

12 KAR 4:140. Monetary penalties.

RELATES TO: KRS 250.396(1), (2)

STATUTORY AUTHORITY: KRS 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.361 through 250.461. This administrative regulation establishes the specific method of calculating the monetary penalties required by the fertilizer law.

Section 1. Penalties for deficiencies in Total Nitrogen (N), Available Phosphate (P₂O₅), soluble potash (K₂O), and index value shall be calculated based on the table established in this section.

Number of Investigational Allowances Below Guarantee	Penalty Schedule
<2	Equal to the monetary value of the deficiency
>2 <3	Two (2) times the monetary value of the deficiency
>3	Three (3) times the monetary value of the deficiency

Section 2. Minimum standards and overages of primary nutrients may reduce penalties calculated in Section 1 of this administrative regulation for fertilizer with index values equal to or greater than ninety-seven (97) percent on the basis of the table established in this section.

Number of Investigational Allowances Below Guarantee	Penalty Adjustments
No more than one (1) deficiency that is less than or equal to two (2) investigational allowances	Penalty adjusted to zero
No more than one (1) deficiency that is greater than two (2) but less than three (3) investigational allowances	Value of overages may adjust up to 100% of the value of the deficiencies
Two (2) deficiencies that are less than three (3) investigational allowances; or, no more than one (1) deficiency that is equal to or greater than three (3) but less than four (4) investigational allowances	Value of overages may adjust up to 75% of the value of the deficiencies

Section 3. If a fertilizer is subject to a penalty from both a primary nutrient deficiency and an index value deficiency, only the larger penalty shall apply and the penalty shall not exceed the total value of the fertilizer.

Section 4. Penalties for deficiencies in secondary and minor elements and for excess chlorine in tobacco fertilizer shall be calculated as established in this section.

(1) Deficiencies.

Number of Investigational Allowances Below Guarantee	Penalty Schedule
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<2	Equal to the monetary value of the deficiency
>2	Two (2) times the monetary value of the deficiency

(2) Excess chlorine in tobacco fertilizers. The investigational allowance for maximum chlorine shall be five-tenths (0.5) percent.

Number of Investigational Allowances Above Maximum Chlorine Guarantee	Penalty Schedule
<2	Equal to the difference in the soluble potash (for tobacco) unit value and the nontobacco soluble potash unit value
>2	Two (2) times the difference in the soluble potash (for tobacco) unit value and the nontobacco soluble potash unit value

Section 5. Any penalty assessed under Section 1 of this administrative regulation shall be added to any penalty assessed under Section 4 of this administrative regulation, and the total shall be paid by the registrant to the consumer of the lot of fertilizer represented by the sample within three (3) months after the date of notice from the director, receipts taken therefore and forwarded to the director.

(1) If a consumer cannot be found, the amount of the penalty payments shall be paid to the Kentucky Agricultural Experiment Station within three (3) months after the date of the notice from the director to the registrant and set aside for purchase of equipment for the sampling, handling, analyzing, and reporting of results of analyses of official samples and for the education of the Kentucky fertilizer industry on the newest methods in manufacturing blended fertilizers.

(2) If the lot of fertilizer is on hand at a retail location the penalty payments assessed under this section shall be used to reduce the retail price of the fertilizer if it is to be relabeled and sold.

Section 6. The total of the penalties assessed under this administrative regulation shall not exceed the retail value of the fertilizer.

(11 Ky.R. 514; eff. 11-13-1984; Am. 12 Ky.R. 1519; 1730; eff. 4-17-1986; 21 Ky.R. 458; eff. 9-28-1994; 47 Ky.R. 116, 936; eff. 11-18-2020.)