy, decomposed, putrid, deleterious, or poisonous. Such a policy and procedures are important to prevent illness and injury and protect public health.

POLICY

If a food product is found to be misbranded, expired or adulterated when conducting an inspection, it shall be voluntarily destroyed by the operator or embargoed. Food to be embargoed shall be embargoed as specified in Ohio Administrative Code 3701-21-27 and 901:3-4-15. If a food product is not from an approved source or is unsound, filthy, decomposed, putrid, deleterious, or poisonous, it shall be voluntarily destroyed by the operator, or it may be destroyed by the licensor.

AUTHORITY

Board of Health Resolution 2015-137 and OAC 901:3-4-15 Embargo of Food

GLOSSARY OF TERMS

The following definitions are relevant to this document.

Adulterated (ORC 3715.59) – Food is adulterated within the meaning of sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the Revised Code, if any of the following apply:

- (A) It bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, the food shall not be considered adulterated if the quantity of the substance in the food does not ordinarily render it injurious to health.
- (B) It bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of section 3715.62 of the Revised Code.
- (C) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.
- (D) It has been produced, processed, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.
- (E) It is the product of a diseased animal or an animal that has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse.
- (F) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

- (G) Any valuable constituent has been, in whole or in part, omitted or abstracted from the food.
- (H) Any substance has been substituted wholly or in part for the food.
- (I) Damage or inferiority has been concealed in any manner.
- (J) Any substance has been added to or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.
- (K) It is confectionery and it bears or contains any alcohol or nonnutritive article or substance other than harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural wax not in excess of four-tenths of one per cent, harmless natural gum, or pectin, except that this division shall not apply to any confectionery by reason of its containing less than one-half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.
- (L) It bears or contains a coal-tar color other than one from a batch certified under authority of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.
- (M) It has been processed or produced in violation of section 3715.025 of the Revised Code.

Approved Source (OAC 3717-1-01(4)(a-d)) –

(4) Approved source means a food is from:

- (a) A processor that is inspected by a federal food safety regulatory agency or equivalent, the Ohio department of agriculture under Chapter 3715., 911., 913., 915., 917., 918. whether mandatory or voluntary, or 925. of the Revised Code, or other recognized food regulatory agency of another state responsible for food safety; or
- (b) A cottage food production operation as defined in division (A) of section 3715.01 of the Revised Code, or an exempt processor of maple syrup, honey, or sorghum as specified in division (A) of section 3715.021 of the Revised Code; and that is in compliance with the provisions of Chapter 3715. of the Revised Code and any applicable rules adopted thereunder;
- (c) A food service operation or retail food establishment as defined and licensed in accordance with Chapter 3717. of the Revised Code provided the processing is not subject to regulation as stated in paragraphs (B)(4)(a) and (B)(4)(b) of this rule.
- (d) The term "approved source" is not applicable to fresh unprocessed fruits and vegetables with the exception of mushrooms and sprouts.

Expired (OAC 901:3-4-15) –

(A) For the purposes of this rule, "expired" means:

- (1) In the case of infant formula, the "use by" date required by 21 C.F.R. 107.20 has passed; or
- (2) In the case of baby food, that any expiration date, "use by" date, or sale date established by state or federal law or marked on the container by the manufacturer, processor, or packager has passed.

Misbranded (ORC 3715.60 (Ohio Food & Drug Law)) – Food is misbranded within the meaning of sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the Revised Code, if:

- (A) Its labeling is false or misleading in any particular.
- (B) It is offered for sale under the name of another food.
- (C) Its container is so made, formed, or filled as to be misleading.
- (D) It is an imitation of another food, unless its label bears in type of uniform size and prominence, the word "imitation," and immediately thereafter the name of the food imitated.
- (E) When it is in package form, it does not bear a label containing:
 - (1) The name and place of business of the manufacturer, packer, or distributor;
 - (2) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that reasonable variations shall be permitted, and exemptions as to small packages shall be established by rules adopted by the director of agriculture;
 - (3) In the case of food subject to section 3715.023 of the Revised Code, the information specified in that section.

- (F) Any word, statement, or other information required by or under authority of sections 3715.01, 3715.02, and 3715.52 to 3715.72 of the Revised Code, to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (G) It purports to be, or is represented as, a food for which a definition and standard of identity have been prescribed by statute, or by any rule adopted under an existing statute, or by rule as provided by section 3715.02 of the Revised Code, unless:
- (1) It conforms to such definition and standard.
 - (2) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such statute or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.
- (H) It purports to be or is represented as:
- (1) A food for which a standard of quality has been prescribed by rule as provided by section 3715.02 of the Revised Code and its quality falls below the standard unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;
 - (2) A food for which a standard or standards of fill of container have been prescribed by rule as provided by section 3715.02 of the Revised Code, and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard.
- (I) It is not subject to the provisions of division (G) of this section, unless it bears labeling clearly giving:
- (1) The common or usual name of the food, if any;
 - (2) In case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance with the requirements of division (I)(2) of this section is impractical or results in deception or unfair competition, exemptions shall be established by rules adopted by the director; and provided that these requirements shall not apply to any carbonated beverage of which a full and correct statement of the ingredients, to the extent prescribed by division (I)(2) of this section, has been filed under oath with the director.
- (J) It purports to be or is represented to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as is provided by rules adopted by the director, as necessary, in order to fully inform purchasers as to its value for such uses.
- (K) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this division is impracticable, exemptions shall be established by rules adopted by the director.

PROCEDURES & STANDARD OPERATING GUIDELINES

If a food product is to be embargoed or destroyed, the inspecting sanitarian must notify the Environmental Health Director to obtain approval prior to tagging or destroying any item(s).

Procedure for Adulterated, Expired, Misbranded

Step	Action
Voluntary Destruction by Operator	
1	If a food product is adulterated, expired, or misbranded, request that the operator voluntarily destroy the item(s). If a food product is voluntarily destroyed by the operator, ensure that the proper Voluntary Destruction form is completed and then attached to the inspection report (scan and attach the destruction form to the inspection form in Healthspace®).
Embargo by Licensor	
If a food product is not voluntarily destroyed by the operator, and is adulterated, expired, or misbranded, it should be embargoed by the licensor using the following steps:	

1	Determine the item(s) to be tagged with the designated Embargo tag. The food item(s) must fit the definition of adulterated, expired, or misbranded AND the facility must have refused to voluntarily destroy the food items.
2	A protected area must be identified and all embargoed item(s) must be moved to the protected location. This may be a specific area in a walk-in cooler, storage room, etc.
3	Once all food item(s) have been relocated to the specified area, photographic evidence must be gathered to document the embargoed item(s). Ensure that all item(s) are documented via photographs.
4	On a standard inspection report, cite the following violation: a. RFE cite: 901:3-4-15(B) Embargo of Food b. FSO cite: 3701-21-27 Embargo of Food
5	Thoroughly document starting with the following statement: "The following food item(s), (insert food items) were embargoed because they are suspected to be <u>misbranded/adulterated/expired</u> (select all that apply). The proper Embargo tag has been affixed to the food item(s). The removal of the tag or disposal of the food item(s) is not permitted until approval is given by the licensor or the court."
6	Follow procedure as outlined to petition the Court for approval to have the food item(s) destroyed. (PER CITY LAW DIRECTOR)

Procedure for Unapproved Source, Unsound, Filthy, Decomposed, Putrid, Deleterious, Poisonous

Step	Action
<i>Voluntary Destruction by Operator</i>	
1	If a food product is not from an approved source or is unsound, filthy, decomposed, putrid, deleterious, or poisonous, request that the operator voluntarily destroy the food item(s). If product is voluntarily destroyed by the operator, ensure that the proper Voluntary Destruction form is completed and then attached to the inspection report (scan and attach the destruction form to the inspection form in Healthspace®).
<i>Destruction by Licensor</i>	
If a food product is not voluntarily destroyed by the operator, and is not from an approved source or is unsound, filthy, decomposed, putrid, deleterious, or poisonous, it is declared to be a nuisance and shall be destroyed by the licensor using the following steps:	
1	Determine the item(s) that are unapproved. Ensure the item(s) do not come from an approved source as defined above, <u>and/or</u> are unsound, filthy, decomposed, putrid, deleterious, or poisonous.
2	Thoroughly photograph the food item(s) and any necessary packaging.
3	Request again that the operator destroy the food item(s). Ensure that the operator has been instructed that if he/she does not destroy the item(s), we will take necessary action to destroy the item(s).
4	Identify an exterior dumpster where the food item(s) can be discarded. Move the item(s) to the exterior dumpster and remove the food from any packaging.
5	Photograph the food item(s) that have been deemed unsaleable and destroyed after they have been placed into the dumpster.
6	On a standard inspection report, cite the following violation: FSO/RFE : 901:3-4-15(E) Embargo of Food
7	Thoroughly document starting with the following statement: "The following food item(s), (insert thorough description of the food items) were declared to be a nuisance and condemned to destruction under authority of GCHD BOH Resolution 2015-137. The food item(s) were found to be <u>unapproved source/unsound/filthy/decomposed/putrid/deleterious/poisonous</u> (select all that apply). It was requested that the operator voluntarily destroy the food items numerous times but he/she did not comply. The item(s) were condemned and destroyed."

CONTRIBUTORS

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SIGNATURES

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_____/_____/_____
Date