

902 KAR 45:080. Salvage.

RELATES TO: KRS 217.005-217.215, 217.992

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215 and 217.992 authorizes the Cabinet for Health Services to regulate the misbranding and adulteration of foods and cosmetics. This administrative regulation establishes uniform requirements relating to the disposition of salvaged foods, cosmetics and related merchandise. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.

Section 1. Citation of Regulation. This administrative regulation may be cited as the "State Food and Cosmetic Salvage Regulation."

Section 2. Definitions. The following definitions shall apply in the interpretation and the enforcement of this administrative regulation:

(1) "Employee" means any person employed by a salvage processing plant or salvage distributor who does, or may in any manner handle or come in contact with the handling, storing, transporting, or selling of distressed, salvageable or salvaged food, cosmetics, or other items listed under subsection (9) of this section.

(2) "Distressed merchandise" means any food, cosmetic, or other item listed under subsection (9) of this section which has had the label lost or which has been subjected to possible damage due to accident, mishandling, fire, flood, adverse weather, or to any other similar cause; or which is suspected of having been rendered unsafe or unsuitable for human or animal consumption or use, or which is misbranded, short filled, over or inadequately processed, or below grade.

(3) "Nonsalvageable merchandise" means "distressed merchandise," as defined in subsection (3) of this section, which cannot be safely or practically reconditioned.

(4) "Perishable food" means that there exists a significant risk of spoilage or deterioration when a food has not been properly stored, or handled.

(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic:

(a) In a form capable of supporting the:

1. Rapid and progressive growth of infectious or toxigenic microorganisms; or
2. Slower growth of *Clostridium botulinum*.

(b) Of animal origin, either raw or heat treated; and

(c) Of plant origin which:

1. Has been treated; or
2. Is raw seed sprouts.

(d) The following are excluded:

1. Air dried hard boiled eggs with shells intact;
2. Food with water activity (aw) value of 0.85 or less;
3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;
4. Foods in unopened hermetically sealed containers that have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and
5. Food for which laboratory evidence demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(6) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all cabinet requirements making it suitable for consumption or use as human or animal feed.

(7) "Salvageable merchandise" means any distressed food, cosmetic, or other item listed under subsection (9) of this section which can be reconditioned, labeled, relabeled, repackaged, reconditioned, sorted, cleaned, culled or by any other means be salvaged to the satisfaction of the cabinet.

(8) "Salvaged merchandise" means previously distressed merchandise which has been reconditioned or salvaged pursuant to the provisions of this administrative regulation and is acceptable for such human or animal consumption or use as may be designated by the cabinet.

(9) "Sanitize" means adequate treatment of food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing numbers of other microorganisms. Such treatments shall not adversely affect the product and shall be safe to the consumer.

(10) "Vehicle" means any truck, car, bus, railcar, aircraft, boat, ship, or other means by which distressed, salvageable or salvaged merchandise is transported from one (1) location to another.

(11) "Salvage dealer" means any person who is engaged in selling or distributing salvaged merchandise.

(12) "Salvage processor" means any person who engages in the business of reconditioning salvageable or salvaged merchandise for sale or further distribution.

(13) "Supplier" means any person who transfers distressed merchandise to a salvage processor.

Section 3. Permit Requirements. (1) No person shall operate a salvage processing plant or act as a salvage dealer or distributor within the Commonwealth of Kentucky, who does not possess a permit issued by the cabinet. Only a person who complies with the requirements of this administrative regulation shall be entitled to receive and retain such a permit which will be of two (2) types:

(a) Salvage processing permit; and

(b) Salvage distributing permit. Permits shall not be transferable from one (1) person to another person or place. A permit shall be posted in every processing plant, and each distributor shall have a copy of a valid permit in each vehicle which he operates. The name and address of the salvage processing plant or distributor and the permit number must be conspicuously displayed on the outside of all vehicles being used for salvage operations. Each permit shall expire on December 31 next following its date of issuance.

(2) Issuance of permits. Any person desiring to operate a salvage processing plant or act as a salvage distributor shall make written application for a permit on Form DFS-200. This form is incorporated by reference and may be viewed or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Upon receipt of such an application, the cabinet shall make an inspection of the salvage processing plant or distributor's operations to determine compliance with the provisions of this administrative regulation. When inspection reveals that the applicable requirements of this administrative regulation have been met, a permit shall be issued to the applicant by the cabinet.

Section 4. Notice to Cabinet of Distressed Merchandise. It shall be the duty of any person owning or having possession of any merchandise listed in Section 2(9) of this administrative regulation which becomes distressed merchandise to notify the cabinet if possible prior to such merchandise being removed from the premises at which it was located at the time it became distressed merchandise. If emergency removal of distressed merchandise is required, notice to the cabinet shall be made as soon thereafter as possible. It shall also be the duty of the owner or manager of the salvage processing plant to notify the cabinet within forty-eight (48) hours or, as soon as possible thereafter, whenever distressed merchandise subject to the provisions of this administrative regulation is obtained.

Section 5. Movement of Distressed Merchandise. Distressed merchandise shall be moved from

the site of a fire, flood, sewer back-up, wreck or other cause as expeditiously as possible after compliance with Section 4 of this administrative regulation so as not to become putrid, unwholesome, rodent or insect harborages, or otherwise, a menace to public health. All distressed and salvageable merchandise of a perishable nature shall, prior to reconditioning, be transported only in vehicles provided with adequate refrigeration or freezing capabilities necessary for product maintenance. No interstate movement of known distressed or salvageable merchandise shall be made without the prior approval of the cabinet, the appropriate control agency in the state receiving the merchandise, and the Federal Food and Drug Administration.

Section 6. Handling of Distressed Merchandise. (1) If distressed articles unrelated to foods, cosmetics, etc. are also salvaged, they shall be handled in rooms separate from those in which foods are reconditioned.

(2) Sufficient precautions shall be taken to prevent cross-contamination (e.g., animal feed to human food) among the various types of merchandise which are salvageable or salvaged.

Section 7. Reconditioning and Labeling of Distressed Merchandise. (1) All salvageable distressed merchandise shall be reconditioned prior to sale or distribution except for such sale or distribution to a person holding a valid salvage processing permit issued by the cabinet.

(2) All metal cans of food offered for sale or distribution shall be free of any evidence of rust pitting, and essentially free of dents (especially at rim, end double seams and/or side seams). Any metal container for which buffing is required to remove pitted rust and leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution. Containers, including metal and glass containers with press caps, screw caps, pull rings or other types of openings which have been in contact with water, liquid foam, or other deleterious substances, as a result of firefighting efforts, flood, sewer back-up, or similar mishaps, shall be deemed unfit for sale or distribution, i.e., nonsalvageable merchandise as defined in Section 2(4) of this administrative regulation, except that consideration may be given to reconditioning spirits by distillation where feasible.

(3) All metal containers of food, other than those mentioned in subsection (2) of this section, whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer back-up, or other reasons shall, after thorough cleaning, be subjected to a sanitizing rinse of a concentration of 100 ppm available chlorine for a minimum period of one (1) minute, or shall be sanitized by another method approved by the cabinet, and subsequently be treated to inhibit rust formation. All other types of packages (including cans or tins which are opened by pull tabs) so damaged shall be deemed unsafe for use or sale.

(4) Label removal. Any cans showing surface rust shall, after having their labels removed, be inspected and destroyed if they contain pin holes. If salvageable, they shall then be cleaned by a method approved by the cabinet before relabeling. Any container of food with the label or mandatory information missing, that cannot be identified and relabeled correctly, shall not be sold. When original labels are missing or illegible, relabeling or overlabeling shall be required.

(5) Relabeling. All salvaged merchandise shall be labeled to indicate that the merchandise has been salvaged. All salvaged merchandise in containers is to be provided with labeling meeting the appropriate requirements of KRS 217.035 and 217.037. Where original labels are removed from containers which are to be resold or redistributed, the replacement labels must show as the distributor, the name and address of the salvage processing plant.

Section 8. Records of Distressed Merchandise. A written record or receipt of distressed, salvageable and salvaged merchandise shall be kept by the salvage processing plant and shall be kept open for inspection by the cabinet during business hours. The records shall include the name of the prod-

uct, the name and address of the manufacturer or distributor, the production code, container sizes, source of the distressed merchandise, the date received, the type of damage, and the salvage process conducted. These records shall be kept on the premises of the salvage processing plant for a period of one (1) year following the completion of transactions involving a lot of merchandise.

Section 9. Protection from Contamination. (1) All salvageable and salvaged merchandise, while being stored or reconditioned at a salvage processing plant, or during transportation, shall be protected from contamination. All perishable foods as well as those susceptible to microbial contamination shall be stored at such temperatures as will protect against spoilage. All potentially hazardous foods shall be maintained at safe temperatures (forty-five (45) degrees Fahrenheit or below or 140 degrees Fahrenheit or above). Frozen foods shall be maintained at zero degrees Fahrenheit or below. Poisonous and toxic materials shall not be transported with distressed, salvageable or salvaged merchandise or stored in a salvage processing plant; unless effective separation is provided. However, such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes may be used or stored in salvage processing plants. Such poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate distressed, salvageable or salvaged merchandise, shall not constitute a hazard to employees and, when not in use, shall be stored in cabinets which are used for no other purpose.

(2) Segregation of merchandise. All salvageable merchandise shall be promptly sorted and segregated from nonsalvageable merchandise to prevent further contamination of the merchandise to be reconditioned for sale or distribution.

Section 10. Personnel Health and Disease Control. (1) No employee while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in an area of a salvage processing plant or for a salvage distributor in any capacity in which there is a likelihood of such person contaminating salvageable or salvaged merchandise with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he or she shall notify the cabinet immediately.

(2) All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty. Employees shall wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his or her hands. The consumption of food or beverages and the use of tobacco in any form shall be allowed only in designated areas and not in areas where food is exposed or in areas used for washing equipment and utensils.

Section 11. Salvage Processing Plant Equipment and Utensils. (1) All equipment and utensils used in a salvage processing plant shall be so designed and of such material and workmanship as to be smooth, easily cleanable and durable, and shall be in good repair; and the surfaces of such equipment and utensils coming in contact with food and other food contact surfaces shall, in addition, be easily accessible for cleaning, nontoxic, corrosion-resistant and nonabsorbent; provided, that, when approved by the cabinet, exceptions may be made to the above materials requirements.

(2) All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment which was installed prior to March 12, 1975 which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition and surfaces coming in contact with salvageable or salvaged merchandise are

nontoxic.

Section 12. Equipment and Utensil Cleaning and Sanitization. (1) Effective means of cleaning and sanitizing equipment, utensils, and soiled food containers, shall be provided. In new or extensively altered salvaged processing plants a three (3) compartment sink and/or a suitable automatic pressurized spray-type ware washing machine capable of washing and sanitizing with hot water or chemical sanitizers shall be provided and conveniently located within the processing area.

(2) Cleaning frequency. All utensils and food-contact surfaces in a salvage processing plant shall be thoroughly cleaned and sanitized prior to use. All other surfaces of equipment shall be cleaned at such intervals as necessary. After cleaning and until use, all equipment and utensils shall be stored and handled as to be protected from contamination.

Section 13. Salvage Processing Plant Sanitary Facilities and Controls. (1) Water supply. The water supply shall be adequate, of a safe, sanitary quality and from a source approved by the Natural Resources and Environmental Protection Cabinet. Hot and cold running water under pressure shall be provided in all areas where foods, or cosmetics are processed, or equipment, utensils, or containers are washed.

(2) Sewage. All sewage and other liquid waste shall be disposed of in a public sewerage system or, in the absence thereof, in a manner approved by the Natural Resources and Environmental Protection Cabinet or the cabinet.

(3) Plumbing. All plumbing shall comply with the State Plumbing Code.

(4) Toilet facilities. Each salvage processing plant shall be provided with adequate, conveniently located toilet facilities for its employees. In new establishments or establishments that are extensively altered, toilet facilities shall be provided in accordance with the requirements of the State Plumbing Code. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms shall be covered.

(5) Lavatories. Each salvage processing plant shall be provided with adequate, conveniently located hand-washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(6) Garbage and refuse. All refuse containing foods or cosmetics shall be kept in leak-proof, nonabsorbent containers be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use; provided, that such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a waste refrigerator. All other refuse shall be stored in containers, rooms, or areas in an approved manner. Adequate cleaning facilities shall be provided, and each container, room or area shall be thoroughly cleaned after the emptying or removal of refuse. All refuse shall be disposed of with sufficient frequency and in such a manner as to prevent contamination of salvaged product and surrounding processing areas.

(7) Insect and rodent control. Effective measures shall be taken to protect against the entrance, breeding, and presence of rodents, insects, and other vermin in the salvage processing plant.

Section 14. Salvage Plant Construction and Maintenance. (1) Floors. The floor surfaces in all rooms and areas in which salvageable or salvaged merchandise is stored or processed and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms, and toilet rooms, should be constructed as to be easily cleanable. All floors shall be kept clean and in good repair. Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal

operations release or discharge water or other liquid waste onto the floor.

(2) Walls and ceilings. The walls and ceilings of all rooms shall be clean and in good repair.

(3) Lighting.

(a) At least thirty (30) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all areas in which salvageable or salvaged merchandise is processed or stored, where utensils are washed, and in hand-washing areas. Dressing or locker rooms, toilet rooms, and refuse storage areas should be adequately lighted. During all cleanup activities, adequate light shall be provided in all other areas to facilitate cleaning and good sanitation.

(b) Protective shielding.

1. Shielding to protect against broken glass falling onto unpackaged food shall be provided for all artificial lighting fixtures located over or within food-storage, food-preparation, and food-display areas.

2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

(4) Ventilation. All rooms and processing areas in the salvage processing plant should be well ventilated. Ventilation hoods and devices when used shall be designed to prevent condensate from dripping into foods or cosmetics, or onto preparation surfaces. Filters, when used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable state and local fire-prevention requirements and shall, when vented to the outside air, discharge in such manner as not to create a nuisance.

(5) Locker area. Adequate facilities should be provided for the orderly storage of employee's clothing and personal belongings.

(6) Housekeeping. All parts of the salvage processing plant and its premises shall be kept clean and free of litter and refuse. Cleaning operations shall be conducted in such a manner as to prevent contamination of salvageable and salvaged merchandise. None of the operations connected with a salvage processing plant shall be conducted in any room used as an employee lounge or living or sleeping quarters. Soiled coats and aprons should be kept in suitable containers until removed for laundering. No live birds or animals shall be allowed in any area used for the conduct of a salvage processing plant's operations or for the storage of salvageable and salvaged merchandise except that patrol dogs accompanying security or police officers are permitted. Guide dogs accompanying blind persons shall be permitted in sales areas.

(7) Vehicles. Vehicles used to transport distressed, salvageable, or salvaged merchandise should be maintained in a clean condition to protect the product from contamination.

Section 15. Plan Review of Future Construction. When a salvage processing plant is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a salvage processing plant, properly prepared plans and specifications for such construction, remodeling, or alteration, showing layout, arrangements, and construction materials of work areas and the location, size and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before such work is begun.

Section 16. Inspections; Notices. (1) Inspection. At least once every twelve (12) months, the cabinet shall inspect each salvage processing plant and distributor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. Whenever the cabinet makes an inspection of a salvage processing plant or distributor, its representative shall record the findings on an inspection report form provided for this purpose, and shall furnish a copy of such inspection report form to the permit holder or his representative in charge.

(3) Issuance of notices. Whenever the cabinet makes an inspection of a salvage processing plant or distributor and determines that any of the requirements of this administrative regulation have been

violated, the cabinet shall notify the permit holder or person in charge of such violations by means of an inspection report form or other written notice. In such notification, the cabinet shall:

(a) Set forth the specific violations found.

(b) Establish a specific and reasonable period of time for the correction of the violations found.

(c) State that failure to comply with any notice issued in accordance with the provisions of this administrative regulation may result in suspension of the permit.

(d) State that an opportunity for appeal from any notice of inspection findings will be provided if a written request for a hearing is filed with the cabinet within the period of time established in the notice for correction.

(4) Service of notices. Notices provided for under this section shall be deemed to have been properly served when a copy of the inspection report form or other notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the cabinet.

Section 17. Salvage Processing Plants and Distributors Outside Jurisdiction of the Cabinet. Salvaged merchandise from salvage processing plants and distributors located outside the jurisdiction of the Commonwealth of Kentucky may be sold within the state, if such plants and distributors conform to the provisions of this administrative regulation or to substantially equivalent provisions and have a valid permit from the cabinet. To determine the extent of compliance with such provisions, the cabinet may accept reports from responsible authorities in other jurisdictions where such plants and distributors are located.

Section 18. Suspension and Revocation of Permits. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event, the permit holder may request a hearing.

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice specifying the violations in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing the suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is complying with the requirements of this administrative regulation, the permit shall be reinstated.

(4) Revocation of permits. For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed in accordance with 902 KAR 1:400. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(5) Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400. (1

Ky.R. 55; eff. 3-12-1975; 13 Ky.R. 2134; eff. 7-2-1987; 18 Ky.R. 869; eff. 10-16-1991; 22 Ky.R. 2459; eff. 8-1-1996; Crt eff. 11-5-2019.)