

902 KAR 45:005. Kentucky food code.

RELATES TO: KRS 217.005-217.205, 217.280-217.390, 217.990-217.992, 219.011

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(c), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(1)(c) authorize the Cabinet for Health and Family Services to regulate food service establishments and retail food stores. This administrative regulation establishes a uniform code for the regulation of all food service establishments and retail food stores for the purpose of protecting the public health.

Section 1. Definitions. (1) "2013 FDA Food Code" means the 2013 edition of the Food Code published by the U.S. Public Health Service and the U.S. Food and Drug Administration.

(2) "Cabinet" is defined by KRS 217.015(3).

(3) "Complex food preparation" means the process of preparing a food item that includes two (2) or more complete trips through the temperature danger zone between forty-one (41) degrees Fahrenheit and 135 degrees Fahrenheit.

(4) "Kentucky State Plumbing Code" is defined by KRS 318.130.

(5) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

(6) "Restricted concessions" means a food service establishment, whether mobile or stationary, limited to preparing and serving only menu items and ingredients considered to be low-risk in relation to foodborne illness.

(7) "Statewide mobile food unit" means a fully enclosed, self-contained food service establishment that operates from a vehicle or is otherwise mobile.

Section 2. Revisions to the 2013 FDA Food Code. The 2013 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this section. (1) FDA Food Code Subparagraph 2-102.11(B) shall be replaced with the following sentence: Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program or a local health department class that addresses the food safety issues described in 2-102.11(C) of the 2013 FDA food code.

(2) FDA Food Code Subparagraph 6-501.115 shall be supplemented with the Kentucky-specific exceptions established in this subsection.

(a) A dog may be allowed in an outdoor dining area if:

1. The outdoor dining area is not fully enclosed; and

2. There is an entrance to the outdoor dining area that is separate from the main entrance and the sole means of entry for a patron with a dog.

(b) Employees shall not permit a dog to come into physical contact with:

1. Food;

2. Serving dishes;

3. Utensils;

4. Tableware;

5. Linens;

6. Unwrapped single-service and single-use articles; or

7. Other food service items that could result in contamination of food or a food-contact surface.

(c) An employee engaged in the preparation or handling of food shall avoid physical contact with a patron dog. If an employee has physical contact with a patron dog, the employee shall

wash his or her hands prior to returning to work.

(d) All accidents involving dog vomit, feces, or urination shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be made available for use in the designated outdoor dining area.

(e) Signage shall be posted at each entrance to the outdoor dining area stating that dogs:

1. May be allowed in the area;
2. Shall not be served food or water in wares used for human consumption;
3. Shall not be allowed on chairs, seats, or tables; and
4. Shall be kept on a leash and under the control of an adult at all times.

(f) The food establishment may refuse to serve the patron with a dog if:

1. The patron fails to exercise reasonable control over the dog; or
2. The dog is behaving in a manner that compromises or threatens to compromise the health or safety of any person present.

Section 3. Statewide Mobile Food Units. (1) All food products served in a statewide mobile food unit shall be cooked or prepared in:

(a) A statewide mobile food unit permitted by the cabinet; or

(b) A food service establishment permitted by the cabinet.

(2) Complex food preparation shall not be performed in a statewide mobile food unit.

(3) The statewide mobile food unit shall not serve as a catering operation unless it meets additional permitting requirements as a catering kitchen.

(4) The statewide mobile food unit shall be serviced and cleaned every day of operation.

(5) The statewide mobile food unit shall meet the sanitation and plumbing requirements contained in the 2013 FDA Food Code and the Kentucky State Plumbing Code.

(6) Sewage and other liquid wastes shall be removed according to the 2013 FDA Food Code and the Kentucky State Plumbing Code.

Section 4. Restricted Concessions. (1) Restricted concessions may include:

(a) Flavored ice;

(b) Shaved ice;

(c) Snow cones with commercially mixed and packaged flavorings;

(d) Pork rinds;

(e) Roasted peanuts, almonds, pecans, or walnuts, without the shell;

(f) Nacho cheese and chips;

(g) Cotton candy;

(h) Pre-cooked, commercially processed hotdogs, frankfurters, or similar meats (such as bratwurst or Italian sausage) that are grilled, steamed, or boiled on-site;

(i) Pre-packaged sandwiches;

(j) Pre-packaged ice cream or popsicles;

(k) Prepackaged, commercially processed snack foods (such as pretzels or chips) from a state or federal permitted food manufacturer;

(l) Shelf-stable, pre-packaged baked goods; or

(m) Commercially produced bottled or canned soft drinks, water, ice tea, or lemonade.

(2) Sanitation requirements.

(a) If public water is available, a restricted concession facility shall follow the requirements of the Kentucky State Plumbing Code.

(b) If public water is not available, a restricted concession facility may operate under temporary sanitation if:

1. There is an adequate amount of stored potable water available;

2. Tubs, buckets, or similar containers for washing, rinsing, and sanitizing equipment large enough to completely immerse the largest item used in operation are available;
3. There are adequate hand washing facilities; and
4. Permanent or portable toilet facilities are conveniently located and have hand washing facilities available.

(c) The restricted concession facility shall provide adequate cold and hot storage for food products and safe storage areas for the storage of dry food and single service articles.

(d) A restricted concession facility shall be constructed or located in such a way that food and utensils shall be protected from potential contamination, including from insects, dust, and debris.

Section 5. Bed and Breakfast. (1) A bed and breakfast establishment shall not be subject to this administrative regulation if:

(a) The bed and breakfast establishment is:

1. In a one (1) family, privately owned residential dwelling unit that has guest rooms or suites used, rented, or hired out for occupancy; and

2. Occupied for sleeping purposes by persons not affiliated by the single-family unit;

(b) The owner or caretaker of the bed and breakfast establishment resides on the premises or property adjacent to the premises during the periods of occupancy;

(c) The number of available guest rooms does not exceed nine (9);

(d) The number of overnight guests does not exceed eighteen (18); and

(e) Breakfast and other meals are served.

(2) Guests shall be informed by placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority.

(3) A bed and breakfast establishment that does not meet all of the requirements established in subsection (1)(a) to (e) of this section shall meet the requirements of this administrative regulation.

Section 6. Inspections and Violations. (1) If an inspection is made of an establishment, the findings shall:

(a) Be recorded on Form DFS-208, Food Establishment Inspection Report, using the:

1. 1/09 edition for an inspection conducted before July 1, 2019; or

2. 10/17 edition for an inspection conducted on or after July 1, 2019; and

(b) Constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be provided to the permit holder or person in charge.

(3) The inspection report form shall summarize the requirements of this administrative regulation and shall set forth a point value for each requirement.

(4) The rating score of the establishment shall be the total of the point value for all violations subtracted from 100.

(5) The inspection report form shall specify a period of time for the correction of the violations found pursuant to this subsection.

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) point items shall be corrected prior to the next routine inspection.

(b) If the rating score of the establishment is at least seventy (70) but not more than eighty-four (84), all violations of one (1) point items shall be corrected within a period not to exceed thirty (30) days.

(c) Regardless of the rating score of the establishment, all violations of priority items shall be corrected within a time period not to exceed ten (10) days.

(6) The inspection report shall state that:

(a) Failure to comply with a time limit for correction may result in the suspension of a permit; and

(b) An opportunity for appeal shall be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

Section 7. Permit Suspension. (1) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a Form DFS-214, Notice of Enforcement of intent to suspend the permit in accordance with 902 KAR 1:400.

(2) A permit shall be suspended immediately upon notice to the permit holder without a hearing if:

(a) The cabinet has reason to believe that an imminent public health hazard exists;

(b) The permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves; or

(c) An inspection of an establishment reveals a rating score of less than sixty (60).

(3) A permit holder subject to suspension of a permit may submit a Form DFS-215, Application for Reinstatement, in accordance with 902 KAR 1:400.

(4) The permit holder whose permit has been suspended may request a hearing in accordance with 902 KAR 1:400.

(5) If a food service establishment is required under the provisions of this administrative regulation to cease operations, it shall not resume operations until a reinspection determines that conditions responsible for the requirement to cease operations no longer exist.

Section 8. Methods of Conducting Evaluations of Retail Food Programs. The evaluation and standardization procedures for retail food programs shall be governed by the FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Food Code", U.S. Public Health Service, FDA, 2013;

(b) "FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual", U.S. Public Health Service, 2015;

(c) "DFS-208, Food Establishment Inspection Report", edition 10/17;

(d) "DFS-214, Notice of Enforcement ", edition 3/2018; and

(e) "DFS-215, Application for Reinstatement, edition 03/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (KDC-22; 1 Ky.R. 645; eff. 4-9-1975; Am. 6 Ky.R. 361; 564; eff. 5-7-1980; 9 Ky.R. 1335; eff. 7-6-1983; 11 Ky.R. 482; eff. 10-9-1984; 17 Ky.R. 512; 1395; eff. 9-19-1990; 18 Ky.R. 3045; 3404; eff. 5-18-1992; 20 Ky.R. 140; 1831; eff. 1-10-1994; 22 Ky.R. 2432; eff. 8-1-1996; 35 Ky.R. 1624; 2255; eff. 5-1-2009; 45 Ky.R. 1127, 2132; eff. 2-21-2019.)