

902 KAR 45:005. Kentucky food code.

RELATES TO: KRS 217.005-217.205, 217.280-217.390, 217.990-217.992
STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(c), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(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) "Cabinet" is defined by KRS 217.015(3).

(2) "Temporary food establishment" is defined by KRS 217.015(45).

Section 2. Insertions and Modifications to the 2005 FDA Food Code.

(1) Except as provided by subsection (2) of this section, the 2005 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this subsection.

(a) FDA Food Code Subparagraph 2-102.11(B). 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 2005 FDA food code.

(b) FDA Food Code Subparagraph 3-301.11(D). Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if the permit holder has a written policy that addresses hand washing while processing, preparing, and serving all ready-to-eat foods; and

(c) FDA Food Code Subparagraph 8-302.11.

1. A mobile food unit shall not operate for more than fourteen (14) consecutive days at one (1) location.

2. After the fourteen (14) consecutive days has expired, a mobile food unit shall not operate at the same location until a period of thirty (30) days has elapsed.

(2) The following provisions of the 2005 FDA Food Code shall not apply to Kentucky food establishments.

- (a) FDA Food Code Subparagraph 3-301.11(D)(1).
- (b) FDA Food Code Subparagraph 3-301.11(D)(2)(a).
- (c) FDA Food Code Subparagraph 3-301.11(6)(e).
- (d) FDA Food Code Subparagraph 8-811.10 (B).
- (e) FDA Food Code Annex 7: Form 3-A, Food Establishment Inspection Report.

Section 3. Inspections and Violations.

(1) If an inspection is made of an establishment, the findings shall be recorded on form DFS-208, Food Establishment Inspection Report, and shall constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be furnished 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 the following provisions:

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) 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) or two (2) 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 three (3), four (4), or five (5) point items shall be corrected within a time period specified by the cabinet but not to exceed ten (10) days.

(d) If the rating score of the establishment is less than seventy (70), the establishment shall be issued a notice of intent to suspend the permit, using form DFS-214 Enforcement Notice. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

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

1. The cabinet has reason to believe that an imminent public health hazard exists;
2. 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
3. An inspection of an establishment reveals a rating score of less than sixty (60).

(f) A permit holder subject to the immediate suspension of a permit may make application on form DFS-215, Application for Re-Instatement of Suspended Permit, for the purpose of reinstatement of suspended permit.

(g) All violations concerning a temporary food service establishment shall be corrected within twenty-four (24) hours.

1. If violations are not corrected within the required twenty-four (24) hour time period, the permit shall be immediately suspended.
2. The permit holder whose permit has been suspended may request a hearing using form DFS-212.

(h) 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.

(j) An opportunity for reinspection shall be offered within seven (7) days of the cabinet's receipt of the form DFS-215.

(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 will be provided if a written request for a hearing is filed in accordance with 902 KAR 1:400.

Section 4. Effective Date.

This Code and the rules, administrative regulations, provisions, requirements, and orders shall take effect one (1) year from the date of approval.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Food Code", U.S. Public Health Service, FDA, 2005.
- (b) "DFS-200, Facility Profile", edition 07/01;
- (c) "DFS-202, Application for a Permit to Operate a Temporary, Fee Exempt or Farmer's Market Temporary Food Service Establishment", edition 04/07;
- (d) "DFS-208, Food Establishment Inspection Report", edition 1/09;
- (e) "DFS-210, Notice to Correct Violations", edition 02/95;
- (f) "DFS-212, Request for Conference", edition 10/96;
- (g) "DFS-213, Notice of Conference", edition 08/96;
- (h) "DFS-214, Enforcement Notice to Apply for Permit, Order to Cease Operation, or Permit Suspension and Order to Cease Operation", edition 08/96;
- (i) "DFS-215, Application for Re-instatement of Suspended Permit", edition 02/95;
- (j) "DFS-216, Record of Complaint and Investigation", edition 04/95;
- (k) "DFS-218, Concessionaires Food Sanitation Guidelines", edition 05/94;
- (l) "DFS-222, Notice and Order of Quarantine", edition 05/94;
- (m) "DFS-223, Tag-Quarantined", edition 10/90;
- (n) "DFS-224, Label for Sample Collection and Analysis", edition 09/87;
and

(o) "DFS-232, Permit to Operate Temporary, Fee Exempt Food Service or Farmer's Market Temporary Food Service Establishment", edition 04/07.

(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. 4-9-75; Am. 6 Ky.R. 361; 564; eff. 5-7-80; 9 Ky.R. 1335; eff. 7-6-83; 11 Ky.R. 482; eff. 10-9-84; 17 Ky.R. 512; 1395; eff. 9-19-90; 18 Ky.R. 3045; 3404; eff. 5-18-92; 20 Ky.R. 140; 1831; eff. 1-10-94; 22 Ky.R. 2432; eff. 8-1-96; 35 Ky.R. 1624; 2255; eff. 5-1-2009.)