



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Cottage Food Law Statutes:

Kentucky



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication
Cottage Food Laws: Kentucky

KY Rev. Stat. § 217.015(51-57)
KY Rev. Stat. § 217.136
KY Rev. Stat. § 217.137
902 KAR 45:090

Current through Register Vol. 51, No. 6, December 1, 2024.

KY Rev. Stat. § 217.015. Definitions for KRS 217.005 to 217.215

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act. For the purposes of KRS 217.136 and 217.137, "bread" or "enriched bread" also means breads that may include vegetables or fruit as an ingredient;
- (3) "Cabinet" means the Cabinet for Health and Family Services or its designee;
- (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
 - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or



(b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;

(6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;

(7) "Cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(b) Articles intended for use as a component of those articles, except that the term shall not include soap;

(8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(b) To affect the structure or any function of the body of man or other animals;

(9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;

(10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;

(11) "Drug" means:

(a) Articles recognized in the official United States



pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;

(12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;

(13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;

(14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;

(15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;

(16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or



cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

(17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;

(18) "Food" means:

- (a) Articles used for food or drink for man or other animals;
- (b) Chewing gum; and
- (c) Articles used for components of any such article;

(19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:

- (a) A pesticide chemical in or on a raw agricultural commodity;
- (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (c) A color additive; or



(d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;

(20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments, home-based processors, or home-based microprocessors;

(21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

(22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;

(23) "Immediate container" does not include package liners;

(24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:

(a) The number of potential illnesses or injuries; or

(b) The nature, severity, and duration of the anticipated illness or injury;

(25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet



during all reasonable times of operation;

(26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;

(27) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon an article or any of its containers or wrappers; or

(b) Accompanying the article;

(28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";

(29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;

(30) "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;

(31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;

(32) "Person" means an individual, firm, partnership, company,



corporation, trustee, association, or any public or private entity;

(33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;

(34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;

(35) "Practitioner" means medical or osteopathic physicians, dentists, chiropodists, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in KRS 320.240(12) to (14), advanced practice registered nurses as authorized in KRS 314.011 and 314.042, physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.858, and health care professionals who are residents of and actively practicing in a state other than Kentucky and who are licensed and have prescriptive authority under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;

(36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, advanced practice registered nurse, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;

(38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;

(39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;



(40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, food processing establishments, or home-based processors;

(41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;

(42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;

(43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;

(44) "Secretary" means the secretary of the Cabinet for Health and Family Services;

(45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;

(46) "Traffic" has the same meaning as it does in KRS 218A.010;

(47) "Ultimate user" has the same meaning as it does in KRS 218A.010;

(48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things,



not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;

(49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

(50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment;

(51) "Home" means a primary residence occupied by the processor, that contains only two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators used for cold storage. This equipment shall have been designed for home use and not for commercial use, and shall be operated in the kitchen within the residence;

(52) "Formulated acid food product" means an acid food in which the addition of a small amount of low-acid food results in a finished equilibrium pH of 4.6 or below that does not significantly differ from that of the predominant acid or acid food;

(53) "Acidified food product" means a low-acid food to which acid or acidic food is added and which has a water activity value greater than 0.85, and a finished equilibrium pH of 4.6 or below;

(54) "Low-acid food" means foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6, and a water activity value greater than 0.85;

(55) "Acid food" means foods that have a natural pH of 4.6 or below;

(56) "Home-based processor" means a person who in his or her



home, produces or processes non-potentially hazardous foods, including but not limited to dried herbs, spices, nuts, candy, dried grains, whole fruit and vegetables, mixed-greens, jams, jellies, sweet sorghum syrup, preserves, fruit butter, bread, fruit pies, cakes, or cookies, and who has a gross income of no more than sixty thousand dollars (\$60,000) annually from the sale of the products;

(57) "Home-based microprocessor" means a farmer who, in the farmer's home or certified or permitted kitchen, produces or processes foods, including but not limited to acid foods, formulated acid food products, acidified food products, or low-acid canned foods, and who has a gross income of no more than sixty thousand dollars (\$60,000) annually from the sale of the product;

(58) "Certified" means any person or home-based microprocessor who:

(a) Has attended the Kentucky Cooperative Extension Service's microprocessing program or pilot microprocessing program and has been identified by the Kentucky Cooperative Extension Service as having satisfactorily completed the prescribed course of instruction; or

(b) Has attended some other school pursuant to 21 C.F.R. sec. 114.10;

(59) "Farmer" means a person who is a resident of Kentucky and owns or rents agricultural land pursuant to subsection (9) of KRS 132.010 or horticultural land pursuant to subsection (10) of KRS 132.010. For the purposes of KRS 217.136 to 217.139, "farmer" also means any person who is a resident of Kentucky and has grown the primary horticultural and agronomic ingredients used in the home-based microprocessed products which they have produced; and

(60) "Farmers market temporary food service establishment" means any temporary food service establishment operated by a farmer who is a member of the market which operates within the confines of a farmers market registered with the Kentucky Department of Agriculture for the direct-to-consumer marketing of Kentucky-grown farm products from approved sources for a period of time not to exceed two (2) days per week for any consecutive six (6) months period in a calendar year.

KY Rev. Stat. § 217.136. Home-based food processors -- Exemption for from permit requirement and fair packaging and labeling laws -- Production, labeling, and sales of home-processed food products -- Inspections -- Registration system.



(1) A home-based processor shall be exempt from KRS 217.035 and 217.037 if the following conditions are met:

(a) All finished product containers are clean, sanitary, and properly labeled pursuant to subsection (3) of this section;

(b) All home-processed foods produced under this exemption are neither adulterated nor misbranded pursuant to subsection (4) of this section; and

(c) All glass containers for jams, jellies, preserves, fruit butter, and similar products are provided with suitable rigid metal covers.

(2) A home-based processor shall not produce or process for sale acid foods, acidified food products, formulated acid food products, or low-acid canned foods.

(3) A home-based processor shall label each of its food products and include the following information on the label of each of its food products:

(a) The name and address of the home-based processing operation;

(b) The common or usual name of the food product;

(c) The ingredients of the food product, in descending order of predominance by weight;

(d) The net weight and volume of the food product by standard measure, or numerical count;

(e) The following statement in ten (10) point type: "This product is home-produced and processed"; and

(f) The date the product was processed.

(4) Food products identified in KRS 217.015(56) and not labeled in accordance with subsection (3) of this section are deemed misbranded.

(5) Food products identified in KRS 217.015(56) and produced, processed, and labeled in accordance with subsection (3) of this section are acceptable food products that may only be offered for sale directly to consumers within this state, including from the home-based processor's home, whether by pick-up or delivery, at a market, roadside stand, community event, or online. These food products may be used in preparing and serving food.



(6) Food products identified in KRS 217.015(56) and labeled in accordance with subsection (3) of this section shall not be required to be tested in determining whether or not the food product is an acid food, acidified food product, formulated acid food product, or low-acid food.

(7) The processing facilities of a home-based processor may be inspected annually by the cabinet.

(8) A home-based processor shall be subject to food sampling and inspection if it is determined that its food product is misbranded pursuant to subsection (4) of this section or adulterated, or if a consumer complaint has been received.

(9) If the cabinet has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the cabinet.

(10) The cabinet shall promulgate administrative regulations to further delineate which food products are subject to the definition of home-based processor, as defined in KRS 217.015(56).

(11) No later than January 1, 2020, the cabinet shall develop and implement a registration system for home-based processors.

(12) Beginning January 1, 2020, a home-based processor shall be registered with the cabinet and include the following information:

(a) The name of the home-based processor and the physical address where production or processing will occur; and

(b) A listing of the food products to be produced or processed.

KY Rev. Stat. § 217.137. Administrative regulations on home-based microprocessors.

(1) The secretary shall promulgate administrative regulations to accommodate the specific circumstances of home-based microprocessors. In order to protect public health while encouraging the marketing of home-processed foods, the administrative regulations shall include, at a minimum, standards for:

(a) Installation, design, location, and maintenance of toilet rooms;

(b) Installation and maintenance of hand-washing facilities;

(c) Manual and mechanical cleaning and sanitizing processes;

(d) Installation and location of equipment;



(e) Construction and covering of floors; and

(f) Construction, materials, and maintenance of walls and ceilings.

(2) Food products that are produced or processed by a home-based microprocessor and in compliance with administrative regulations promulgated pursuant to subsection (1) of this section are acceptable food products that may only be offered for sale by farmers markets, certified roadside stands, or on the processor's farm. These food products may be used in preparing and serving food.

(3) The cabinet shall promulgate administrative regulations to further delineate which food products are subject to the definition of home-based microprocessor, as defined in KRS 217.015(57).

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors

Section 1. Definitions.

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

(2) "Certified roadside stand" means a physical location listed with the Kentucky Farm Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food products.

(3) "Easily cleanable" means that surfaces are readily accessible and made of a material and finish and so fabricated that residue can be effectively removed by normal cleaning methods.

(4) "Equipment" means articles used in the preparation and processing of food.

(5) "Farmer" is defined by KRS 217.015(59).

(6) "Farmers market" or "farmers market temporary food service establishment" is defined by KRS 217.015(60).

(7) "Food contact surfaces" means those surfaces with which food can come in contact, and those surfaces that drain onto surfaces that can come in contact with food.

(8) "Permitted kitchen" means a food service establishment or food processing firm that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 to 217.215, and issued by the Cabinet for Health and Family Services.

(9) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin



production of *Clostridium botulinum*, or in raw shell eggs, the growth of *Salmonella Enteritidis*. "Potentially hazardous food" includes:

- (a) An animal food (a food of animal origin) that is raw or heat-treated;
- (b) A food of plant origin that is heat-treated or consists of raw seed sprouts;
- (c) Cut melons; and
- (d) Garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.

(10) "Primary ingredients" means an agricultural or horticultural product that:

(a) Has been grown, harvested, and processed by the farmer as a predominant ingredient of a food product with the exception of "flour", as defined by KRS 217.015(17), for use in:

- 1. "Bread" as defined by KRS 217.015(2); or
- 2. Other items listed in KRS 217.015(56); and

(b) Does not include oil, vinegar, sugar, and other seasonings or spices used in the production of home processed or microprocessed foods.

(11) "Processing authority" means:

(a) The Food Science Professionals of the University of Kentucky, Department of Agriculture, who review and approve established scheduled processes, for adequate process times and pressures for the size of jar, style of pack, and kind of food being canned, by home-based microprocessors; or

(b) A qualified entity in accordance with 21 C.F.R. 113.83 and 114.83.

(12) "Single-service article" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one (1) time or one (1) person use after which they are intended for discard.

(13) "Single-use article" means utensils and bulk food containers designed and constructed to be used once and discarded such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten (10) cans that do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.

(14) "Utensil" means any food-contact implement used in the storage, preparation, transportation, dispensing, or sale of food.

(15) "Ware-washing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils such as kitchenware.



Section 2. Limitations on Certain Home-based Processed and Home-based Microprocessed Food Products.

- (1) A home-based processor may produce:
 - (a) Foods listed in KRS 217.015(56);
 - (b) Dried or freeze dried whole fruits or vegetables;
 - (c) Candy that shall be:
 1. Produced without added alcohol; and
 2. Made with no bare-hand contact;
 - (d) Maple syrup;
 - (e) Pecan pies;
 - (f) Granola that may be made with dried grains;
 - (g) Trail or snack mix that may be made with dried fruit, nuts, or seeds; and
 - (h) Popcorn that may be plain or have added seasonings.
- (2) A home-based microprocessor shall produce foods as authorized by KRS 217.015(57).
- (3) The following foods shall not be processed or offered for sale by a home-based processor or home-based microprocessor:
 - (a) Crème filled pies;
 - (b) Custard;
 - (c) Custard pies;
 - (d) Pies with meringue topping;
 - (e) Cheesecake;
 - (f) Cream, custard, or meringue pastries;
 - (g) Raw seed sprouts;
 - (h) Garlic-in-oil products; and
 - (i) Pureed baby foods.
- (4) Vacuum packaging of food in a container other than a mason-type jar shall be prohibited.
- (5) A jam or jelly processed in less than ten (10) minutes shall be filled into a sterile empty jar. Sterilization shall be accomplished by submerging the jar in boiling water for:



(a) At least ten (10) minutes at an altitude of less than 1,000 feet above sea level; and

(b) One (1) additional minute for each additional 1,000 feet elevation above sea level.

(6) If a boiling-water canner is utilized in the production of food by a home-based processor, the canner shall be deep enough so that at least one (1) inch of briskly boiling water will be over the tops of jars during processing.

(7) If an electric range is used for heating, the boiling-water canner shall have a flat bottom and shall be no more than four (4) inches wider than the element on which it is heated.

Section 3. Standards for Home-based Processing.

(1) A home-based processor shall maintain basic hygiene, cleanliness, and sanitation while producing home-based processor products and shall comply with the standards established in paragraphs (a) through (f) of this subsection during production, packaging, and handling of products for sale. The home-based processor shall:

(a) Regularly wash hands with soap and water;

(b) Keep kitchen equipment and utensils used for home-based processing clean and maintained in a good state of repair;

(c) Wash, rinse, and sanitize all food contact surfaces, equipment, and utensils used for food preparation before each use;

(d) Keep children under age twelve (12) and pets or other animals out of the kitchen during home-based processing related activities;

(e) Cease performing any domestic activities in the kitchen, such as family meal preparation, dishwashing, or washing and drying laundry; and

(f) Not produce, package, or handle any home-processed products while infected with a contagious disease or illness.

(2) A home-based processor doing business in the state shall be a resident of Kentucky.

(3) A home-based processor may advertise and accept orders and payments in person, electronically, or via the internet or phone.

(4) A home-based processor shall provide all home-based processed foods direct to the consumer through pick-up or delivery, and at flea markets, farmers markets, festivals, county fairs, craft fairs, and non-profit charity events, or a roadside stand.

(5) Home-based processed food products shall:



- (a) Be labeled as required by KRS 217.136(3); and
 - (b) Contain allergen information as specified by 21 U.S.C. 343(w).
- (6) A home-based processor shall not be required to have grown a primary ingredient for each of their products produced.
- (7) Beginning January 1, 2020, a home-based processor shall register with the Department for Public Health, Food Safety Branch. A home-based processor shall submit:
- (a) A DFS-250 Application for Home-based Processor, available from the Kentucky Food Safety Branch or at University of Kentucky Extension Service Office; and
 - (b) A fifty (50) dollar registration fee.
- (8) The home-based processor registration shall be valid for one (1) year. A home-based processor registration shall expire March 31 of each year and is renewable upon submission of a DFS-250 and accompanied by an annual fee of fifty (50) dollars.
- (9) Inspection of a home-based processor facility shall be made upon complaint, utilizing the DFS-252, Home-based Processor/Microprocessor Inspection Report.

Section 4. Home-based Microprocessor Certification.

- (1) A Kentucky farmer desiring to grow, harvest, process, and market Kentucky grown microprocessed food products and participate in the training program shall submit a DFS-251, Application for Home-based Microprocessor, which is available from the Department for Public Health, Food Safety Branch or at University of Kentucky Extension Service Office.
- (2) The application for certification shall be submitted to the cabinet and include the following information and attachments:
- (a) Name and address, including:
 - 1. The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and
 - 2. The name and address of the property owner if not owned by the farmer;
 - (b) The name and address of the primary residence occupied by the farmer;
 - (c) Type of water source. Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements established in 401 KAR Chapter 8;



(d) Type of sewage disposal. Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed, and operated in accordance with the requirements of 902 KAR Chapter 10 and 401 KAR Chapter 5;

(e) A listing of the food products to be processed and marketed by the farmer;

(f) Verification of attendance and successful completion of the Food Processing School including:

1. Verification of attendance and successful completion of the Food Processing School provided by the University of Kentucky Extension Office in compliance with KRS 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

2. Verification of attendance and successful completion of a food processing school approved pursuant to 21 C.F.R. 114.10; and

(g) Documentation from the processing authority for an established scheduled process for each food item that is to be processed by the home-based microprocessor.

1. Any change in the recipe shall constitute a recipe deviation, and a new review and approval shall be required from the processing authority prior to processing.

2. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing.

3. All established scheduled processes shall be maintained and made available upon request by the cabinet.

(3)

(a) Prior to marketing home-based products, the application for home-based microprocessor, along with the required water source approval, shall be submitted to the cabinet.

(b) The cabinet shall notify the applicant if the application is approved or denied.

(c) If the application is approved, the home-based microprocessor may begin marketing home-based products.

(d) If the application is denied:

1. The cabinet shall notify the applicant in writing of the reasons for the denial; and



2. The home-based microprocessor may appeal in accordance with Section 9(5) of this administrative regulation.

(4) Product labels for home-based microprocessed foods shall be labeled in accordance with KRS 217.005 to 217.215 and 21 U.S.C. 343(w). Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.

(5) The certification requirements established in this subsection shall apply to a home-based microprocessor.

(a) Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable.

(b) The certification shall be posted in a conspicuous place in the processing establishment and a copy shall be posted at the point of sale.

(c) Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(6) Each home-based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. A home-based microprocessor certification shall expire March 31 of each year and shall be renewable annually upon submittal of an application accompanied by an annual fee of fifty (50) dollars.

(7) Attendance at a food processing school as required by subsection (2)(f) of this section shall be required every three (3) years or upon any change or addition of food products to be processed.

Section 5. Production Standards for Home-based Microprocessors.

(1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

(a) Cross-contamination; 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) Pets and other animals shall not be allowed in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.

(3) Children under age twelve (12) shall not be allowed in the kitchen area during microprocessing related activities.

(4) Smoking or use of any form of tobacco shall not be allowed in the kitchen area during microprocessing related activities.

(5) Laundry facilities may be present in the residential kitchen, but shall not be used during microprocessing related activities.

(6) Home-based microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during home-based microprocessing activities.

(7) Vehicles used in transporting home-based microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting home-based microprocessed foods.

(8) Products made by a home-based microprocessor shall not be used or offered for consumption in a retail food establishment or through interstate commerce.

(9) Food Supplies.

(a) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor.

(b) All other ingredients in the products shall be in sound condition, safe for human consumption, obtained from a state or federal permitted food manufacturer, and stored and protected separate and apart from personal use food ingredients.

(c) Prior to processing, the temperature of potentially hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 135 degrees Fahrenheit or above, except during necessary times of preparation.

(d) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. A



container inspected and found to not be properly sealed shall be discarded. Reprocessing of an unsealed jar shall be prohibited.

(e) For each microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

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

(g) A product processed by a home-based microprocessor shall be packaged in food grade material.

(10)

(a) Food shall be prepared:

1. With a minimum of bare hand contact;
2. On a food-contact surface; and
3. With clean utensils that have been sanitized.

(b) 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 home-based microprocessor shall first be thoroughly cleaned with potable water.

(11) Equipment and utensils.

(a) Equipment.

1. Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners shall be prohibited for processing of low-acid canned foods.
2. Open-kettle canning and the processing of freshly-filled jars in a conventional oven, microwave oven, or dishwasher shall be prohibited.
3. All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at ten (10) to fifteen (15) PSIG as measured by a dial gauge, or weighted gauge if deemed appropriate by the processing authority. The processing authority shall ensure that each weighted-gauge pressure canner utilized by a microprocessor is operated at the correct pressure for the corresponding altitude.
4. A pressure canner shall not have been manufactured prior to year 2000, and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges.



5. A pressure canner utilized in the microprocessing of foods shall, at minimum;
 - a. Be of a sixteen (16) quart capacity; and
 - b. Contain at least seven (7) quart jars during processing.
6. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited.
7. Each temperature dial gauge shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the home-based microprocessor and shall be made available to the cabinet upon request.
8. A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process.
9. Only regular and wide-mouth mason-type, threaded, home-canning jars with self-sealing, two (2) piece canning lids with screw bands shall be used for microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one (1) piece zinc porcelain-lined caps shall be prohibited.

(b) Equipment and utensils shall be:

1. Constructed and repaired with safe materials, including finishing materials;
2. Corrosion resistant and nonabsorbent;
3. Maintained in good repair; and
4. Smooth, easily cleanable, and durable under conditions of normal use.

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

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

(e) Single-service and single-use articles shall not be reused.

(f) 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 ware-washing methods shall be permitted for repeated use.

Section 6. Sanitation Requirements for Home-based Microprocessors.



(1) A farmer or processing assistant shall not process food in a home-based microprocessing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual 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 infection; or
- (d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2)

(a) Each person engaged in a food preparation and ware-washing operation of a home-based microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water:

1. Before starting work;
2. After smoking;
3. After eating;
4. After handling nonwashed fruits and vegetables;
5. After using the toilet; and
6. As often as is necessary during work to keep hands and forearms clean.

(b) A hand-washing facility with hot and cold potable water shall comply with the requirements of 815 KAR 7:125, and shall be conveniently located.

(c) A supply of hand-cleaning soap or detergent shall be available at each hand-washing facility.

(d) A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing facility.

(e) An easily-cleanable waste receptacle shall be conveniently located near the hand-washing facility.

(f) 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.



- (g) Hand-washing facilities, soap, detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.
- (3) Each worker of a home-based microprocessing facility shall keep his or her fingernails trimmed and clean.
- (4) Each worker of a home-based microprocessing facility shall wear clean outer clothing.
- (5) Each worker in the food preparation area of a home-based microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.
- (6) Each worker of a home-based microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.
- (7) Each worker of a home-based microprocessing facility 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 worker's activity could result in contamination of food, water, equipment, or utensils.
- (8) Cleaning and sanitizing of equipment and utensils.
- (a) Food utensils and equipment shall be stored in a manner to avoid contamination.
 - (b) Food-contact surfaces and sinks shall be smooth and easily cleanable.
 - (c) Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to microprocessing related activities and after each use.
 - (d) Sinks, basins, or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.
 - (e) Equipment and utensils shall be prerinsed or prescraped and, if necessary, presoaked to remove food particles and soil.
 - (f) Manual cleaning and sanitizing shall be conducted as established in subparagraphs 1. through 5. of this paragraph.
 - 1. For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used.
 - 2. Each of the following five (5) steps of the ware-washing process shall be completed:
 - a. Prerinsing or scraping;
 - b. Washing with hot detergent solution;



- c. Rinsing to remove abrasives and cleaning chemicals;
- d. Sanitizing, using a method approved by the applicable provisions of 902 KAR 45:005, Section 2, the Kentucky Food Code; and
- e. Air-drying and draining.

3. Washing, rinsing, and sanitizing solutions shall be maintained in a clean condition.

4. The washing solution shall be maintained at a minimum temperature of at least ninety-five (95) degrees Fahrenheit.

5. Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(g) Mechanical cleaning and sanitizing shall be conducted as established in this subsection. A domestic or home-style dishwasher may be used if the performance criteria established in this subsection 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 while sanitizing the kitchen facility's utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(h) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

- 1. Soiled utensils prior to washing; and
- 2. Cleaned utensils after sanitizing.

(i) Manually-cleaned equipment, utensils, and tableware shall be air-dried.

(9) Toilet facilities.

(a) Toilet facilities shall be:



1. Installed pursuant to requirements of 815 KAR 7:125;
2. Conveniently located; and
3. Accessible to workers at all times.

(b) 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.

(10) The floors, walls, ceilings, and attached equipment in food preparation and storage areas and in workers bathrooms of a home-based microprocessor facility shall be fabricated from easily cleanable material, maintained in good repair, and kept clean.

(11) Artificial lighting shall be provided sufficient to facilitate sanitary food handling and cleaning of facilities.

(12) The use and storage of 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 Chapter 29;
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 shall not be 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.

(13) 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. If garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter pursuant to 401 KAR Chapter 63.

Section 7. Microprocessors Utilizing Permitted Kitchens.

(1) A microprocessor may elect to process food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) A microprocessor utilizing a permitted kitchen shall comply with Sections 2, 4, 5, and 6 of this administrative regulation.



(a) A microprocessor utilizing a permitted kitchen shall provide a copy of a signed, written agreement between the facility owner and the farmer that authorizes the use of the permitted kitchen for microprocessing and the name, address, and permit number of the facility.

(b) Microprocessed food products shall not be made during periods of time while the permitted facility is in operation.

(c) Microprocessed food products shall be stored at the farmer's primary residence and shall be maintained separate and apart from the personal use food supplies.

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 8. Inspections, Notices, Records.

(1) Inspections. At least once every four (4) years, the cabinet shall inspect each home-based microprocessor 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 a home-based microprocessor shall record the findings on the DFS 252, Home-based Processor/Microprocessor Inspection Report, and shall provide a copy of the inspection report to the certificate 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 certificate holder or the certificate holder's representative in charge. In the notification, the cabinet shall establish:

(a) The specific violations found; and

(b) A specific and reasonable period of time for the correction of the violations found pursuant to this paragraph. The report of inspection shall state:

1. 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 certificate, as provided in KRS 217.126;

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



3. Failure to comply with a notice issued in accordance with the provisions of this administrative regulation may result in suspension of the certificate.

(4) Service of notice. A notice provided for under this section shall be properly served if a copy of the DFS-252 inspection report form or other notice has been delivered personally to the certificate 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 certificate holder. A copy of the notice shall be filed with the cabinet.

(5) The cabinet shall maintain a record of all certified home-based microprocessors and shall provide this information to the University of Kentucky Cooperative Extension Service Office and local health departments.

Section 9. Certificate Suspension, Revocation, or Denial.

(1) A home-based microprocessor certificate shall be suspended immediately, upon notice to the certificate holder, if:

(a) The cabinet has reason to believe that an imminent public health hazard exists; or

(b) The certificate holder has interfered with the cabinet in the performance of its duties.

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

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection in accordance with 902 KAR 1:400.

(4) Revocation of certificate. 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 certificate may be permanently revoked. Before a permanent revocation action is taken, the cabinet shall notify the certificate holder in writing, stating the reasons the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR 1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.



Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DFS-250, Application for Home-based Processor", 03/19;
- (b) "DFS-251, Application for Home-based Microprocessor", 05/18; and
- (c) "DFS-252, Home-based Processor/Microprocessor Inspection Report", 05/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

