

902 KAR 50:050. Manufacturing plant requirements.

RELATES TO: KRS 217C.010, 217C.040, 217C.070

STATUTORY AUTHORITY: KRS 194.050, 211.090, 217C.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217C.040 requires the secretary to regulate, in the interest of the public health, all aspects relating to the production and sale of milk. This administrative regulation establishes: (1) uniform sanitary and operational standards for manufacturing milk plants, receiving stations, transfer stations and handlers; and (2) the process for issuance and revocation of permits relating thereto.

Section 1. Permits and Inspections. (1)(a) A person who does not possess a valid permit, issued as provided in this administrative regulation, shall not:

1. Operate a manufacturing milk plant;
2. Operate a receiving station;
3. Operate a transfer station; or
4. Be a handler of manufacturing milk.

(b) A qualified representative of the cabinet shall inspect each plant, receiving station, and transfer station:

1. Prior to issuance of a permit; and
2. At least annually thereafter.

(2) Only a person in satisfactory compliance with the requirements of this administrative regulation shall be entitled to a permit. A permit shall not be transferable with respect to persons or locations.

(3) Manufactured milk and milk products from points beyond the limits of routine inspection of the Commonwealth of Kentucky, or its police jurisdiction, may be sold in the Commonwealth of Kentucky, or its police jurisdiction, if the milk or milk products are:

(a) Produced and processed under administrative regulations substantially equivalent to this administrative regulation; and

(b) The out-of-jurisdiction governmental unit concerned accepts Kentucky's manufacturing milk and milk products on a reciprocal basis.

(4) Properly prepared plans for transfer stations, receiving stations and milk plants regulated under this administrative regulation which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the cabinet for approval before work is begun.

Section 2. Prohibited Acts Relating to Manufacturing Milk Plants, Receiving Stations, Transfer Stations and Handlers, within the Commonwealth of Kentucky. A person shall not:

(1) Process, handle, sell or offer for sale milk or a milk product for manufacturing purposes without a permit issued in accordance with this administrative regulation;

(2) Process, handle, provide, sell, offer or expose for sale, or have in possession with intent to sell a milk or milk product for manufacturing purposes which is adulterated, misbranded or otherwise in violation of this administrative regulation;

(3) Prohibit, to a duly-authorized agent of the cabinet:

- (a) Entry or inspection;
- (b) The taking of a sample; or
- (c) Access to records or evidence;

(4) Remove, destroy, alter, forge or falsely represent, without proper authority, a tag, stamp, mark or label used by the cabinet; or

(5) Remove or dispose of a detained or quarantined article without proper authorization from the cabinet.

Section 3. Manufacturing Milk Plant, Receiving Station, Transfer Station and Handler Permit Suspension and Reinstatement. (1) A permit issued under this administrative regulation may be suspended if:

- (a) The cabinet has reason to believe that a public health hazard exists;
- (b) The permit holder has violated the requirements of this administrative regulation; or
- (c) The permit holder has interfered with the cabinet in the performance of its duties.

(2) The cabinet shall serve upon a permit holder a written notice of intent to suspend the permit, except in a case in which:

(a) The milk or milk product involved creates, or reasonably appears to create, an imminent hazard to the public health; or

(b) There has been a willful refusal to permit authorized inspection.

(3) The cabinet's written notice of intent to suspend shall:

(a) Specify with particularity the violation alleged; and

(b) Afford the permit holder reasonable opportunity to correct the violation alleged.

(4) A permit shall remain in suspension until the violation has been corrected to the satisfaction of the cabinet, in accordance with the requirements of this administrative regulation.

(5) The cabinet may require a second inspection if, during an annual inspection, a violation of a requirement established in this administrative regulation is found to exist. The second inspection shall occur at least three (3) days after the violation is discovered and verbal or other notice given. If, upon reinspection, the violation continues to exist, the cabinet shall issue official written notice, specifying a time in which the violation shall be corrected. Failure of the permit holder to comply with the requirements of the official notice shall be cause for permit suspension, in accordance with this administrative regulation.

(6) Appeal rights.

(a) A person who has been served with a notice of intent to suspend may, within forty-eight (48) hours of receipt of notice, apply in writing for an informal appeal. The cabinet shall, prior to suspension, proceed to informal hearing to ascertain the facts of the alleged violation.

(b) A person whose permit has been suspended may apply in writing for an informal appeal. The cabinet shall, within a reasonable time, proceed to informal hearing to ascertain the facts of the alleged violation.

(c) The cabinet, upon evidence presented at the hearing, shall affirm, modify, or rescind the suspension or intent to suspend. A permit suspended under the provisions of this subsection may be reinstated by submission of evidence that the violation has been corrected, in accordance with the requirements of this administrative regulation.

(d) A party aggrieved by a decision of the cabinet may appeal the decision in accordance with KRS Chapter 13B.

Section 4. Trade Secrets. A person who, in an official capacity, obtains under the provisions of this administrative regulation, information which is entitled to protection as a trade secret, including information as to quantity, quality, source of disposition of milk or milk products, or results of an inspection or test, shall not use the information to his own advantage or reveal it to an unauthorized person.

Section 5. (1) The following material is incorporated by reference:

(a) Requirements for Manufactured Milk Product Plants in Kentucky; and

(b) Code of Federal Regulations, Title 7, Part 58, Subpart B, effective August 28, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky

40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. (FDC 14-1; 1 Ky.R. 288; eff. 1-8-1975; 5 Ky.R. 263; eff. 11-1-1978; 12 Ky.R. 1913; eff. 7-2-1986; 18 Ky.R. 1463; eff. 1-10-1992; 29 Ky.R. 2771; 30 Ky.R. 286; eff. 8-13-2003.)