

302 KAR 27:060. Fine schedule for violation of KRS 217B.120.

RELATES TO: KRS 217B.120, 40 C.F.R. 170

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

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

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, 302 KAR 31:040, or 40 C.F.R. 170.

(2) In addition to the information required to be set out 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 Section 2 of this administrative regulation shall be assessed if the violation is not corrected within the time specified 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 Pesticide Regulation, 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 specified 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 31:040, and 40 C.F.R. 170 shall be:

- (a) \$200 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) \$100 for a violation of KRS 217B.120(4);
- (e) \$100 for a violation of KRS 217B.120(5);
- (f) \$100 for a violation of KRS 217B.120(6);
- (g) \$100 for a violation of KRS 217B.120(7);
- (h) \$200 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) \$100 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) \$100 for a violation of KRS 217B.120(16);
- (q) \$200 for a violation of KRS 217B.120(17);
- (r) \$100 for a violation of KRS 217B.120(18);
- (s) \$200 for a violation of KRS 217B.120(19);
- (t) \$200 for a violation of KRS 217B.120(20);
- (u) \$200 for a violation of KRS 217B.120(21);
- (v) \$200 for a violation of KRS 217B.120(22);
- (w) \$200 for a violation of 302 KAR 31:040; and
- (x) \$200 for a violation of 40 C.F.R. 170.

(2) For each application violation, which is the same as the initial violation as established in subsection (1) of this section, the fine shall be \$1,000.

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

(4) 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.

Section 3. A violation of KRS 217B.120(2) for each application of products containing 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.

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. Incorporation by Reference.

(1) "Enforcement Response Policy", October 20, 2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 735; Am. 1368; eff. 12-19-2001; 45 Ky.R. 2446, 2883; eff. 5-3-2019.)