



## Ohio Administrative Code Rule 901:3-4-15 Embargo of food.

Effective: June 16, 2003

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(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.

(B) Whenever a licensor finds or has cause to believe within a retail food establishment or food service operation in their jurisdiction that any food is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, or that infant formula, or baby food is expired, the licensor shall affix to the item a tag giving notice that the item is, or is suspected of being, adulterated, misbranded, or expired and has been embargoed. The tag shall warn all persons not to remove or dispose of the item by sale or otherwise until permission for removal or disposal is given by the licensor or the court. No person may remove or dispose of a detained or embargoed item by sale or otherwise without such permission.

(C) When a food, infant formula, or baby food that has been embargoed has been found by the licensor to be adulterated, misbranded, or expired, the licensor shall petition the municipal or county court in whose jurisdiction the item is embargoed for an order for condemnation of the item. When the licensor has not found within ten days that an item embargoed is adulterated, misbranded, or expired, the licensor shall remove the tag or other marking.

(D) If the court finds that an embargoed item is adulterated, misbranded, or expired, the item shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of the licensor, and all court costs, fees, storage, and other proper expenses shall be taxed against the claimant of the item or the claimant's agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the item, the court, after entry of the decree and after



such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the item shall be so labeled or processed, has been executed, may by order direct that the item be delivered to the claimant thereof for labeling or processing under the supervision of the licensor. The expense of supervision shall be paid by the claimant. The bond shall be returned to the claimant of the item on representation to the court by the licensor that the item is no longer in violation of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, and that the expenses of supervision have been paid.

(E) Whenever the licensor finds in any retail food establishment or food service operation, any meat, seafood, poultry, vegetable, fruit, or other perishable foods that are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the foods are declared to be a nuisance, and the licensor shall forthwith condemn or destroy the foods, or in any other manner render the items unsalable as human food.

(F) Any action that may be taken by a licensor under paragraphs (A) to (E) of this rule may be taken by a health commissioner or other person employed by the licensor if the person or health commissioner is authorized by the licensor to take the action.