

902 KAR 50:090. Milk adulteration.

RELATES TO: KRS Chapter 13B, 211.090, 217.025, 217C.060, 217C.100

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

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 regulations for the the production, transportation, processing, handling, sampling, examination, grading, sale, and other matters relating to Grade A and manufactured milk and milk products as may be necessary to protect the public health. This administrative regulation establishes enforcement procedures to prevent the sale of Grade A and manufactured milk and milk products adulterated with antibiotics and other inhibitory substances, chemicals, and excessive water.

Section 1. Antibiotics and other Inhibitory Substances Enforcement Procedure.

(1) Sampling procedure.

(a) Antibiotic tests shall be performed a minimum of four (4) times during any consecutive six (6) months on each producer's milk or on raw commingled loads and all Grade A processed milk (except cultured products). When commingled milk is tested, milk from each individual producer shall be represented in the sample.

(b) Commingled loads that show any level of antibiotics shall require each individual producer's milk on the load to be tested.

(c)

1. An individual producer's milk sample found to be positive shall be reported to the Milk Safety Branch and confirmed by laboratory report; and

2. No additional milk shall be collected from the individual producer until the producer is compliant with enforcement procedures listed in subsection (4) of this section.

(2) All loads of raw milk shall be screened for antibiotics and other inhibitory substances prior to receipt by the plant.

(3) Utilization of milk on a load showing levels of antibiotics shall be as follows:

(a) A load of raw milk with an antibiotic level below the M-a-85 (Revision #16) standards, may be accepted by the plant.

(b) A load of raw milk with a positive antibiotic level above the M-a-85 (Revision #16) standards shall not be utilized by the plant and shall be reported to the Milk Safety Branch.

(c) If a load of raw milk is commingled into a plant storage tank with other loads and later found to be positive, the storage tank shall be tested and found to be negative prior to processing.

(d) Intentional blending of loads found to be positive for antibiotics shall be prohibited.

(e) Raw milk inadvertently processed and later found to be positive for antibiotics or other inhibitory substances shall be reported to the Milk Safety Branch prior to shipment for sale. Each case will be handled individually and may require testing to determine if antibiotics are present which would prohibit sale.

(4) Enforcement procedures.

(a) Producers with first antibiotic or other inhibitory substances violation during the past twelve (12) months shall require a negative sample to be obtained from the producer's milk supply by a certified sample collector prior to the milk being collected by the hauler. Test results shall be reported to the Milk Safety Branch as soon as possible.

(b) Producers with the second antibiotic or other inhibitory substances violation during the past twelve (12) months shall:

1. Be notified by the Milk Safety Branch of the suspension by telephone and confirmed by letter. The letter confirming the suspension shall include an Application for Reinstatement of Permit, DFS-7A, incorporated by reference in 902 KAR 50:033.
2. Prior to an official sample being collected for reinstatement purposes, the producer shall request permit reinstatement in writing and indicate the problem has been corrected.
3. A representative of the Milk Safety Branch shall visit the dairy producer after the request for reinstatement is received and prior to the first official sample being taken.
4. During this farm visit the producer shall demonstrate a method of marking cows treated with antibiotics to assure milk from treated cows is not offered for sale.
5. Upon acceptance of the exclusion procedure for treated cows, an official sample shall be collected and found to be negative for antibiotics prior to shipment.
6. The first shipment of milk following the negative sample shall not exceed four (4) milkings for Grade A purposes or six (6) milkings for manufacturing purposes.

(c) Producers with more than two (2) antibiotic or other inhibitory substances violations during the past twelve (12) months shall:

1. Have their permits suspended; and
2. May request an administrative hearing by submitting a Request for a Hearing, incorporated by reference in 902 KAR 50:033, to the Milk Safety Branch within ten (10) days, to show cause why their permit should not be revoked.
3. The hearing shall be conducted in accordance with KRS 217C.100.

(5) Company or producer association policy. Companies or producer associations having policies requiring producer penalties for offering milk for sale containing antibiotics or other inhibitory substances may have precedence over the enforcement policy outlined in this administrative regulation provided that:

- (a) The policy is filed in writing with the Milk Safety Branch;
- (b) The policy is approved by the Milk Safety Branch as being as or more stringent than the enforcement procedures listed in this administrative regulation; and
- (c) Evidence is forwarded in writing that company policy was carried out on each positive producer's milk sample found.

Section 2. Adulterated Milk (Excessive Water).

(1)

- (a) Producers whose milk supplies are found to contain over ten (10) percent excessive water shall be issued a notice requiring the supply to be withheld from sale immediately.
- (b) Milk from this supply shall not be sold until a sample is collected by a certified sample collector, analyzed in a certified laboratory, and is negative for excessive water.

(2)

- (a) Producers whose milk supplies are found to contain more than two (2) percent but less than ten (10) percent excessive water shall be issued a notice of adulteration and the milk supply resampled after the lapse of three (3) days.
- (b) Should the resample continue to show more than two (2) percent excessive water, the producer shall be issued a notice requiring the supply to be withheld from sale immediately.
- (c) Milk shall not be sold from this supply until a sample is collected by a certified sample collector, analyzed in a certified laboratory, and is negative for excessive water.

(3)

- (a) Producers whose milk supplies are found to contain between five-tenths (.5) percent to two (2) percent excessive water shall be notified and the milk supply resampled after a lapse of three (3) days.
- (b) Should the resample continue to have between five-tenths (.5) percent to two (2) percent excessive water, a supervised sample shall be collected by an inspector or other authorized person. The supervised sample shall be used as a future reference point for the accurate freezing point for the supply.
- (4) Producers who repeatedly have milk samples test positive for excessive water shall be issued a notice of permit suspension.
- (5) A producer whose permit has been suspended may, at any time, submit an "Application for Reinstatement of Permit", DFS-7A, incorporated by reference in 902 KAR 50:033, to the Milk Safety Branch.
- (6) Suspension of a permit shall remain in effect until a negative excessive water sample is obtained.

Section 3. Procedures for Testing Milk Samples for Chemical Contaminants.

- (1) Raw milk samples shall be collected and analyzed for chemical contaminants a minimum of annually from all bulk tank truck loads representing Kentucky dairy producers and imported supplies from other states.
- (2) Semiannual samples shall be collected from loads having a previous history of chemical contaminants.
- (3) Finished milk and milk products manufactured and sold within Kentucky shall also be collected and analyzed.
- (4)
 - (a) Whenever a Kentucky inspected bulk tank load of raw milk tests positive for any level of a chemical contaminant, the individual milk producers represented on the load will be immediately notified by telephone and confirmed by letter.
 - (b) Milk from each individual producer shall be sampled on a screening basis after notification.
 - (c) If out-of-state bulk tank loads are found to be contaminated, the shipping state regulatory agency will be immediately notified by telephone and confirmed in writing.
- (5)
 - (a) Whenever laboratory results of an individual producer's milk sample shows a violation of an established tolerance level for a particular chemical contaminant, the supply shall be withheld from the market channels.
 - (b) The producer shall be notified by telephone and confirmed in writing.
 - (c) An additional follow-up confirming sample shall be collected within ten (10) working days after notification of exclusion.
 - (d) Continued sampling of an excluded milk producer's supply shall be maintained until an acceptable level of the contaminant is attained.
 - (e) The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals. Higher levels will be sampled on a more frequent basis.
 - (f) Whenever levels based on an official sample fall below acceptable tolerance levels, the producer will be notified by telephone and confirmed in writing that the supply is again acceptable for sale.
- (6)
 - (a) A producer may assist with testing individual cows, feeds, and water supplies at their own expense.
 - (b) Results from producer obtained testing shall be submitted to the Milk Safety Branch.
- (7) The following procedure will be followed whenever any level of polychlorinated biphenyls (PCBs) are found in a producer's milk supply:

- (a) The milk producer shall be notified of the level of PCBs in the milk supply by telephone, confirmed by letter, and the milk supply excluded.
- (b) A farm inspection shall be made to determine the type of silo being used.
- (c) Concrete silos coated with cumar or other sealers containing PCBs shall be condemned for use with the dairy herd.
- (d) A producer with a condemned silo may:
 - 1. Abandon the silo (do not store feed); or
 - 2. Recoat the silo. If a silo is recoated, the producer shall notify the Milk Safety Branch for approval prior to the silo being filled.
- (e) The producer's milk supply shall be placed on a continuous surveillance program until a negative sample is obtained.

Section 4. Incorporation by Reference.

- (1) "M-a-85 (Revision #16)", December 2018, is incorporated by reference.
 - (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.
- (11 Ky.R. 26; eff. 5-21-1984; 112; eff. 8-7-1984; 18 Ky.R. 1466; eff. 1-10-1992; 47 Ky.R. 581; eff. 12-15-2020.)