

302 KAR 29:040. Settlement proceedings.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 13B.070(3), 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the settlement of administrative complaints brought pursuant to KRS 217B.545.

Section 1. Commencement of Settlement Proceedings. At any time after the service of an administrative complaint upon a licensee and before hearing, the responding licensee may seek a settlement of any pending allegation with the department.

Section 2. Presentation of Proposal to Board. If an appropriate settlement has been negotiated, the department shall present the negotiated settlement to the Pest Control Advisory Board for acceptance, rejection, or modification. If accepted or modified, the offer of settlement shall be signed by the chairman and forwarded to the commissioner for acceptance or rejection.

Section 3. Effect of Rejection. If the board rejects an offer of settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B, unless the licensee requests that the offer be submitted directly to the commissioner for decision. If requested by the licensee, the offer shall be submitted directly to the commissioner along with the board's reasons for rejecting the offer and a recommendation from the board that the commissioner not approve the offer. The commissioner shall accept or reject the offer after reviewing the whole record. He may allow oral argument on the proposed offer before he makes a decision if either party moves for it and if it appears that such argument would substantially contribute to the decision-making process. If the commissioner approves the offer, he shall enter an appropriate order in conformance with the proposal. If the commissioner rejects the offer, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B. Rejection shall not be taken as a finding or determination of any kind on behalf of the board or commissioner, and no orders or other pleadings shall be filed in regard to any rejected offer.

Section 4. Action by the Commissioner.

(1) The commissioner shall enter an order to:

(a) Approve the board's recommendation for:

1. Acceptance of an offer of settlement;
2. Rejection of an offer of settlement; or
3. Modification of an offer of settlement;

(b) Approve a settlement request by a licensee after rejection by the board; or

(c) Conform with the commissioner's finding to dismiss a complaint in whole or in part.

(2) If the commissioner rejects the settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B.

(28 Ky.R. 749; 1377; eff. 12-19-2001; 42 Ky.R. 1332; 2064; eff. 2-5-2016.)