

902 KAR 45:090. Farmers markets.

RELATES TO: KRS Chapter 13B, 217.005-217.215, 217.992

STATUTORY AUTHORITY: KRS 194A.050, 217.125(1), 217.136, 217.137, 217.138

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125, 217.136, 217.137, and 217.138 authorize the Secretary of the Cabinet for Health Services to promulgate administrative regulations for the efficient administration and enforcement of home-based processors and home-based microprocessors. This administrative regulation establishes a uniform code for the manufacture and marketing of limited based Kentucky grown home processed food products at farmers markets, certified roadside stands, or from the processors farm.

Section 1. Definitions. (1) "Adulterated food and food products" means any food or food product adulterated as defined by KRS 217.025.

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

(3) "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.

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

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

(6) "Farmers market" means a physical location for the direct-to-consumer marketing of Kentucky grown whole fruit and vegetables, and limited Kentucky-grown processed food products with the set time and locations that are listed with the Kentucky Department of Agriculture.

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

(8) "Hand washing" means the following process:

(a) Wetting hands and forearms with warm running water, 101-120°F;

(b) Applying antibacterial or antimicrobial soap and thoroughly distributing over hands and forearms;

(c) Rubbing hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of hands and between the fingers;

(d) Rinsing hands and forearms thoroughly to remove residual soap; and

(e) Drying hands and forearms with paper towels dispensed from sanitary dispensers.

(9) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, or conveying of food.

(10) "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 Services.

(11) "Potentially-hazardous food (PHF)" 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 an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that makes the product nonpotentially hazardous.

(12) "Primary ingredients" means an agricultural or horticultural product that has been grown, harvested and processed by the farmer as a predominant ingredient of a food product with the exception of flour, as defined in KRS 217.015(17) for use in bread as defined in KRS 217.015(2), and in other acceptable items outlined in KRS 217.015(56). "Primary ingredients" does not include oil, vinegar, sugar and other seasonings or spices used in the production of home processed or microprocessed foods.

(13) "Processing authority" means 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 other qualified entities in accordance with 21 C.F.R. Parts 113.83 and 114.83.

(14) "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

(15) "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.

(16) "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 which do not meet the materials, durability, strength, and clean ability specifications for multiuse utensils.

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

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

(19) "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

Section 2. Home-based Processor Registration. (1) A Kentucky farmer as defined at KRS Chapter 217.015(59) and desiring to grow, harvest, process and market Kentucky grown food products shall make written request for registration on Form DFS-250, incorporate by reference in this administrative regulation and also available at the Web site, <http://chs.ky.gov/publichealth/Food-Program.htm>, at local health departments, and from University of Kentucky Extension Offices.

(2) The application for registration shall include the following information and attachments:

(a) The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and the name and address of the property owner if not owned by the farmer;

(b) The farmer's name and the 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 of the Natural Resources and Environmental Protection Cabinet (NREPC), 401 KAR Chapter 8. A farmer with a nonmunicipal water source shall submit to the cabinet documentation from NREPC that the water source is approved; and

(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 the cabinet or the Natural Resources and Environmental Protection Cabinet, 902 KAR Chapter 10 and 401 KAR Chapter 5.

(3) Prior to marketing home-based products, the application for home-based processor, along with the required water source approval, shall be submitted to the cabinet or the local health department. Applications received by local health departments shall be forwarded to the cabinet.

(4) A home-based processor registration shall be valid for one (1) year, unless previously suspended or revoked, and shall be renewable annually. Home-based processor registrations shall expire March 31 of each year.

(5) Home-based processors shall follow current good manufacturing practices as outlined in 21 C.F.R. Part 110.

(6) Home-based processed food products shall be labeled in accordance with KRS 217.005 to 217.215.

(7) Food products shall only be marketed by the registered home-based processor.

(8) Food products processed by a home-based processor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based processor. Vacuum packaging of foods in containers other than mason-type jars, shall be prohibited. Canning of pureed baby foods shall be prohibited.

(9) All jams and jellies processed in less than ten (10) minutes shall be filled into sterile empty jars. Sterilization shall be accomplished by submerging the jars in boiling water for at least ten (10) minutes at altitudes of less than 1,000 feet above sea level. Jars should be boiled for one (1) additional minute for each additional 1,000 feet elevation above sea level.

(10) Home-based processed food products shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

(11) Products processed by home-based processors shall be packaged in food grade material.

(12) Products processed by home-based processors shall not be used or offered for consumption in a retail-food establishment, by internet sales, or sold in interstate commerce.

- (13) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based processing related activities.
- (14) Mop water shall not be disposed of in the dishwashing sink.
- (15) Children under age twelve (12) shall not be permitted in the kitchen area during home-based processing related activities.
- (16) Inspection of home-based processor facilities shall be made for the purpose of:
 - (a) Investigating compliance with KRS 217.005 to 217.215 or this administrative regulation; or
 - (b) Upon complaint.
- (17) Vehicles used in transporting home-based processed 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 processed foods.
- (18) If boiling-water canners are utilized in the production of foods 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. 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.
- (19) The cabinet shall maintain a record of all registered home-based processors and shall provide this information to the University of Kentucky Cooperative Extension Office and Local Health Departments.

Section 3. Home-based Microprocessor Certification. (1) A Kentucky farmer, as defined at KRS Chapter 217.015(59), and desiring to grow, harvest, process and market Kentucky grown microprocessed food products and participate in the training program shall make written request for certification on Form DFS-252, incorporated by reference in this administrative regulation and also available at the Web site, <http://chs.ky.gov/publichealth/Food-Program.htm>, at local health departments, or at University of Kentucky Extension Service Office.

- (2) The application for certification shall include the following information and attachments:
 - (a) The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and 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 as stated in Section 2(2)(c) of this administrative regulation;
 - (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 the cabinet or the Natural Resources and Environmental Protection Cabinet, 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)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. 113.10 or 21 C.F.R. 114.10, and complete the filing process as defined in paragraph (g) of this subsection; 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. 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. Each additional product shall have a separate written established scheduled process and shall be submitted to the processing authority for review prior to processing. All established scheduled processes shall be maintained and made available upon request by the cabinet.
- (3) 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 or the local health department.
- (4) Food products processed by a home-based microprocessor shall be nonpotentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a home-based microprocessor. Vacuum packaging of foods in containers other than mason-type jars shall be prohibited.
- (5) Product labels for home-based microprocessed foods shall be labeled in accordance with KRS 217.005 to 217.215. Draft copies of all home-based microprocessed food product labels shall be submitted for review by the cabinet prior to labeling and marketing.
- (6) Each home-based microprocessor certification shall be issued only for the premises and person named in the application and shall be nontransferable. Certifications shall be posted in a conspicuous place in the processing establishment and a copy at the point of sale. Home-based microprocessed food products shall only be marketed by the certificate holder that processed the food product.
- (7) Each home based microprocessor certification shall be valid for one (1) year, unless previously suspended or revoked. Home-based microprocessor Certifications shall expire March 31 of each year and shall be renewable annually upon submittal of application accompanied by an annual fee of fifty (50) dollars.
- (8) Products made by home-based microprocessors shall not be used or offered for consumption in a retail-food establishment, by internet sales or in interstate commerce.
- (9) Attendance of a food processing school as defined in 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.
- (10) Mop water shall not be disposed of in the dishwashing sink.

Section 4. Food Supplies. (1) The primary ingredients used in home-based microprocessed products shall have been grown by the microprocessor. All other ingredients in the products shall be in sound condition, safe for human consumption, shall be obtained from an approved commercially manufactured source, stored and protected separate and apart from personal use food ingredients.

- (2) Ice used in the manufacture of food products shall have been commercially produced or made with potable water.

Section 5. Food Protection. (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) Prior to processing, the temperature of potentially-hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary times of preparation.
- (3) Only food-grade lime shall be used for soaking foods prior to pickling.
- (4) Jar seals for microprocessed foods shall be inspected within twelve (12) to twenty-four (24) hours after cooling. Containers inspected and found to not be properly sealed shall be discarded. Reprocessing of unsealed jars shall be prohibited.
- (5) 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.
- (6) Hermetically-sealed packages shall be handled so as to maintain product and container integrity.
- (7) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during microprocessing related activities.
- (8) Children under age twelve (12) shall not be permitted in the kitchen area during microprocessing related activities.

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

(10) 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.

(11) 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.

Section 6. Food Preparation. (1) Food shall be prepared:

- (a) With a minimum of bare hand contact;
- (b) On a food-contact surface; and
- (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 home-based microprocessor shall first be thoroughly cleaned with potable water.

Section 7. Food Display and Marketing. All food on display shall be protected from contamination.

Section 8. Farmer or Processing Assistants. (1) A farmer or processing assistants 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) 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 in accordance with Section 1(8) of this administrative regulation:

- (a) Before starting work;
 - (b) After smoking;
 - (c) After eating;
 - (d) After handling nonwashed fruits and vegetables;
 - (e) After using the toilet; and
 - (f) As often as is necessary during work to keep hands and forearms clean.
- (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 may result in contamination of food, water, equipment, or utensils.

Section 9. Equipment and Utensils. (1) Equipment.

(a) Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners is prohibited for processing of low-acid canned foods;

(b) Open-kettle canning and the processing of freshly-filled jars in conventional ovens, microwave ovens, and dishwashers shall be prohibited;

(c) 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 weighted-gauge pressure canners utilized by microprocessors are operated at the correct pressure for the corresponding altitude;

(d) Pressure canners shall not have been manufactured later than five (5) years prior to the effective date of this administrative regulation and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges;

(e) Pressure canners utilized in the microprocessing of foods shall, at minimum, be of a sixteen (16) quart capacity, which will contain seven (7) quart jars. Use of pressure saucepans with less than sixteen (16) quart capacities shall be prohibited;

(f) Temperature dial gauges 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;

(g) A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process; and

(h) 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.

(2) Equipment and utensils shall be:

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

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

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

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

(6) 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 10. 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, and utensils shall be cleaned and sanitized prior to microprocessing related activities 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 prerinsed 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, and utensils, three (3) compartments shall be provided and used. A two (2) compartment sink, with an additional portable tub may be used;

(b) Each of the following five (5) steps of the ware-washing process shall be completed:

1. Prerinsing or scraping;
2. Washing with hot detergent solution;
3. Rinsing to remove abrasives and cleaning chemicals;
4. Sanitizing, using method approved by applicable provisions of KRS Chapter 217, Kentucky Food, Drug, and Cosmetic Act, and 902 KAR 45:005, Section 17, the State Retail Food Code; and
5. Air-drying and draining.

(c) Washing, rinsing and sanitizing solutions shall be maintained in a clean condition;

(d) The washing solution shall be maintained at a minimum temperature of ninety-five (95) degrees Fahrenheit; and

(e) 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.

(7) Mechanical cleaning and sanitizing shall be conducted as follows: A domestic or home-style dishwasher may be used if the following performance criteria are met:

- (a) The dishwasher shall effectively remove physical solids from all surfaces of dishes.
 - (b) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.
 - (c) 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; and
 - (d) 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 manufacturer's 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) Manually-cleaned equipment, utensils and tableware shall be air-dried.

Section 11. Toilet Facilities. (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing Code, KRS Chapter 318 and 815 KAR Chapter 20, shall be conveniently located, and shall be accessible to workers 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 Processors and Processing Assistants. (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.

(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 or cloth towels shall be prohibited. 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 first be 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 storage areas and in workers bathrooms of a home-based microprocessor facility 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, flies, cockroaches, or of pests. The premises shall be maintained in a condition that is pest free and 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 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 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; and

(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. 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 applicable administrative regulations of the Cabinet for Natural Resources and Environmental Protection, 901 KAR Chapter 63.

Section 15. Microprocessors Utilizing Permitted Kitchens. (1) Microprocessors may elect to process their food products utilizing a kitchen that currently holds a valid permit to operate issued by the cabinet.

(2) Microprocessors utilizing a permitted kitchen shall comply with Sections 3 through 14 of this administrative regulation;

(a) Microprocessors 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 when the permitted facility is in operation;

(c) Microprocessed food products shall be stored at the farmers primary residence and shall be maintained separate and apart from the personal use food supplies; and

(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 16. Plan Review of Future Construction. If a kitchen or worker bathroom facility of a home-based microprocessor 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 local health department for approval before the work is begun.

Section 17. Inspections, Notices, Records. (1) Inspections. At least once every two (2) 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, and shall furnish 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 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. 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 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 18. 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) In all other instances, 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 for 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 for the purpose of reinstatement of the certificate. 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 certificate have been corrected, the cabinet shall make a reinspection. If the applicant is in compliance with the requirements of this administrative regulation, the certificate shall be reinstated.
- (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 for which 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 19. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DFS-250, Application for Home-based Processors" (6/03);
 - (b) "DFS-251, Application for Home-based Microprocessor" (6/03);
 - (c) "DFS-252, Home-based Processor/Microprocessor Inspection Report" (6/03);
 - (d) "DFS-234, Certificate or Registration to Operate" (4/97);
 - (e) "DFS 214, Enforcement Notice (8/96)";
 - (f) "DFS 212, Request for Conference (10/96)";
 - (g) "DFS 213, Notice for Conference (8/96)"; and
 - (h) "DFS 215, Application for Reinstatement of Home-based Microprocessor Certification (2/95)".
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 535; Am. 1239; eff. 11-19-2003.)