

902 KAR 45:006. Kentucky bed and breakfast.

RELATES TO: KRS 217.005-217.045, 217.105-217.125, 217.126-217.175, 217.185-217.205, 217.280, 217.290-217.390, 217.992, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), 217.127, 217.135, 2000 Ky. Acts ch. 549, part I.A.41

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.215(1) authorizes the Secretary of the Cabinet for Health Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. This administrative regulation establishes a uniform code for the regulation of food service operations of bed and breakfast establishments within the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Secretary" means the Secretary of the Cabinet for Health Services.

(2) "Cabinet" means the Cabinet for Health Services or its designee.

(3) "Bed and breakfast establishment" means a bed and breakfast home or a bed and breakfast inn.

(4) "Bed and breakfast home" means a private owner-occupied house having up to five (5) guest rooms and in which the only meal served to guests is breakfast.

(5) "Bed and breakfast inn" means a private inn or other unique residential facility having not more than nine (9) guest rooms and in which the only meal served to guests is breakfast. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy.

(6) "Continental breakfast" means a breakfast meal restricted to the following foods:

(a) Beverages such as coffee, tea and fruit juice;

(b) Pasteurized Grade A milk;

(c) Fresh fruit;

(d) Frozen and commercially processed fruit;

(e) Baked goods, such as pastry, rolls, bread, and muffins which are not potentially hazardous food;

(f) Cereal;

(g) Jam, jelly, honey, sorghum syrup or other table syrup;

(h) Pasteurized Grade A cream and butter, nondairy creamer, or similar products;

(i) Commercially manufactured hard cheese, cream cheese, or yogurt.

(7) "Full breakfast" means a breakfast meal including foods other than those listed in the definition of "continental breakfast".

(8) "Person" means an individual, a firm, partnership, company, corporation, trustee, association, or a public or private entity.

(9) "Potentially hazardous food" means a 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; or

(c) Of plant origin which:

1. Has been treated; or

2. Are raw seed sprouts.

(d) Excluding:

1. Air dried hard boiled eggs with shells intact;

2. Food with water activity (aw) values of 0.85 or less;

3. Food with a hydrogen ion concentration (pH) level of four and six-tenths (4.6) or below;

4. Food in an unopened, hermetically sealed container that has 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.

Section 2. Application for a Permit to Operate; Fees. (1) A person desiring to operate a bed and breakfast establishment shall make written application for a permit on form DFS-200, provided by the cabinet. The application shall include:

- (a) The name and address of the applicant;
- (b) The location and type of the proposed establishment; and
- (c) The signature of the applicant.

(2) Prior to approval of an application for a permit, the cabinet shall inspect the proposed establishment to determine compliance with the provisions of this administrative regulation.

(3) A permit to operate a bed and breakfast establishment shall be issued for only the premises and person named in the application. A permit shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

(4) A permit to operate a bed and breakfast establishment, unless previously suspended or revoked, shall expire on December 31, following the date of issuance and shall be renewable annually upon an application accompanied by the required fee, as follows:

- (a) Bed and breakfast establishment providing a full breakfast - eighty-seven (87) dollars;
- (b) Bed and breakfast establishment serving only a continental breakfast - sixty-seven (67) dollars.

Section 3. Food Supplies. (1) Food shall be in sound condition and safe for human consumption. Food shall be obtained from a source which shall comply with the applicable laws relating to food safety. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment shall be prohibited.

(2) Fluid milk and fluid milk products used shall be pasteurized and shall comply with KRS Chapter 217C and 902 KAR 50:110. Dry milk and milk products used shall be made from pasteurized milk and milk products. Raw milk shall not be provided or used in a bed and breakfast establishment.

(3) Clean shell eggs meeting applicable grade standards or pasteurized liquid, frozen, or dry eggs, or pasteurized dry egg products shall be used.

(4) Ice which has been manufactured with potable water and handled in a sanitary manner shall be used.

Section 4. Food Protection. (1) At all times, including while being stored, prepared, offered, dispensed, or transported, food shall be protected from:

- (a) Cross-contamination between foods; and
- (b) Potential contamination by:
 - 1. Insects;
 - 2. Insecticides;
 - 3. Rodents;
 - 4. Rodenticides;
 - 5. Unclean equipment or utensils;
 - 6. Unnecessary hand contact;
 - 7. Draining;

8. Overhead leakage or condensation;
9. Dust;
10. Coughs;
11. Sneezes; or
12. Other agents of public health significance.

(2) The temperature of potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, at all times, except during necessary times of preparation or service.

(3) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(4) Pets may be present on the premises, but shall not be permitted in the kitchen and shall be kept out of food preparation and dining areas during food preparation and service to the public.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during food preparation and service.

(6) Cooking facilities in the residential kitchen shall not be available to guests.

Section 5. Food Preparation. (1) Food shall be prepared:

- (a) With a minimum of manual contact;
- (b) On a food-contact surface;
- (c) With clean utensils that have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the food establishment shall be thoroughly cleaned with potable water before being used.

(3) Potentially hazardous food processed by cooking shall be cooked to heat all parts of the food to at least 140 degrees Fahrenheit.

(4) For a kitchen in a bed and breakfast establishment serving a continental breakfast only, ingredients which are potentially hazardous such as milk, cream, and eggs, may be used in food preparation if the final product is not a potentially hazardous food. Stove top skillet or microwave produced items such as pancakes, waffles, or French toast shall be prohibited.

(5) For a kitchen in a bed and breakfast establishment serving a full breakfast, potentially hazardous foods shall be cooked and immediately served to guests. The following food handling practices shall be prohibited:

- (a) Cooling and reheating prior to service;
 - (b) Hot holding for more than two (2) hours; and
 - (c) Service of leftovers.
- (6) A potentially hazardous food shall be thawed:

- (a) In a refrigerated unit at a temperature forty-five (45) degrees Fahrenheit or below;
- (b) Under potable running water at a temperature of seventy (70) degrees Fahrenheit or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food;

- (c) In a microwave oven if the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or if the entire, uninterrupted cooking process takes place in the microwave oven; or

- (d) As part of the conventional cooking process if the food weighs three (3) pounds or less.

Section 6. Food Display and Service. (1) Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by the use of:

- (a) Packaging;

- (b) Easily cleanable display cases;
- (c) Serving line or salad bar protector devices;
- (d) Covered containers for self-service; or
- (e) Other effective means.

(2) Potentially hazardous food other than milk, cream, cream cheese, or yogurt shall not be provided for consumer self-service in a bed and breakfast establishment serving a continental breakfast only.

(3)(a) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, or in dispensers or containers.

(b) For table service, catsup and other sauces may be served in the original container or pour-type dispenser.

(c) Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

(4) Ice for consumer use shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination.

(5)(a) Once served to a consumer, portions of leftover food shall not be reused or re-served except that nonpotentially hazardous packaged food, that is still packaged and is still in sound condition may be re-served.

(b) A single-service creamer or a completely wrapped pat of butter or margarine may be re-served if still packaged and in sound condition.

Section 7. Employee Health and Practices. (1) An employee shall not work in a bed and breakfast establishment in a capacity in which there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the employee is:

- (a) Infected with a communicable disease that can be passed by food;
- (b) A carrier of an organism that causes a communicable disease;
- (c) Affected with a boil, infected wound, or acute respiratory care infection.

(2) An employee engaged in a food preparation, service, or warewashing operation shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water:

- (a) Before starting work;
- (b) After smoking;
- (c) Eating;
- (d) Using the toilet; and
- (e) As often as is necessary during work to keep hands and forearms clean.

(3) An employee shall keep his or her fingernails trimmed and clean.

(4) Each employee shall wear clean outer clothing.

(5)(a) An employee working in a food preparation area shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(b) An employee working in another area of a bed and breakfast establishment shall arrange his or her hair to prevent the contamination of food, equipment or utensils.

(6) Each employee shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) An employee shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the employee's activity may result in contamination of food, water, equipment, or utensils.

Section 8. Equipment and Utensils. (1) Equipment and utensils shall be:

- (a) Constructed and repaired with safe materials, including finishing materials;
- (b) Corrosion resistant and nonabsorbent; and
- (c) Smooth, easily cleanable, and durable under conditions of normal use.

(2) Single-service articles shall be made from clean, sanitary, safe materials.

(3) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(4) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods shall be permitted for repeated use.

(5) Single-service articles shall not be reused.

(6) Equipment and utensils shall be maintained in good repair.

Section 9. Cleaning and Sanitizing of Equipment and Utensils. (1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, tableware and utensils shall be cleaned and sanitized prior to food preparation for the public and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be preflushed or prescraped and, if necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, utensils and tableware, three (3) compartments shall be provided and used. The regulatory authority may allow the use of compartments other than sinks.

(b) Each of the following five (5) steps of the warewashing process shall be completed:

- 1. Prerinsing or scraping;
- 2. Application of cleaner for soil removal;
- 3. Rinsing to remove an abrasive and to dilute cleaning chemicals;
- 4. Sanitizing; and
- 5. Air-drying and draining.

(c) The establishment shall use a sanitizing method approved by applicable provisions of the:

- 1. KRS Chapter 217, the Kentucky Food, Drug, and Cosmetic Act; and
- 2. 902 KAR 45:005, Section 17, the State Retail Food Code.

(d) Wash, rinse and sanitizing solutions shall be maintained in a clean condition.

(e) The washing solution shall be maintained at a temperature of 110 degrees Fahrenheit or above, or as specified on the manufacturer's label.

(f) If a chemical is used for sanitization, it shall not have a concentration higher than the maximum permitted by law. A test kit or other device that measures the parts per million concentration of the solution used at least once each business day and each time the sanitizing solution is changed.

(7) Mechanical cleaning and sanitizing shall be conducted as follows:

(a) A commercial dishwasher shall comply with applicable provisions of the state retail food code, KRS Chapter 217 and 902 KAR 45:005.

(b) A domestic or homestyle dishwasher may be used if the following performance criteria are met:

1. The dishwasher shall effectively remove physical solids from all surfaces of dishes.
 2. The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.
 3. The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle.
 4. The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible when sanitizing the kitchen facilities' utensils and tableware. A copy of the instructions shall be available on the premises.
- (8) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:
- (a) Soiled utensils prior to washing; and
 - (b) Cleaned utensils after sanitizing.
- (9) Equipment, utensils and tableware shall be air-dried.

Section 10. Water Supply and Sewage Disposal. (1) Sufficient potable water for the needs of the establishment shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet.

(2) Bottled and packaged potable water shall be obtained from a source that complies with 401 KAR 8:010 through 401 KAR 8:700 and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water for consumer self-service shall be dispensed from the original container.

(3) Sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated pursuant to the requirements of the Natural Resources and Environmental Protection Cabinet and the cabinet. Mop water shall not be disposed of in the dishwashing sink.

Section 11. Toilet Facilities for Employees. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, shall be conveniently located, and shall be accessible to employees at all times.

(2) A bathroom opening to the kitchen or dining area shall have adequate ventilation and a self-closing door. Ventilation may be provided by a window or by mechanical means. A soap dispenser and disposable towels shall be provided for hand washing in a bathroom used by a food handler.

(3) A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials.

Section 12. Hand-washing Facilities for Employees. (1) Hand-washing facilities shall be installed pursuant to the requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, and shall be conveniently located.

(2) A hand-washing facility shall be provided with hot and cold potable water tempered by means of a mixing valve or combination faucet.

(3) A supply of hand-cleansing soap or detergent shall be available from a dispensing unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility. Common towels shall be prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand-washing facility.

(4) A soap dispenser and disposable towels for use in hand washing shall be provided at the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the toilet, hands shall be first washed in an approved hand-washing facility before they are washed in the kitchen sink.

(5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, ceilings, and attached equipment in food preparation and service areas and in employee bathrooms of a bed and breakfast establishment shall be fabricated from easily cleanable material, shall be maintained in good repair, and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

Section 14. Insect and Rodent Control. (1) Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents or of flies, cockroaches, other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

(2) Pesticides and rodenticides.

(a) A person shall not apply insecticides or rodenticides except:

1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR 31:005;
2. In accordance with the manufacturer's labeling; and

3. In such a way that food, food-contact surfaces, and the supply of potable water are not contaminated.

(b) Open pesticide or rodenticide bait boxes shall not be used.

(c) Pesticides, rodenticides and other toxic materials shall be stored apart from food, equipment, and utensils. Every container of toxic material shall be clearly labeled for easy identification.

(d) Pesticides and rodenticides shall be stored separated from other toxic and chemical compounds at all times.

(3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the development of objectionable odors and the attraction of pests.

Section 15. Plan Review of Future Construction. If a kitchen or employee bathroom facility of a bed and breakfast establishment is constructed or extensively remodeled, properly prepared plans and specifications for the construction, remodeling, or alteration, showing layout, construction materials, location, size, and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the cabinet for approval before the work is begun.

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

(2) Inspection records. The cabinet representative inspecting an establishment shall record the findings, and shall furnish a copy of the inspection report to the permit holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the cabinet shall notify the permit holder or his representative in charge. In the notification, the cabinet shall:

(a) Establish the specific violations found; and

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

1. If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) or two (2) point weighted items shall be corrected as soon as possible, not to exceed the time of the next routine inspection.

2. When 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 weighted items shall be corrected as soon as possible, within a period not to exceed thirty (30) days.

3. Regardless of the rating score of the establishment, all violations of four (4) or five (5) point weighted items shall be corrected within a time specified by the cabinet, not to exceed ten (10) days.

4. 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. The permit shall be suspended within ten (10) days after receipt of the notice unless a written request for a hearing is filed with the cabinet, by the permit holder, within the ten (10) day period.

5. The report of inspection shall state:

a. Failure to comply with a notice from the cabinet or local health department, or with a time limit for correction of a violation, shall result in regulatory action up to and including suspension of the permit, as provided in KRS 217.126.

b. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request for hearing is filed with the cabinet within ten (10) days following service of notice, in accordance with 902 KAR 1:400.

(c) State that failure to comply with a 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 a notice of adverse inspection findings shall be provided if a written request for a hearing is filed with the cabinet within ten (10) days following the service of the notice for correction.

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

Section 17. Suspension and Revocation of Permits. (1)(a) An establishment's permit shall be suspended immediately, without hearing, upon notice to the permit holder if:

1. The cabinet has reason to believe that an imminent public health hazard exists;
2. The permit holder has interfered with the cabinet in the performance of its duties; or
3. The establishment rating score is less than sixty (60).

(b) The permit holder may request a hearing.

(2) The cabinet shall allow a permit holder a reasonable opportunity to correct a violation. The cabinet shall notify, in writing, a permit holder or operator who fails to comply with a written notice issued under the provisions of this administrative regulation, that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended permits. A person whose permit has been suspended may 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 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 the requirements of this administrative regulation, or for interference with the cabinet in the performance of its duties, a permit may be permanently revoked, after an opportunity for a hearing has been provided by the cabinet. Before a permanent revocation action is taken, 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 the 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.

(5) Hearings. Administrative hearings shall be conducted in accordance with 902 KAR 1:400 and KRS Chapter 13B. (18 Ky.R. 587; eff. 10-6-91; Am. 22 Ky.R. 2445; eff. 8-1-96; 27 Ky.R. 1934; 2475; eff. 3-6-2001.)