

902 KAR 50:033. Standards for enforcement procedures for manufactured grade milk.

RELATES TO: KRS Chapter 13B, 217.025, 217.045, 217C.010-217C.990

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1)(c), 217C.040, 217C.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Service to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products. KRS 217C.040 authorizes the cabinet to promulgate administrative regulations for the issuing and revocation of permits to milk producers, haulers, transfer stations, processing plants, pasteurization plants, and distributors, and to adopt separate regulations regulating Grade A milk products and milk for manufacturing purposes. This administrative regulation sets uniform standards for the enforcement of 902 KAR 50:031 and 902 KAR 50:032 pertaining to the production, transportation, handling, sampling, examination, grading, and sale of manufactured milk and milk products; inspection of dairy farms; and the revocation and reinstatement of producer permits.

Section 1. Enforcement Procedures for Raw Milk. (1) Sight and odor.

(a) Bulk tank loads or individual producer milk received at a processing facility shall be examined on an organoleptic basis by the hauler or by the milk grader.

(b) Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product.

(c) Producer milk rejected for sight and odor by a hauler or milk grader shall be tagged with a reject tag.

(2) Bacterial estimates.

(a) At least one (1) time each month at irregular intervals, an official sample of each producer's milk shall be tested.

(b) Producers shall be notified of the results of all tests performed.

1. A producer shall be given a notice of intent to suspend permit by the cabinet if two (2) of the last four (4) counts exceed bacterial standards specified in 902 KAR 50:031 Section 3(3).

2. An additional sample shall be taken within twenty-one (21) days of sending the notice, but not before the lapse of three (3) days.

3. A producer shall remain under notice of intent to suspend permit if two (2) of the last four (4) samples exceed the standards.

4. A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) samples exceed the standard.

(c) A producer may be issued a temporary permit by the cabinet upon receipt from the producer of a satisfactory farm inspection and form DFS-7A, Application for Reinstatement of Permit.

1. If the sample from the first milk offered for sale is in compliance, the permit shall be reinstated.

2. If the sample is not in compliance, the temporary permit shall be withdrawn.

(d) Upon issuance of the temporary permit, the producer shall have no milk in the bulk tank produced during the period the permit was suspended unless specified by the cabinet. Three (3) samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(e) The cabinet may reinstate the producer's permit upon receipt of a bacteria sample in compliance with standards set in 902 KAR 50:031 Section 3(3).

(3) Sediment.

(a) If the sediment disc is classified as #1, #2, or #3 the producer's milk may be accepted.

(b) If the sediment disc is classified #3, the producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup.

1. If the second sample is classified #3, the producer shall be issued a notice of intent to suspend permit and an additional sample shall be collected and tested.

2. If the additional sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

3. If the second sample is classified #4, the producer's permit shall be suspended.

(c) If the sediment disc is classified as #4, the producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

(d) The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an Application for Reinstatement of Permit.

(4) Abnormal milk.

(a) At least four (4) times each six (6) months an official sample of each producer's milk shall be tested for somatic cell count.

(b) The producer shall be notified in writing of tests showing a somatic cell count in excess of the standard specified in 902 KAR 50:031 Section 3(5).

(c) If two (2) of the last four (4) somatic cell counts exceed this standard, the producer shall be given a notice of intent to suspend their permit by the cabinet.

1. The producer shall remain under notice if two (2) of the last four (4) samples exceed the limit; and

2. An additional sample shall be collected within twenty-one (21) days after issuance of the notice of intent to suspend permit, but not before the lapse of three (3) days.

(d) A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) somatic cell counts exceed the limit.

(e) Upon receipt of an Application for Reinstatement of Permit, a sample shall be analyzed. If the sample is in compliance, the permit shall be reinstated.

(f) Three (3) samples shall be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(5) Drug residues.

(a) All marketed milk shall be sampled prior to processing using approved screening procedures defined in 902 KAR 50:031 Section 3(6).

1. If the presence of drug residue is detected, a confirmatory test approved by the cabinet shall be performed.

2. If the confirmatory test result is positive for drug residue, the milk shall be disposed of either in a manner that removes it from the human and animal food chain or acceptably reconditioned for animal food as determined by the cabinet.

3. If a commingled sample is positive, each producer's milk represented in the sample shall be tested immediately.

(b) All positive drug residue sample results shall be reported to the Milk Safety Branch, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Milk for manufacturing permit shall be suspended upon confirmed positive drug residue sample.

1. First suspension within a twelve (12) month period shall require a two (2) day minimum loss of milk or equivalent as determined by the cabinet.

2. Second suspension within a twelve (12) month period shall require a four (4) day mini-

mum loss of milk or equivalent as determined by the cabinet.

3. Third suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet.

(d) The milk for manufacturing permit shall be temporarily reinstated for fourteen (14) days if a negative drug residue sample of raw milk is reported to the cabinet, and the cabinet is in receipt of an Application for Reinstatement of Permit.

1. The milk for manufacturing permit shall be reinstated after the cabinet receives a copy of the 2019 Milk and Dairy Beef Residue Prevention Producer's Certificate of Participation signed by the producer and his veterinarian.

2. Failure to return the completion certificate within fourteen (14) days of the temporary reinstatement shall result in a minimum one (1) day temporary permit suspension. ~~producer's supply shall be maintained until an acceptable level of the contaminant is attained. The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals, depending on the laboratory workload and the previous contaminant level. Higher chemical contaminant levels shall be sampled at lesser frequencies.~~

~~(c) If levels based on an official sample fall below acceptable tolerance levels, the producer shall be notified immediately and confirmed in writing by the cabinet that the supply is again acceptable for sale.~~

~~(d) Producer assistance in testing individual cows, feeds, and water supplies may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and commercial laboratories.]~~

Section 2. Manufacturing Milk Producer Permit Suspension and Reinstatement. In addition to the penalties established in KRS 217C.990, the cabinet may suspend or revoke an individual producer's permit, in accordance with KRS 217C.040.

(1) The cabinet shall, upon notice to the producer, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists;

(b) The producer or an employee has interfered with the cabinet in the performance of the cabinet's duties; or

(c) The producer or an employee has falsified any records or documents.

(2)(a) In accordance with KRS 13B.070(3), a producer whose permit has been suspended three (3) times within a twelve (12) month period for a violation of any type in accordance with 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation, shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated.

(b) Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated.

(c) At this conference the cabinet may set conditions under which the permit may be reinstated.

(d) This permit suspension shall remain in effect until the conditions of the conference have been met.

(3) In all other instances of violation of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation, the cabinet shall:

(a) Serve on the producer a written notice stating the violation; and

(b) Afford the producer a reasonable opportunity to correct the violation.

(4) A producer whose permit has been suspended may, at any time, submit an Application for Reinstatement of Permit.

(5) Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(6) For serious or repeated violations of any of the requirements of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation the producer's permit may be permanently revoked.

(7) Prior to revocation, the cabinet shall notify the producer in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following the service of the notice, unless the Request for Hearing is filed with the Milk Safety Branch.

(8) The hearing shall be conducted in accordance with KRS 217C.100.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2019 Milk and Dairy Beef Residue Prevention Producer's Certificate of Participation";

(b) "Application for Reinstatement of Permit", DFS-7A, 4/2020; and

(c) "Request for a Hearing", DFS 8, 4/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Milk Safety Branch, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (20 Ky.R. 2281; eff. 3-14-1994; 47 Ky.R. 446; eff. 11-19-2020.)