

# Food Code Differences

## 2005 Code VS. 2013 Code

Kentucky Food Safety Branch  
2019

### Amended Definitions

#### Core Item

“Core item” means a provision in the Code that is not designed as a PRIORITY ITEM or a PRIORITY FOUNDATION ITEM.

“Core item” includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures(SSOP), Facilities or structures, equipment design, or general maintenance.

#### Packaged

“Packaged” means bottled, canned, cartoned, bagged, or wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.

“Packaged” does not include wrapped or placed in a carry-out container to protect the FOOD during service or delivery to the CONSUMER, by a FOOD EMPLOYEE, upon CONSUMER request.

#### Priority Item

“Priority item” means a provision in this Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls hazard.

"Priority item" includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing.

"Priority item" is an item that is denoted in this Code with a superscript **P**.

#### Priority Foundation Item

"Priority foundation item" means a provision in this Code whose application supports, facilitates or enables one or more PRIORITY ITEMS.

"Priority foundation item" includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

"Priority foundation item" is an item that is denoted in this Code with a superscript **Pf**.

## **Shiga toxin-producing Escherichia Coli ( STEC)**

Means any E. coli capable of producing Shiga toxins. STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild non-bloody diarrhea, to hemorrhagic colitis to hemolytic uremic syndrome.

## **Time/Temperature Control for Safety Food**

"Time/temperature control for safety food" means a FOOD that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

"Time/temperature control for safety food" includes: (a) An animal FOOD that is raw or heat-treated; a plant FOOD that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation.

\*\*The term "potentially hazardous food" was changed to "Time/Temperature Control for Safety Foods" (TCS) to better reflect the nature of the food.

## **Reduced Oxygen Packaging**

Sous vide PACKAGING, in which raw or partially cooked FOOD is vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

## **Amended Code**

### **2-102.12 Certified Food Protection Manager**

(A) At least one EMPLOYEE that has supervisory and management responsibility and the authority to direct and control FOOD preparation and service shall be a certified FOOD protection manager who has shown proficiency of required information through passing a test that is part of an ACCREDITED PROGRAM.

(B) This section does not apply to certain types of FOOD ESTABLISHMENTS deemed by the REGULATORY AUTHORITY to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of FOOD preparation.

## **2-102.20 Food Protection Manager Certification**

(A) A PERSON IN CHARGE who demonstrates knowledge by being a FOOD protection manager that is certified by a FOOD protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of FOOD Protection Manager Certification Programs is deemed to comply Food Protection Standards for Accreditation of FOOD Protection Manager Certification Programs is deemed to comply with ¶2-102.11(B).

## **2-102.20 Food Protection Manager Certification**

(B) A FOOD ESTABLISHMENT that has an EMPLOYEE that is certified by a FOOD protection manager certification program that is evaluated and listed by a Conference for Food Protection recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of FOOD Protection Manager Certification Programs is deemed to comply with §2-102.12.

## **2-201.11 Management and Personnel**

- Added Code language nontyphoidal Salmonella as one of the reportable illnesses for action by the Person In Charge.
- Added Code language to address employee health controls for the exclusion and restriction of nontyphoidal Salmonella.

## **2-201.13 Removal, Adjustment, or Retention of Exclusions and Restrictions**

(5) If a FOOD EMPLOYEE was diagnosed with an infection from nontyphoidal *Salmonella* and EXCLUDED as specified under Subparagraph 2-201.12(A)(2):

(a) RESTRICT the FOOD EMPLOYEE, who is ASYMPTOMATIC for at least 30 days until conditions for reinstatement as specified under Subparagraphs (G)(1) or (2) of this section are met;P

**or**

(b) Retain the EXCLUSION for the FOOD EMPLOYEE who is SYMPTOMATIC, until conditions for reinstatement as specified under Paragraphs (G)(1) or (G)(2) of this section are met.

(G) Reinstatement a food employee who was EXCLUDED as specified under Subparagraph 2-201.12(A)(2) or who was RESTRICTED as specified under ¶ 2-201.12(G) if the PERSON IN CHARGE obtains APPROVAL from the REGULATORY AUTHORITY; and one of the following conditions is met:

- (1) The EXCLUDED or RESTRICTED FOOD EMPLOYEE provides to the PERSON IN CHARGE written

medical documentation from a HEALTH PRACTITIONER stating that the FOOD EMPLOYEE is free of a nontyphoidal *Salmonella* infection based on test results showing 2 consecutive negative stool specimen cultures that are taken;

- (a) Not earlier than 48 hours after discontinuance of antibiotics,P and
- (b) At least 24 hours apart;P

(2) The FOOD EMPLOYEE was RESTRICTED after symptoms of vomiting or diarrhea resolved, and more than 30 days have passed since the FOOD EMPLOYEE became ASYMPTOMATIC

**or**

(3) The FOOD EMPLOYEE was EXCLUDED or RESRTICTED and did not develop symptoms and more than 30 days have passed since the FOOD EMPLOYEE was diagnosed. P

### **2-501.11 Clean-up of Vomiting and Diarrheal Events**

A FOOD ESTABLISHMENT shall have procedures for EMPLOYEES to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the FOOD ESTABLISHMENT. The procedures shall address the specific actions EMPLOYEES must take to minimize the spread of contamination and the exposure of EMPLOYEES, consumers, FOOD, and surfaces to vomitus or fecal matter.

### **3-201.16 Wild Mushroom**

(A) Except as specified in ¶ (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a FOOD ESTABLISHMENT unless the FOOD ESTABLISHMENT has been APPROVED to do so.

(B) This section does not apply to:

- (1) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the FOOD regulatory agency that has jurisdiction over the operation; or
- (2) Wild mushroom species if they are in packaged form and are the product of a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

### **3-304.17 Refilling Returnables**

(A) Except as specified in ¶¶ (B) - (E) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT;P

(B) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:

- (1) Designed and constructed for reuse and in accordance with the requirements specified under Part 4-1 and 4-2; P
- (2) One that was initially provided by the FOOD ESTABLISHMENT to the CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT, for the purpose of being returned for reuse;

- (3) Returned to the FOOD ESTABLISHMENT by the CONSUMER after use;
- (4) Subject to the following steps before being refilled with FOOD:
  - (a) Cleaned as specified under Part 4-6 of this Code,
  - (b) Sanitized as specified under Part 4-7 of this Code; P
  - (c) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4-1 and 4-2; P
- (C) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with BEVERAGE if:
  - (1) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;
  - (2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;
  - (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
  - (4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and
  - (5) The container is refilled by:
    - (a) An EMPLOYEE of the FOOD ESTABLISHMENT, or
    - (b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process as specified under ¶¶ 4-204.13(A), (B), and (D) that cannot be bypassed by the container owner.
- (D) Consumer-owned, personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).
- (E) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

### **3-402.11 Parasite Destruction**

- (2) A scallop product consisting only of the shucked adductor muscle;
- (5) FISH eggs that have been removed from the skein and rinsed.

### **3-401.14 Non-Continuous Cooking of Raw Animal Foods**

Raw animal FOODS that are cooked using a NON-CONTINUOUS COOKING process shall be:

- (A) Subject to an initial heating process that is no longer than sixty minutes in duration;
- (B) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under ¶ 3 501.14(A);
- (C) After cooling, held frozen or cold, as specified for TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under ¶ 3 501.16(A)(2);
- (D) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11 (A)-(C);P

(E) Cooled according to the time and temperature parameters specified for cooked TIME /TEMPERATURE CONTROL FOR SAFETY FOOD under ¶ 3-501.14(A) if not either hot held as specified under ¶3-501.16(A), served immediately, or held using time as a public health control as specified under §3-501.19 after complete cooking P;  
and

(F) Prepared and stored according to written procedures that:

(1) Have obtained prior APPROVAL from the REGULATORY AUTHORITY; Pf

(2) Are maintained in the FOOD ESTABLISHMENT and are available to the REGULATORY AUTHORITY upon request; Pf

(3) Describe how the requirements specified under ¶ (A)- (E) of this Section are to be monitored and documented by the PERMIT HOLDER and the corrective actions to be taken if the requirements are not met; Pf

(4) Describe how the FOODS, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as FOODS that must be cooked as specified under ¶ (D) of this section prior to being offered for sale or service Pf; and

(5) Describe how the FOODS, after initial heating but prior to cooking as specified under ¶(D) of this section, are to be separated from READY-TO-EAT FOODS as specified under ¶3-302.11 (A).Pf

### **3-501.13 Thawing**

(E) REDUCED OXYGEN PACKAGED FISH that bears a label indicating that it is to be kept frozen until time of use shall be removed from the reduced oxygen environment:

(1) Prior to its thawing under refrigeration as specified in ¶(A) of this section;

or

(2) Prior to, or Immediately upon completion of, its thawing using procedures specified in ¶ (B) of this section.

### **3-502.12 Reduced Oxygen Packaging Without a Variance, Criteria**

(b) Discard the FOOD if within 30 calendar days of its PACKAGING if it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;<sup>Pf</sup>

(4) Limits the refrigerated shelf life to no more than 30 calendar days from PACKAGING to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;<sup>P</sup>

(7) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under ¶ 8-201.13(B).

(D) Except as specified under ¶ (C) and ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a **cook-chill or sous vide process shall:**

(1) Provide to the REGULATORY AUTHORITY prior to implementation, a HACCP PLAN that contains the information as specified under ¶¶ 8-201.14 (B) and (D);<sup>Pf</sup>

(e) Cooled to 5°C (41°F) in the sealed PACKAGE or bag as specified under § 3-501.14 and:<sup>P</sup>

(i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of PACKAGING;<sup>P</sup>

(ii) Held at 5°C (41°F) or less for no more than 7 days, at which time the FOOD must be consumed or discarded;<sup>P</sup> or

(iii) Held frozen with no shelf life restriction while frozen until consumed or used.<sup>P</sup>

(E) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES **cheese using a REDUCED OXYGEN PACKAGING method shall:**

(1) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;<sup>P</sup>

(2) Have a HACCP PLAN that contains the information specified under ¶¶ 8-201.14 (B) and (D) and as specified under ¶¶ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section;<sup>Pf</sup>

(3) Labels the PACKAGE on the principal display panel with a “use by” date that does not exceed 30 days from its packaging or the original manufacturer’s “sell by” or “use by” date, whichever occurs first;<sup>Pf</sup> and

(4) Discards the REDUCED OYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within 30 calendar days of its PACKAGING.<sup>Pf</sup>

(F) A HACCP Plan is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(1) Labeled with the production time and date,

(2) Held at 5°C (41°F) or less during refrigerated storage, and

(3) Removed from its PACKAGE in the FOOD ESTABLISHMENT within 48 hours after PACKAGING.

## **8-304.11 Responsibilities of the Permit Holder**

(K) Notify customers that a copy of the most recent establishment inspection report is available upon request by posting a sign or placard in a location in the food establishment that is conspicuous to customers or by another method acceptable to the REGULATORY AUTHORITY. Example: If a local health department does not have a local ordinance in place in regards to posting of the inspection sheet/report then there should be a placard or sign in place at the food establishment notifying customers that the most recent establishment report is available upon request.

## **Annex 5 Conducting Risk-based Inspections**

### **Risk Category 1: Inspection Frequency Once a Year**

- Examples include most convenience store operations, hot dog carts, and coffee shops. Establishments that serve or sell only pre-packaged, non-time/temperature control for safety (TCS) foods. Establishments that prepare only non-TCS foods. Establishments that heat only commercially processed, TCS foods for hot holding.
- No cooling of TCS foods. Establishments that would otherwise be grouped in Category 2 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factor.

### **Risk Category 2: Inspection Frequency Twice a Year**

- Examples may include retail food store operations, schools not serving a highly susceptible population, and quick service operations. Limited menu. Most products are prepared/cooked and served immediately. May involve hot and cold holding of TCS foods after preparation or cooking. Complex preparation of TCS foods requiring cooking, cooling, and reheating for hot holding is limited to only a few TCS foods.
- Establishments that would otherwise be grouped in Category 3 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors. Newly permitted establishments that would otherwise be grouped in Category 1 until history of active managerial control of foodborne illness risk factors is achieved and documented.

### **Risk Category 3: Inspection Frequency Three times a Year**

- Examples is a full service restaurant. Extensive menu and handling of raw ingredients. Complex preparation including cooking, cooling, and reheating for hot holding involves many TCS foods. Variety of processes require hot and cold holding of TCS food. Establishments that would otherwise be grouped in Category 4 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors.
- Newly permitted establishments that would otherwise be grouped in Category 2 until history of active managerial control of foodborne illness risk factors is achieved and documented.



#### **Risk Category 4: Inspection Frequency Four times a Year**

- Examples include preschools, hospitals, nursing homes, and establishments conducting processing at retail. Includes establishments serving a highly susceptible population or that conduct specialized processes, e.g., smoking and curing; reduced oxygen packaging for extended shelf-life.

\*Risk-based inspection information is located in Annex 5 page 590-591

#### **KY Food Code**

- 902 KAR45:005-Kentucky Food Code has been amended to update the requirements for food service establishments from the 2005 FDA Food Code to the 2013 FDA Food Code. There are some exclusions to the 2013 FDA Food Code that are included in this administrative regulation.
- Allowing dogs in outside dining areas with restrictions.
- Removing fourteen (14) consecutive day limit for a state wide mobile food service unit.
- 902 KAR 45:090 -This regulation is being amended as a result of the passage of House Bill 263 which amended KRS 217.015(56) to remove the requirement that a home-based processor be a farmer and amended KRS 217.136 to expand the locations where a home-based processor can sell their products but still requires direct to consumer sales.
- Repeal of 902 KAR 45:006 (Bed and Breakfast) and 902 KAR 45:140 (Retail food programs evaluation and standardization procedures), are have been repealed and have been incorporated into the amended Kentucky Food Code.

#### **Please see KY Food Code 902 KAR45:005 below:**

##### **902 KAR 45:005. Kentucky food code.**

RELATES TO: KRS 217.005-217.205, 217.280-217.390, 217.990-217.992, 219.011

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(c), 217.125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1), 217.125, 211.090(3), and 211.180(1)(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) "2013 FDA Food Code" means the 2013 edition of the Food Code published by the U.S. Public Health Service and the U.S. Food and Drug Administration.

(2) "Cabinet" is defined by KRS 217.015(3).

(3) "Complex food preparation" means the process of preparing a food item that includes two (2) or more complete trips through the temperature danger zone between forty-one (41) degrees Fahrenheit and 135 degrees Fahrenheit.

(4) "Kentucky State Plumbing Code" is defined by KRS 318.130.

(5) "Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

(6) "Restricted concessions" means a food service establishment, whether mobile or stationary, limited to preparing and serving only menu items and ingredients considered to be low-risk in relation to foodborne illness.

(7) "Statewide mobile food unit" means a fully enclosed, self-contained food service establishment that operates from a vehicle or is otherwise mobile.

Section 2. Revisions to the 2013 FDA Food Code. The 2013 edition of the FDA Food Code shall apply to Kentucky food establishments with the addition of the provisions established in this section. (1) FDA Food Code Subparagraph 2-102.11(B) shall be replaced with the following sentence: 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 2013 FDA food code.

(2) FDA Food Code Subparagraph 6-501.115 shall be supplemented with the Kentucky-specific exceptions established in this subsection.

(a) A dog may be allowed in an outdoor dining area if:

1. The outdoor dining area is not fully enclosed; and
2. There is an entrance to the outdoor dining area that is separate from the main entrance and the sole means of entry for a patron with a dog.

(b) Employees shall not permit a dog to come into physical contact with:

1. Food;
2. Serving dishes;
3. Utensils;
4. Tableware;
5. Linens;
6. Unwrapped single-service and single-use articles; or
7. Other food service items that could result in contamination of food or a food-contact surface.

(c) An employee engaged in the preparation or handling of food shall avoid physical contact with a patron dog. If an employee has physical contact with a patron dog, the employee shall wash his or her hands prior to returning to work.

(d) All accidents involving dog vomit, feces, or urination shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be made available for use in the designated outdoor dining area.

(e) Signage shall be posted at each entrance to the outdoor dining area stating that dogs:

1. May be allowed in the area;
2. Shall not be served food or water in wares used for human consumption;
3. Shall not be allowed on chairs, seats, or tables; and
4. Shall be kept on a leash and under the control of an adult at all times.

(f) The food establishment may refuse to serve the patron with a dog if:

1. The patron fails to exercise reasonable control over the dog; or
2. The dog is behaving in a manner that compromises or threatens to compromise the health or safety of any person present.

Section 3. Statewide Mobile Food Units. (1) All food products served in a statewide mobile food unit shall be cooked or prepared in:

- (a) A statewide mobile food unit permitted by the cabinet; or
  - (b) A food service establishment permitted by the cabinet.
- (2) Complex food preparation shall not be performed in a statewide mobile food unit.
- (3) The statewide mobile food unit shall not serve as a catering operation unless it meets additional permitting requirements as a catering kitchen.
- (4) The statewide mobile food unit shall be serviced and cleaned every day of operation.
- (5) The statewide mobile food unit shall meet the sanitation and plumbing requirements contained in the 2013 FDA Food Code and the Kentucky State Plumbing Code.
- (6) Sewage and other liquid wastes shall be removed according to the 2013 FDA Food Code and the Kentucky State Plumbing Code.

Section 4. Restricted Concessions. (1) Restricted concessions may include:

- (a) Flavored ice;
- (b) Shaved ice;
- (c) Snow cones with commercially mixed and packaged flavorings;
- (d) Pork rinds;
- (e) Roasted peanuts, almonds, pecans, or walnuts, without the shell;
- (f) Nacho cheese and chips;
- (g) Cotton candy;
- (h) Pre-cooked, commercially processed hotdogs, frankfurters, or similar meats (such as bratwurst or Italian sausage) that are grilled, steamed, or boiled on-site;
- (i) Pre-packaged sandwiches;
- (j) Pre-packaged ice cream or popsicles;
- (k) Prepackaged, commercially processed snack foods (such as pretzels or chips) from a state or federal permitted food manufacturer;
- (l) Shelf-stable, pre-packaged baked goods; or
- (m) Commercially produced bottled or canned soft drinks, water, ice tea, or lemonade.

(2) Sanitation requirements.

(a) If public water is available, a restricted concession facility shall follow the requirements of the Kentucky State Plumbing Code.

(b) If public water is not available, a restricted concession facility may operate under temporary sanitation if:

1. There is an adequate amount of stored potable water available;
2. Tubs, buckets, or similar containers for washing, rinsing, and sanitizing equipment large enough to completely immerse the largest item used in operation are available;
3. There are adequate hand washing facilities; and
4. Permanent or portable toilet facilities are conveniently located and have hand washing facilities available.

(c) The restricted concession facility shall provide adequate cold and hot storage for food products and safe storage areas for the storage of dry food and single service articles.

(d) A restricted concession facility shall be constructed or located in such a way that food and utensils shall be protected from potential contamination, including from insects, dust, and debris.

Section 5. Bed and Breakfast. (1) A bed and breakfast establishment shall not be subject to this administrative regulation if:

(a) The bed and breakfast establishment is:

1. In a one (1) family, privately owned residential dwelling unit that has guest rooms or suites used, rented, or hired out for occupancy; and

2. Occupied for sleeping purposes by persons not affiliated by the single-family unit;

(b) The owner or caretaker of the bed and breakfast establishment resides on the premises or property adjacent to the premises during the periods of occupancy;

(c) The number of available guest rooms does not exceed nine (9);

(d) The number of overnight guests does not exceed eighteen (18); and

(e) Breakfast and other meals are served.

(2) Guests shall be informed by placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority.

(3) A bed and breakfast establishment that does not meet all of the requirements established in subsection (1)(a) to (e) of this section shall meet the requirements of this administrative regulation.

Section 6. Inspections and Violations. (1) If an inspection is made of an establishment, the findings shall:

(a) Be recorded on Form DFS-208, Food Establishment Inspection Report, using the:

1. 1/09 edition for an inspection conducted before July 1, 2019; or

2. 10/17 edition for an inspection conducted on or after July 1, 2019; and

(b) Constitute a written notice to the permit holder.

(2) A copy of the inspection report shall be provided 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 this subsection.

(a) If the rating score of the establishment is eighty-five (85) or more, all violations of one (1) 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) 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 priority items shall be corrected within a time period not to exceed ten (10) days.

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

Section 7. Permit Suspension. (1) If the rating score of the establishment is less than seven-ty (70), the establishment shall be issued a Form DFS-214, Notice of Enforcement of intent to suspend the permit in accordance with 902 KAR 1:400.

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

- (a) The cabinet has reason to believe that an imminent public health hazard exists;
  - (b) 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
  - (c) An inspection of an establishment reveals a rating score of less than sixty (60).
- (3) A permit holder subject to suspension of a permit may submit a Form DFS-215, Application for Reinstatement, in accordance with 902 KAR 1:400.
- (4) The permit holder whose permit has been suspended may request a hearing in accordance with 902 KAR 1:400.
- (5) 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.

Section 8. Methods of Conducting Evaluations of Retail Food Programs. The evaluation and standardization procedures for retail food programs shall be governed by the FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Food Code", U.S. Public Health Service, FDA, 2013;
- (b) "FDA Procedures for Standardization of Retail Food Safety Inspection Officers, Procedures Manual", U.S. Public Health Service, 2015;
- (c) "DFS-208, Food Establishment Inspection Report", edition 10/17;
- (d) "DFS-214, Notice of Enforcement ", edition 3/2018; and
- (e) "DFS-215, Application for Reinstatement, edition 03/2018.

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