

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Regulation
(Amended at ARRS Committee)

302 KAR 26:150. Pesticide-related penalties.

RELATES TO: KRS 217B.120, KRS 217B.550, 7 U.S.C. 136 et seq., 40 C.F.R. 170

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.193 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations of KRS Chapter 217B, including those established in KRS 217B.120 and 217B.550. This administrative regulation establishes a system of regulatory fines pursuant to violations of KRS Chapter 217B established in KRS 217B.120 and 217B.550.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193.

- (1) The Department of Agriculture shall, in accordance with KRS 217B.193(1), cause a notice of violation to be issued to persons, license holders, or registration holders found to be in violation of KRS 217B.120, 217B.550, 302 KAR 31:040, or 40 C.F.R. 170.
- (2) In addition to the information required to be stated in the notice of violation pursuant to KRS 217B.193, the department shall notify the person, license holder, permit holder, registration holder, or certificate holder that:
 - (a) Except for good cause shown, an administrative fine in the amount established in Sections 2 and 6 of this administrative regulation shall be assessed if the violation is not corrected within the time stated in the notice of violation;
 - (b) He or she shall have thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and
 - (c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Environmental Services, Frankfort, Kentucky 40601.
- (3) The period for abatement of a violation shall commence on the day the notice of violation is issued pursuant to KRS 217B.193(1).
- (4) The department may allow additional time for abatement of a violation, not to exceed the maximum time established in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period stated in the notice of violation.
- (5) The Enforcement Response Policy shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2.

- (1) Except as established in Section 3 of this administrative regulation, administrative fines for each first violation of KRS 217B.120, 302 KAR 26:080; 302 KAR 31:040, 40 C.F.R. 170, and any other administrative regulation promulgated by the department shall be:
 - (a) \$300 for a violation of KRS 217B.120(1);
 - (b) \$100 for a violation of KRS 217B.120(2);
 - (c) \$200 for a violation of KRS 217B.120(3);
 - (d) \$200 for a violation of KRS 217B.120(4);
 - (e) \$200 for a violation of KRS 217B.120(5);
 - (f) \$200 for a violation of KRS 217B.120(6);
 - (g) \$100 for a violation of KRS 217B.120(7);
 - (h) \$100 for a violation of KRS 217B.120(8);
 - (i) \$100 for a violation of KRS 217B.120(9);

- (j) \$100 for a violation of KRS 217B.120(10);
- (k) \$200 for a violation of KRS 217B.120(11);
- (l) \$200 for a violation of KRS 217B.120(12);
- (m) \$200 for a violation of KRS 217B.120(13);
- (n) \$200 for a violation of KRS 217B.120(14);
- (o) \$200 for a violation of KRS 217B.120(15);
- (p) \$200 for a violation of 302 KAR 26:080, Section 6(1);
- (q) \$200 for a violation of 302 KAR 26:080, Section 6(2);
- (r) \$100 for a violation of 302 KAR 26:080, Section 6(3);
- (s) \$200 for a violation of 302 KAR 31:040;
- (t) \$200 for a violation of 40 C.F.R. 170; and
- (u) \$200 for a violation of any administrative regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation, or modification of a license pursuant to KRS 217B.120.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period stated by the department pursuant to KRS 217B.193.

(6)

(a) Nothing in this section shall prohibit the department from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 217B.120.

(b) The department shall review for possible denial, suspension, or revocation, the license or certification of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 3. In lieu of the monetary penalty established in Section 2(1)(a) of this administrative regulation, a violation of KRS 217B.120(1) for each application of products containing Additional Training Dicamba shall result in a fine of \$100 per acre based on the acres where the application was made, with a maximum administrative fine of \$1,000 for the first offense.

Section 4. Failure to pay any fine, within thirty (30) days of the end of the time period established in Section 1 of this administrative regulation, shall result in a suspension or revocation of a license, permit, registration, or certification pursuant to KRS 217B.120.

Section 5.

(1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions established in Section 2 of this administrative regulation.

(2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 6.

(1) Administrative fines for a first violation of KRS 217B.550 and any other requirement of 302 KAR Chapter 26 shall be:

- (a) \$200 for a violation of KRS 217B.550(1);
 - (b) \$200 for a violation of KRS 217B.550(2);
 - (c) \$200 for a violation of KRS 217B.550(3);
 - (d) \$100 for a violation of KRS 217B.550(4);
 - (e) \$100 for a violation of KRS 217B.550(5);
 - (f) \$300 for a violation of KRS 217B.550(6);
 - (g) \$200 for a violation of KRS 217B.550(7);
 - (h) \$200 for a violation of KRS 217B.550(8);
 - (i) \$200 for a violation of KRS 217B.550(9);
 - (j) \$200 for a violation of KRS 217B.550(10);
 - (k) \$100 for a violation of KRS 217B.550(11);
 - (l) \$200 for a violation of KRS 217B.550(12);
 - (m) \$100 for a violation of KRS 217B.550(13);
 - (n) \$100 for a violation of KRS 217B.550(14);
 - (o) \$100 for a violation of KRS 217B.550(15);
 - (p) \$200 for a violation of KRS 217B.550(16);
 - (q) \$200 for a violation of KRS 217B.550(17); and
 - (r) \$200 for a violation of any administrative regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.
- (2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.
- (3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.
- (4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation or modification of a license pursuant to KRS 217B.545.
- (5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period stated by the department pursuant to KRS 217B.193.
- (6)
- (a) Nothing in this section shall prohibit the department from suspending, revoking, or modifying a license or certificate at any time pursuant to KRS 217B.545.
 - (b) The department shall review for possible denial, suspension, or revocation, the license or certification, whether issued as a result of qualification by examination or reciprocity, of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 7. Failure to pay any fine within thirty (30) days of the end of the time period established in Section 1 of this administrative regulation shall result in a suspension, revocation, or modification of a license or certification pursuant to KRS 217B.545.

Section 8.

- (1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions established in Section 6 of this administrative regulation.
- (2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 6 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 9. Incorporation by Reference.

(1) "Enforcement Response Policy", June 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(49 Ky.R. 222, 783; eff. 10-20-2022.)

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