

# KDA PESTICIDE REGULATIONS

Official Current Regulations are always found online at:

<http://www.lrc.ky.gov/kar/TITLE302.HTM>

## 302 KAR 27:010. Definitions for 302 KAR Chapter 27.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the department to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes the definitions which apply to 302 KAR Chapter 27, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Agricultural commodity" means any plant, or part thereof, or animals or animal products produced by persons, including farmers, ranchers, grape growers, plant propagators, Christmas tree growers, aquaculturists, orchardists, foresters, or other comparable persons, primarily for sale.

(3) "Agricultural fumigation" means the application of pesticide gases or fumigants in an enclosed area used for the production, storage, or transportation of agricultural commodities or to the contents of any structure used for the production, storage, or transportation of agricultural commodities. Agricultural fumigation shall not include the application of pesticide gases or fumigants to a structure for the purpose of controlling structural pests.

(4) "Application" means placing of a pesticide for effect, including mixing and loading.

(5) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(6) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

(a) 300 U.S. gallons of liquid measure; or

(b) 300 U.S. pounds of net dry weight.

(7) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(8) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(9) "Compatibility" means that chemical property of a pesticide which permits use with other chemicals without undesirable results being caused by the combination.

(10) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity, and the associated responsibility.

(11) "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.

(12) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(13) "Department," unless otherwise specified, means the Kentucky Department of Agriculture.

(14) "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships which exist among them.

(15) "Faulty, careless, or negligent manner" means any act or omission which has or may have a deleterious effect on any person or property resulting from application or use of pesticides inconsistent with label instructions or standards established by 302 KAR Chapter 27 or KRS Chapter 217B.

(16) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(17) "Forest" means a concentration of trees and related vegetation in nonurban areas characterized by natural terrain and drainage patterns.

(18) "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(19) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(20) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(21) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(22) "Practical knowledge" means the comprehension of and ability to see pertinent facts in dealing with specific problems and situations.

(23) "Private applicator" means a person certified to use any pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer, or to the lands of a farmer-neighbor, if applied without compensation other than trading of personal services between producers of agricultural commodities.

(24) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(25) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, man, or the environment.

(26) "Remote pesticide sales agent" means a person located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.

(27) "Resident pesticide sales agent" means a person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.

(28) "Spot fumigation" means fumigation operations performed in special rooms, vaults, chambers, tanks, railroad boxcars, aircraft, or other enclosed areas of limited size, which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic concentrations of the fumigants used.

(29) "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(30) "State" means the Commonwealth of Kentucky.

(31) "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.

(32) "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(33) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(34) "Toxicity" means the property of a pesticide that causes any adverse physiological effects on a living organism.

Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 727; Am. 1362; eff. 12-19-2001.)

### **302 KAR 27:020. General provisions.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.105(7)

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 requirements for recordkeeping, the storage and handling of pesticides, trainee supervision, certification denial, suspension, modification or revocation, and registered pesticide equipment identification.

Section 1. Recordkeeping Requirements. (1) Applicability. The provisions of this section shall not apply to doctors of veterinary medicine applying restricted use pesticides during the ordinary course of their practice.

(2) Dealers. Each dealer or branch office that sells pesticides shall maintain the following records for each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target crop or resale.

(3) All private applicators, noncommercial applicators, pesticide operators, and pesticide applicators who apply pesticides shall maintain the following records:

- (a) Name and address of person receiving services;
- (b) Brand or product name of pesticides applied;
- (c) Date of application;
- (d) Purpose of application;
- (e) Size of area treated;
- (f) Crop, commodity, stored product, or type of area treated;
- (g) Name and certification number of applicator;
- (h) EPA registration number;
- (i) Location of application; and
- (j) Total amount of each pesticide applied.

(4) Retention. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of two (2) years from the date of sale pursuant to KRS 217B.105(7). All persons required to maintain records under subsection (3) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a restricted use pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each use or application shall be required by that person or business entity, even though one (1) or more persons may have used or applied a pesticide.

(5) Availability. Records required under this section shall be made available to the department upon request or for dealers and branch offices, as prescribed in KRS 217B.105(7).

Section 2. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons who have occasion to store restricted use pesticides or persons who have occasion to store any pesticides for the purpose of redistribution or direct resale.

(2) Standards for storage of pesticides:

- (a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas.

(b) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people.

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read.

(d) Storage sites shall comply with applicable fire codes.

(e) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(f) Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".

(3) Standards for storage of bulk fertilizer or bulk pesticides. Any person who has cause to store bulk fertilizer or bulk pesticides shall meet the standards and requirements set out in 302 KAR 31:040.

(4) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by private applicators, dealers, pesticide operators, pesticide applicators, or noncommercial applicators shall be transported consistent with 49 USC 51.

Section 3. Supervisory Requirements. A trainee who applies pesticides shall have direct on the job supervision as defined in KRS 217B.040(28).

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified 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 of 1972, as amended, 7 USC 14.

Section 5. Registered Pesticide Equipment Identification. The equipment owner shall notify the department if equipment registered under KRS 217B.170 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the decal when the equipment is permanently removed from active pesticide application or is permanently transferred out of the state.

Section 6. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 728; Am. 1363; eff. 12-19-2001.)

### **302 KAR 27:030. Pesticide sales agents.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.185

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.185 requires the department to establish a licensure program for pesticide sales agents. This administrative regulation establishes classifications of pesticide sales agent licenses and rules for the sales of pesticides by pesticide sales agents.

Section 1. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

Section 2. (1) A person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) A person located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) A person located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 27:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 3. Recordkeeping Requirements. (1) Pesticide sales agent. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target crop or resale.

(2) All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601.

Section 4. (1) A remote pesticide sales agent shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals.

(2) A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides.

Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 730; Am. 1364; eff. 12-19-2001.)

### **302 KAR 27:040. Prison inmates.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

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 issuance of pesticide licenses to prison inmates.

Section 1. Prison Inmates. (1) Except as provided in subsection (2) of this section, prison inmates who have completed the requirements for licensing set out in 302 KAR 27:050 and KRS Chapter 217B and who have paid the appropriate fees, shall be issued a license which will be held in inactive status until the inmate is released from incarceration.

(2) Prison inmates who are actively engaged in the application of pesticides for a prison shall be licensed in accordance with KRS 217B.090.

Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 731; Am. 1365; eff. 12-19-2001.)

### **302 KAR 27:050. Certification.**

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

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.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability. (1) A person shall not be licensed to sell or apply pesticides unless he is certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification. Certification under this administrative regulation may be obtained from the department as a private applicator pursuant to Section 7 of this administrative regulation; category-specific certification may be obtained in the following categories of pesticide use or application:

(1) Category 1. Agricultural pest control. This category shall include:

(a) Plant and animal. This category shall include persons applying or supervising the application of pesticides in production of agricultural commodities including, but not limited to, tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and on grasslands, noncrop agricultural lands, and greenhouses, and the application of pesticides on animals including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators or engaged in large-scale application of pesticides, shall be included in this category.

(b) Agricultural fumigation. This category shall include the application of pesticide gases or fumigants in an enclosed area used for the production, storage, or transportation of agricultural commodities or to the contents of any structure used for the production, storage, or transportation of agricultural commodities; and any other application of a pesticide gas or fumigant in preparing land for production or in controlling pests in growing agricultural commodities, whether the agricultural commodities are indoors or outdoors.

(2) Category 2. Forest pest control. This category shall include persons applying or supervising the application of restricted use pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Category 4. Seed treatment. This category shall include persons applying or supervising the application of pesticides on seeds.

(4) Category 5. Aquatic pest control. This category shall include persons applying or supervising the application of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in 302 KAR 29:060, Section 1(2).

(5) Category 6. Right-of-way pest control. This category shall include persons applying or supervising the application of pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(6) Category 9. Regulatory pest control. This category shall include state, federal, or other governmental employees who apply or supervise the application of pesticides in the control of regulated pests.

(7) Category 10. Demonstration and research pest control. This category shall include individuals who demonstrate to the public the proper uses and techniques of applying pesticides or supervise the demonstration. Included in this group shall be persons such as extension specialists and county agents, individuals demonstrating methods used in public programs, and persons conducting field research with pesticides, and in so doing, apply or supervise the application of pesticides. This group shall include state and federal employees and other persons conducting field research on pesticides.

(8) Category 11. Aerial. This category shall include persons applying pesticides to lands of another using aircraft.

(9) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 28 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.

(10) Category 13. Antifouling marine paint. This category shall include persons who apply paint mixed with a pesticide to prevent the growth of pests, both plant and animal, to a product to be used in lakes, rivers, and waterways.

(11) Category 14. Pest control consultant. This category shall include persons, who for a fee, offer or supply technical advice, supervision, or aid, or recommend the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.

(12) Category 15. Antimicrobial pest control. This category shall include persons who apply pesticides to control bacteria, mold, or fungi to or through any medium. Water and wastewater treatment plant operators shall be included in this category. Homeowners applying pesticides to personal swimming pools and persons certified in Category 1 of this chapter shall be excluded from this category.

(13) Category 16. Sewer root control. This category shall include persons who apply pesticides into a sewer or sewer system to control the ingress of roots or any other blockage of the system.

(14) Category 17. Wood preservatives. This category shall include persons who apply pesticides to wood and wood products to protect from wood-destroying organisms. Excluded from this category shall be persons engaged in structural pest control pursuant to 302 KAR Chapter 29.

Section 3. General Requirements. (1) To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to activate the licenses requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license may occur.

(2) If an applicant provides a copy of a valid Kentucky-certified crop advisor certification to the department, the examination for a consultant license shall be waived.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;

(g) Practical application of the Worker Protection Standards, 40 CFR 156 and 170, FIFRA; and

(h) The proper selection and use of personal protective equipment for handling and application of pesticides.

(3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms;

- (d) Drainage patterns;
- (e) Storage or use of pesticides and fertilizer including bulk fertilizer or pesticide;
- (f) Other nonchemical controls including, but not limited to, sanitation.
- (4) Pest identification, including consideration of the following factors:
  - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
  - (b) Pest maturation and development as it may relate to the problem of identification and control.
- (5) Pesticides, including consideration of the following factors:
  - (a) Types of pesticides;
  - (b) Types of pesticide formulations;
  - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
  - (d) Hazards and residues associated with use;
  - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
  - (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
  - (a) Types of pesticide application equipment and advantages and limitations of each; and
  - (b) Uses, maintenance, and calibration of equipment.
- (7) Application techniques, factors including:
  - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
  - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
  - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 USC 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

- (1) Category 1. Agricultural. This category shall be subdivided as follows:
  - (a) Plant and animal. Persons requesting agricultural plant and animal certification shall demonstrate practical knowledge of crops and specific pests of those crops for which they may be using pesticides. Practical knowledge shall be required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, nontarget injury, and community problems resulting from the use of pesticides in agricultural areas. They shall demonstrate practical knowledge of agricultural animals and their associated pests. A practical knowledge shall also be required concerning specific pesticide toxicities and residue potentials since host animals will frequently be used for food. Further, the person shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.
  - (b) Agricultural fumigation. This category shall include persons requesting agricultural fumigation certification. They shall demonstrate practical knowledge of the use of pesticide gases and fumigants in the treatment of enclosed areas used for the production, storage, or transportation of agricultural commodities and the use of pesticide gases and fumigants in preparing land for the production of agricultural commodities and for the control of pests in growing agricultural commodities.
- (2) Category 2. Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, seed production in the Commonwealth, and the pests involved therein. They shall possess practical knowledge of the cyclic occurrence of certain pests and their specific population dynamics as a basis for programming pesticide applications. A practical knowledge shall be required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitation and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator shall, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintentional effects on wildlife. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use.
- (3) Category 4. Seed treatment. Persons requesting seed treatment certification shall demonstrate practical knowledge of the types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of the hazards associated with handling, sorting, mixing, misuse of treated seed such as introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.
- (4) Category 5. Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water-use situations and potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They shall also demonstrate practical knowledge of the principles of limited-area application.
- (5) Category 6. Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of run-off, drift, excessive foliage destruction, and the ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right-of-way area, and the impact of their application activities upon the adjacent areas and communities.
- (6) Category 9. Regulatory. Persons applying for certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that

required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made.

(7) Category 10. Demonstration and research. Persons demonstrating the safe and effective use of pesticides to other persons and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide use. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation shall be required. Further, they shall demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. In general, persons conducting demonstration pest control work shall possess a practical knowledge of all of the standards detailed in this administrative regulation.

(8) Category 11. Aerial certification. Persons applying pesticides using aircraft shall obtain aerial certification. Aerial applicators shall possess knowledge of aerial application equipment and calibration of that equipment, spray efficiency testing, field flight patterns, swath markings, turning procedures and subsequent considerations, awareness of obstacles and obstructions, personal safety of pilot, flagman, and ground crew, and preflight checklists of spray personnel. Persons obtaining certification in this category shall also be certified in at least one (1) other category of pesticide use as appropriate for their business.

(9) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

(10) Category 13. Antifouling marine paint. Persons desiring certification in this category shall demonstrate practical knowledge of the principles and practices of using antifouling paints, including toxicity to humans and nontarget organisms via common exposure routes; proper cleaning, disposal and containment techniques; climatic factors that may influence environmental hazards; common types and features of target and nontarget aquatic/marine organisms; proper handling, mixing and application procedures; and the laws and regulations governing pesticides and antifouling paints.

(11) Category 14. Pest control consultant. Persons desiring certification in this category shall demonstrate practical knowledge of soils, plant identification, pest identification, and soil fertility and have knowledge of pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.

(12) Category 15. Antimicrobial pest control. Persons desiring certification in this category shall demonstrate practical knowledge of disinfecting, sanitation, reduction or mitigation of growth or development of microbiological organisms; protection of inanimate objects, industrial processes, systems or services, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, virus, fungi, protozoa, algae, or slime. Water and wastewater treatment plant operators shall be included in this category. This category shall not include homeowners maintaining personal swimming pools.

(13) Category 16. Sewer root control. Persons desiring certification in this category shall demonstrate practical knowledge of the safe handling and proper application of sewer root control chemicals, including practical knowledge of root growth and biology, equipment type and calibration procedures, proper pesticide handling, mixing and application procedures, proper use and maintenance of personal protective equipment, toxicity of root control pesticides to human and nontarget organisms via common exposure routes, proper cleaning, disposal and containment techniques, effects of root control pesticides on ground water, sewage treatment plants, septic tanks, holding tanks, lift stations, and other sewage treating, conveying, or handling equipment, environmental effects, factors that may lead to a hazardous condition, and the laws and regulations that cover pesticide use.

(14) Category 17. Wood preservative. Persons desiring certification in this category shall demonstrate practical knowledge in the use of wood preservatives, air monitoring procedures, personal protective clothing and equipment, hygiene, related health and safety measures, emergency procedures, and practices necessary to prevent environmental contamination.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation, other than a private applicator, shall in any three (3) year period, attend at least twelve (12) continuing education units of training for a single category, approved by the department, in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category, in addition to the single category held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only. All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.

Section 7. Private Applicators. (1) Standards of certification of private applicators. Compliance with the following standards shall qualify a person for certification as a private applicator. A private applicator may purchase, use, or apply pesticides in his capacity as a private applicator. As a minimum requirement for certification, a person who desires certification as a private applicator shall show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations, including but not limited to, proper storage, use, handling, and disposal of the pesticides and containers. This practical knowledge shall include the ability to:

- (a) Recognize common pests to be controlled and damage caused by them;
- (b) Read and understand the label and labeling information, including the common names of the pesticides, pests to be controlled, timing and methods of application, safety precautions, any preharvest and reentry restrictions, and specific disposal procedures;
- (c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

- (d) Recognize local environmental situations that shall be considered during application to avoid contamination;
- (e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident;
- (f) Demonstrate knowledge of the standards for the supervision of noncertified persons established by 40 CFR 171;
- (g) Understand the practical application of the Worker Protection Standards, 40 CFR 156 and 170, FIFRA;
- (h) Properly select and use personal protective equipment for handling and application of pesticides; and
- (i) Know and understand the standards and regulations for the storage of pesticides and fertilizer, including bulk fertilizer or pesticide.

(2) Verification of competence. Competence of private applicators shall be verified by means of a training program administered by county extension agents. Audio-visual training shall be given accompanied by study of the private applicator training pamphlet. Included in the pamphlet shall be self-quizzes with answers to be used by the applicators to assess their own progress. Following completion of training, a certification competency statement shall be signed by the instructor and forwarded to the department or its designated representative. Certification credentials shall then be transmitted to the applicator by the department or its designated representative. Training shall be based on the "Core Manual" published by the United States Environmental Protection Agency. Private applicators may request a written competency test as an alternate means of certification. Private applicators shall be required to be recertified every three (3) years.

Section 8. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies.

(1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

Section 9. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 731; Am. 1365; eff. 12-19-2001.)

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

RELATES TO: KRS 217B.120

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 set forth in KRS 217B.120. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.120.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193. (1) The Department of Agriculture shall 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, and 40 CFR 170 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(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 specified 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 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 set forth 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 Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for each first violation of KRS 217B.120, 302 KAR 31:040, and 40 CFR 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) \$50 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 CFR 170.

(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 or revocation of a license, permit, registration or certification 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 set by the department pursuant to KRS 217B.193.

(6) 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. Failure to pay any fine, within thirty (30) days of the end of the time period prescribed 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 4. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. 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 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 6. Incorporation by Reference. (1) The "Kentucky Enforcement Response Policy" (April 1999, Revised 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.)

**302 KAR 28:010. Definitions for 302 KAR Chapter 28.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 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 definitions which apply to 302 KAR Chapter 28, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Agricultural commodity" means any plant, or part thereof, or animals or animal products produced by persons, including farmers, ranchers, grape growers, plant propagators, Christmas tree growers, aquaculturists, orchardists, foresters, or other comparable persons, primarily for sale.

(3) "Application" means placing of a pesticide for effect, including mixing and loading.

(4) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(5) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

- (a) 300 U.S. gallons of liquid measure; or
- (b) 300 U.S. pounds of net dry weight.

- (6) "Calibration" means adjustment of dispersal or output of application to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.
- (7) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.
- (8) "Compatibility" means that chemical property of a pesticide which permits use with other chemicals without undesirable results being caused by the combination.
- (9) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.
- (10) "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.
- (11) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.
- (12) "Department", unless otherwise specified, means the Kentucky Department of Agriculture.
- (13) "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships which exist among them.
- (14) "Faulty, careless, or negligent manner" means any act or omission which has or may have a deleterious effect on any person or property resulting from application or use of pesticides inconsistent with label instructions or standards established by 302 KAR Chapter 28 or KRS Chapter 217B.
- (15) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.
- (16) "Forest" means a concentration of trees and related vegetation in nonurban areas characterized by natural terrain and drainage patterns.
- (17) "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- (18) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.
- (19) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.
- (20) "Interior plantscapes" means ornamentals in the interior of a building.
- (21) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.
- (22) "Ornamental" means trees, shrubs, and other plantings, except agricultural commodities, in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial, and institutional buildings.
- (23) "Practical knowledge" means the comprehension of and ability to see pertinent facts in dealing with specific problems and situations.
- (24) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.
- (25) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, man, or the environment.
- (26) "Remote pesticide sales agent" means a person located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.
- (27) "Resident pesticide sales agent" means a person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.
- (28) "Sports turf" means any land area covered with turf on which sports activities occur, but does not include golf courses.
- (29) "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.
- (30) "State" means the Commonwealth of Kentucky.
- (31) "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.
- (32) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.
- (33) "Toxicity" means the property of a pesticide that causes any adverse physiological effects on a living organism.

Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 736; Am. 1369; Am. 12-19-2001.)

### **302 KAR 28:020. General provisions.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 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 requirements for recordkeeping, the storage and handling of pesticides, trainee supervision, and certification denial, suspension, modification or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

(1) A person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) A person located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) A person located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides, with copies submitted monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601;

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Dealers. Each dealer or branch office, in the location where the pesticides are sold, shall maintain the following records with respect to each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(3) Noncommercial applicators, pesticide operators, and pesticide applicators. Unless regulated by KRS 217B.300 or 217B.320, all noncommercial applicators, pesticide operators, and pesticide applicators who apply pesticides shall maintain the following records:

- (a) Name and address of person receiving services;
- (b) Brand or product name of pesticide applied;
- (c) Date of application;
- (d) Purpose of application;
- (e) Size of area treated;
- (f) Crop, commodity, stored product, or type of area treated;
- (g) Name and certification number of applicator;
- (h) EPA registration number;
- (i) Location of application; and
- (j) Total amount of each pesticide applied.

(4) Retention. All persons required to maintain records under subsections (1) and (2) of this section shall retain the records for a period of two (2) years from the date of sale. All persons required to maintain records under subsection (3) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a restricted use pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.

(5) Availability. Records required under this section shall be made available to the department upon request or for dealers and branch offices, as prescribed in KRS 217B.105(7).

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons who have occasion to store restricted use pesticides or persons who have occasion to store any pesticides for the purpose of redistribution or direct resale.

(2) Standards for storage of pesticides:

- (a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;
- (b) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;
- (c) Storage sites shall be adequately lighted so that labels and label information can be easily read;
- (d) Storage sites shall comply with applicable fire codes;
- (e) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(f) Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".

(3) Standards for storage of bulk fertilizer or bulk pesticides. Any person who has cause to store bulk fertilizer or bulk pesticides shall meet the standards and requirements set out in 302 KAR 31:040.

(4) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by dealers, pesticide operators, pesticide applicators, or noncommercial applicators shall be transported consistent with 49 USC 51.

Section 4. Supervisory Requirements. A trainee who applies pesticides shall have direct on the job supervision as defined in KRS 217B.040(28).

Section 5. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified 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 of 1972, as amended, 7 USC 14.

Section 6. Registered Pesticide Equipment Identification. The equipment owner shall notify the department if equipment registered under KRS 217B.170 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the decal when the equipment is permanently removed from active pesticide application or is permanently transferred out of the state.

Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 738; Am. 1370; eff. 12-19-2001.)

### **302 KAR 28:030. Ornamental and interior plantscape posting.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 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 ornamental and interior plantscape posting requirements.

Section 1. Applicability. Any operator or applicator who applies pesticides to ornamentals or interior plantscapes shall:

(1) Immediately following application of pesticides to ornamentals or interior plantscapes, place a marker at a prominent location in the ornamentals or interior plantscapes. The sign shall read "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator. Posting requirements shall not apply if plants that are in interior plantscapes are taken off-site for pesticide application and not returned until the plants have adequately dried.

(2) Provide prior notification to the customer or adjoining residents in writing, in person, or by telephone if requested, of the date and approximate time of the application. If an operator is not able to provide prior notification to a customer or adjoining residence due to the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

(3) Provide the customer with the following information:

- (a) The brand name, or common name, of the pesticide applied;
- (b) The pesticide type;
- (c) The fertilize rate and analysis;
- (d) The reason for use;
- (e) The concentration of end use product applied to the ornamental or interior plantscape; the rate of application, and the total gallons of end use product applied;
- (f) Any precautionary or hazard information appearing on the label as applicable to the end use concentration;
- (g) The name and license or certificate number of the individual actually making the application; and
- (h) Customer name, address, and date of application.

Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 740; Am. 1371; eff. 12-19-2001.)

### **302 KAR 28:040. Prison inmates.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

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 issuance of pesticide licenses to prison inmates.

Section 1. Prison Inmates. (1) Except as provided in subsection (2) of this section, prison inmates who have completed the requirements for licensing, as set out in 302 KAR 28:050 and KRS Chapter 217B, and who have paid the appropriate fees, shall be issued a license which will be held in inactive status until the inmate is released from incarceration.

(2) Prison inmates who are actively engaged in the application of pesticides for a prison shall be licensed in accordance with KRS 217B.090.

Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 740; Am. 1372; eff. 12-19-2001.)

### **302 KAR 28:050. Certification.**

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

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.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability. (1) A person shall not be licensed to sell or apply pesticides unless he is certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification. (1) Certification may be obtained from the department as a pesticide operator, noncommercial applicator, pesticide applicator, or pesticide sales agent pursuant to Section 3 of this administrative regulation, in the following categories of pesticide use or application:

(2) Category 3. Ornamental and lawn care. This category shall include persons applying pesticides or fertilizer to control insects, weeds, and diseases in residential and commercial lawns, and maintenance of ornamental trees, shrubs and flowers, including the control of pests that do not normally invade structures, such as bagworms, grubs, and moles. Certification in this category shall not qualify an applicator to make applications to sports turf or golf courses.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.

(4) Category 18. Golf course. This category shall include persons who apply pesticides or fertilizer to land on which turf and ornamental care is done for the purpose of preparing the land for use in the game of golf.

(5) Category 19. Interior Plantscapes. This category shall include persons using pesticides to control insects, weeds, and diseases in or on interior plantscapes, regardless of who owns the plants.

(6) Category 20. Sports turf. This category shall include persons applying pesticides to control insects, weeds, and diseases to or on turf on which sports activities occur. Certification in this category shall not qualify an applicator to make applications to golf courses.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an exam, a person will have ninety (90) days from the date of testing to activate the licenses and certification requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license and certification may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to man, and common exposure routes;

- (b) Common types and causes of pesticide accidents;
- (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
- (d) Symptoms of pesticide poisoning;
- (e) First aid and other procedures to be followed if a pesticide accident occurs;
- (f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;
- (g) Practical application of the Worker Protection Standards, 40 CFR 156 and 170, FIFRA; and
- (h) The proper selection and use of personal protective equipment for handling and application of pesticides.
- (3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:
  - (a) Weather and other climatic conditions;
  - (b) Types of terrain, soil, or other substrata;
  - (c) Presence of fish, wildlife, and other nontarget organisms;
  - (d) Drainage patterns;
  - (e) Storage or use of pesticides and fertilizer including bulk fertilizer or pesticide; and
  - (f) Other nonchemical controls including, but not limited to, sanitation.
- (4) Pest identification, including consideration of the following factors:
  - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and
  - (b) Pest maturation and development as it may relate to the problem of identification and control.
- (5) Pesticides, including consideration of the following factors:
  - (a) Types of pesticides;
  - (b) Types of pesticide formulations;
  - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;
  - (d) Hazards and residues associated with use;
  - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
  - (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
  - (a) Types of pesticide application equipment and advantages and limitations of each; and
  - (b) Uses, maintenance, and calibration of equipment.
- (7) Application techniques; factors including:
  - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
  - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
  - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 USC 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. (1) In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(2) Category 3. Ornamentals and lawn care. Persons requesting ornamental and lawn care certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and lawns, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category shall demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(3) Category 12. Pesticide sales agent. Persons requesting certification in this category shall demonstrate practical knowledge of the different types of pesticides, pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, and worker protection safety issues.

(4) Category 18. Golf courses. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides and fertilizers; practical knowledge of fungi, weeds, insect infestation, disease control, and fertility; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning, disposal and containment techniques; effects of control pesticides on ground water; conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

(5) Category 19. Interior plantscapes. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying and handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

(6) Category 20. Sports turf. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and regulations that cover pesticide use.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training for a single category approved by the department in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category in addition to the single category

held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only. All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.

Section 7. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies.

(1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

Section 8. Effective Date. The effective date of this administrative regulation shall be July 1, 2002 (28 Ky.R. 741; Am. 1372; eff. 12-19-2001.)

### **302 KAR 28:060. Fine schedule for violation of KRS 217B.120.**

RELATES TO: KRS 217B.120

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.585, 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 set forth in KRS 217B.120. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.120.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193. (1) The Department of Agriculture shall 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, and 40 CFR 170 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(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 specified 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 has 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 set forth in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period specified as provided in the notice of violation.

(5) The Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for each first violation of KRS 217B.120, 302 KAR 31:040, and 40 CFR 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) \$50 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 CFR 170.

(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 or revocation, of a license, permit, registration, or certification 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 set by the department pursuant to KRS 217B.193.

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

Section 3. Failure to pay any fine within thirty (30) days of the end of the time period prescribed 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 4. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. 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 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002

Section 6. Incorporation by Reference. (1) The "Kentucky Enforcement Response Policy" (April 1999, Revised 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. 743; Am. 1374; eff. 12-19-2001.)

### **302 KAR 29:010. Definitions for 302 KAR Chapter 29.**

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 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 the definitions which apply to 302 KAR Chapter 29, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions. (1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects humans or the environment.

(2) "Application" means placing of a pesticide for effect, including mixing and loading.

(3) "Authorized agent" means a manager or license holder that is actively engaged in the company.

(4) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(5) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(6) "Commercial structural applicator" means a certified applicator that, for compensation, uses or supervises the use of any pesticide on any structure or substandard structure as defined in subsections (43) and (44) of this section.

(7) "Commercial structural fumigation license" means a license issued to a person allowing him to engage in the business of using poisonous gases to control pests in structures.

(8) "Common exposure route" means a probable manner, oral, dermal, or respiratory, by which a pesticide may reach or enter an organism.

(9) "Compatibility" means chemical property of a pesticide that permits use with other chemicals without undesirable results being caused by the combination.

(10) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.



- (11) "Consumer disclosure" means a form which:
- (a) Discloses to the consumer any wood destroying organism work to be performed by the commercial structural applicator; and
  - (b) Includes the elements of the consumer discloser form recommended by the Pest Control Advisory Board, approved by the Kentucky Department of Agriculture, and incorporated by reference in 302 KAR 29:050.
- (12) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.
- (13) "Conventional termite treatment" means treatment with a registered liquid termiticide, used according to label instructions.
- (14) "Environment" means water, air, land, plants, humans and other animals living therein, and the interrelationships which exist among them.
- (15) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.
- (16) "Graph" means a drawing of a structure that identifies the type of structure, provides an outline of the structure indicating approximate length and width and records current visible wood-destroying activity, any current visible wood-destroying damage, and treatment methods recommended.
- (17) "Hazard" means a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- (18) "Health care center" means hospitals, nursing homes, convalescent centers, clinics, medical centers, or any facility that provides overnight stay for the purpose of health care.
- (19) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.
- (20) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.
- (21) "Integrated pest management program" means a strategy of controlling pests by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.
- (22) "Kentucky State Plan" means the certification maintenance requirements and training courses approved by the department on recommendation of the Pest Control Advisory Board as set forth in 302 KAR 29:060.
- (23) "Moisture control treatment" means a treatment applied under the structure which consists of a ventilation system, soil cover, liquid chemical treatment, or any combination of the above.
- (24) "Negligent manner" means failure to use reasonable care in application or use of pesticides.
- (25) "New employee" means a person who has not been previously trained for thirty (30) days pursuant to KRS 217B.560.
- (26) "Noncommercial structural applicator" means a certified person who uses or supervises the use of any pesticide while making applications to any structure owned, occupied, or managed by him or his employer.
- (27) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.
- (28) "Operator in charge" means a person certified to apply fumigants and charged with the duty of overseeing the fumigation operation.
- (29) "Partial termite treatment" means any treatment performed to selected areas of a structure.
- (30) "Practical knowledge" means the comprehension of and ability to identify and use pertinent facts in dealing with specific problems and situations.
- (31) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.
- (32) "Registry" means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.
- (33) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, humans, or the environment.
- (34) "Remote pesticide sales agent" means an individual located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.
- (35) "Resident pesticide sales agent" means an individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.
- (36) "School" means an institution for teaching children such as, but not limited to, preschool, kindergarten, child day care centers, primary, and secondary schools.
- (37) "School authority" means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.
- (38) "Spot fumigation" means a fumigation operation performed for the control of structural pests or wood-destroying organisms in special rooms, vaults, chambers, tanks, railroad boxcars, barges, aircraft, or other enclosed areas of limited size, and which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic concentrations of the fumigants used.
- (39) "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.
- (40) "State" means the Commonwealth of Kentucky.
- (41) "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.
- (42) "Structural pest control license" means a license issued to a person allowing him to engage in the business of structural pest control.
- (43) "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(44) "Substandard structure" means those structures with less than fourteen (14) inches of clearance between the soil and the bottom of the floor joists in the crawl area, structures with wood-to-soil contact, or any other structures that cannot be treated according to label directions.

(45) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(46) "Termite baiting system" means a termite monitoring and control program that uses bait stations, according to label directions, to deliver toxicant to termites.

(47) "Termite pretreatment" means the application of an approved termiticide or baiting system, according to label directions, in new construction.

(48) "Toxicity" means the property of a pesticide that causes any adverse physiological effects to a living organism.

(49) "Unauthorized personnel" means any individual or individuals not belonging to, or a part of, the fumigating crew performing a fumigation operation. (28 Ky.R. 745; Am. 1375; eff. 12-19-2001; 37 Ky.R. 112;684; eff. 9-8-2010.)

### **302 KAR 29:020. General provisions.**

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136I, 49 U.S.C. 51

STATUTORY AUTHORITY: KRS 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 requirements for recordkeeping, the storage and handling of restricted-use pesticides, trainee supervision, and certification denial, suspension, modification, or revocation.

Section 1. Pesticide Sales Agents. There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.

(1) An individual located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user shall be licensed as a resident pesticide sales agent.

(2) An individual located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.

(3) An individual located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.

(4) A resident pesticide sales agent license or remote pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(5) An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this administrative regulation.

Section 2. Recordkeeping Requirements. (1) Pesticide sales agents. A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals. A resident pesticide sales agent or remote pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides:

- (a) Brand, amount, and type of restricted use pesticide sold;
- (b) Buyer's name and address;
- (c) Certification number of the purchaser; and
- (d) Intended use: target pest or resale.

(2) Commercial and noncommercial structural applicators. All commercial and noncommercial structural applicators who apply pesticides or any termiticides shall maintain the following records:

- (a) Name and address of person receiving services and location of performance of services;
- (b) Brand or product name of pesticides applied;
- (c) Date of application;
- (d) Type of area treated;
- (e) Name of applicator; and
- (f) Total amount of each pesticide applied, excluding paste baits.

(3) Retention. All persons required to maintain records under subsection (1) of this section shall retain the records for a period of two (2) years from the date of the sale and shall submit copies monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one or more persons may have used or applied pesticides.

(4) Availability. Records required under this section shall be made available to the department upon request.

Section 3. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons holding a Category 7(a), Category 7(b), Category 7(c), Category 8, or Category 12 license who have occasion to store pesticides.

(2) Standards for storage:

- (a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;
  - (b) Storage sites shall be cool, dry, and airy or have an exhaust system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If an exhaust system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;
  - (c) Storage sites shall be adequately lighted so that labels and label information can be easily read;
  - (d) Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions; and
  - (e) Restricted-use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison."
- (3) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by commercial structural applicators shall be transported consistent with 49 U.S.C. 51.

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified 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 of 1972, as amended, 7 U.S.C. 136l.

Section 5. Pesticide Application by Structural Commercial and Noncommercial Applicators. Any person governed by this administrative regulation shall be certified in Category 7(a), Structural Pest Control, pursuant to 302 KAR 29:060, before making application of pesticides to a structure, except new employees being trained pursuant to KRS 217B.560.

Section 6. Registered Pesticide Equipment Identification. (1) Each branch or pesticide applicator shall at all times have its vehicles, which are actively and regularly engaged in service work, marked for easy identification. The identification shall consist of the letters "L.P.C.O." two (2) inches high and followed by the company number of the business, as assigned by the department. The identification shall be placed in a highly visible location.

(2) The vehicle owner shall notify the department if a vehicle registered under KRS 217B.565 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall remove the identification if the vehicle is permanently removed from active pesticide application or is permanently transferred out of the state. (39 Ky.R. 556; 968; eff. 12-7-2012.)

### **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.

Section 2. Presentation of Proposal to Board. If an appropriate settlement has been negotiated, it shall be presented to the board and if accepted, 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, and no orders or other pleadings shall be filed in regard to any rejected offer.

Section 4. Action by the Commissioner. If the commissioner approves of the board's recommendation for acceptance or rejection, a request by the licensee for settlement after rejection by the board, or if the commissioner dismisses the complaint in whole or in part, he shall enter an order in conformance with his findings. If the commissioner rejects the settlement, the matter shall continue to proceed as a formal proceeding pursuant to KRS Chapter 13B.

Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002. (28 Ky.R. 749; Am. 1377; eff. 12-19-2001.)

**302 KAR 29:050. Commercial structural pest control and fumigation.**

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, 217B.530

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.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Applicability. A person shall not engage in commercial structural pest control or fumigation without first obtaining a license from the department. A person may apply for a license in one (1) or more of the following categories:

- (1) Commercial structural pest control applicator;
- (2) Commercial structural pest control manager;
- (3) Commercial structural fumigation applicator;
- (4) Commercial structural fumigation manager; or
- (5) Pesticide sales agent.

Section 2. License Application. (1) All applicants for applicator or manager licenses shall provide the following:

- (a) A completed "Commercial Structural Pest Control Examination Application";
  - (b) A statement from a statewide law enforcement agency that the applicant has never been convicted of fraud, misrepresentation, or a felony;
  - (c) College transcripts if applicable; and
  - (d) Written verification of pesticide work experience, pursuant to KRS 217B.520.
- (2) All applications for applicator or manager examinations shall be sworn to and notarized.
- (3) Pursuant to KRS 217B.525(1), all applications for applicator or manager licenses shall be postmarked thirty (30) days prior to the next scheduled testing date. Any application received after the thirty (30) day deadline shall be returned.
- (4) Any applicant failing to submit a complete application thirty (30) days prior to the scheduled testing date shall not be allowed to test.
- (5) Any false or misleading statements made in a license application shall be grounds to deny or revoke the license.
- (6) The application of any applicant convicted of a felony shall require approval by the board.
- (7) The manager's license examinations shall be given the second Tuesday of each month at a location specified by the department. If the second Tuesday falls on a holiday, the examination shall be given on the following Tuesday.
- (8) The manager's license examination shall be timed and shall be completed within two (2) hours.
- (9) An applicant for an applicator's or manager's license shall pass both parts of the examination in a single testing session pursuant to KRS 217B.530(7).

Section 3. License Renewal. (1) Each license shall expire on June 30 of each year.

(2) Failure to submit, by July 1 of each year, a completed "Structural Pest Control Renewal" form with a fee of \$100 for each place of business maintained in Kentucky, shall result in the license holder having his license suspended until the renewal registration has been received and the fee and any associated fines are paid.

(3) At the time of license renewal, each company shall submit to the department a list with the following information on each employee:

- (a) Name, address, and home telephone number;
- (b) Social Security number; and

(c) Job title.

(4) Within thirty (30) days of the addition or termination of an employee, the company shall submit to the department the information required in subsection (4) of this section for each new or terminated employee.

Section 4. Change of Address Notices. Each license holder shall notify the department of any change of address within ten (10) days after the change has been made.

Section 5. Treatment for Wood-destroying Organisms. Unless the structure is substandard, the following standards shall apply:

(1) Treatment measures taken for the prevention or control of wood-destroying organisms shall be based upon an inspection of the structure.

(2) Termite treatment measures. The following standards shall apply to the treatment of all structures for the control or prevention of subterranean termite infestations.

(a) The selection and use of soil-applied liquid termiticides, termite bait systems, wood treatments, or any other product used for control of wood-destroying organisms shall be in accordance with directions on the product label.

1. Loose cellulose debris that can be raked from beneath structures shall be removed.

2. Except for a component of a termite baiting system that is affixed to termite tubes, all accessible termite tubes shall be removed.

(b) Termite pretreatments shall be carried out in accordance with label directions of the product used and shall not be applied at less than label rates.

(c) Any alternative termite treatment measures or new technology in termite control with less than five (5) years efficacy data shall receive prior written approval from the department before the measures and technology may be registered and used. All alternative termite treatment measures or new technology in termite treatments shall be applied in accordance with label directions.

(3) Powderpost beetle and old house borer treatment measures:

(a) Treatment for the control of powderpost beetle or old house borer infestations may be performed by spraying or painting infested and adjacent areas with a pesticide labeled for their control; and

(b) Fumigation by licensed fumigators may be used to control powderpost beetle or old house borer infestations if other control measures have failed or are inappropriate.

(4) Requirements for prevention and control of wood-destroying fungi. The following shall be the minimum requirements for control of wood-destroying fungi in crawl space areas or other areas of buildings after the buildings have been constructed:

(a) The applicator shall determine the moisture content of joists, sills, and subfloor in the building. If excess dampness from the soil under a building contributes to moisture readings above twenty (20) percent, the applicator shall:

1. Install a vapor barrier over approximately seventy (70) percent of the soil;

2. Install additional ventilation so there is at least one (1) square foot of vent space per 150 square feet of crawl space area without a vapor barrier;

3. Install vents to give cross ventilation with a vapor barrier;

4. Improve drainage;

5. Waterproof the foundation; or

6. Perform any combination of the items specified in subparagraphs 1 to 5 of this paragraph.

(b) The application of fungicides under the structure may be used in the control of existing decay problems under the following circumstances:

1. Spot treatment may be performed for areas with twenty (20) percent or above moisture readings.

2. Complete liquid treatment may only be performed in conjunction with paragraph (a) of this subsection if moisture readings are above twenty (20) percent in four (4) separate areas of a structure. a. The separate areas of a structure shall be:

(i) Left front;

(ii) Right front;

(iii) Left rear;

(iv) Right rear;

(v) Left center; and

(vi) Right center.

b. Moisture readings shall be recorded on a graph at the time of original sale of treatment.

c. If a structure qualifies with four (4) moisture readings, a moisture control treatment shall be performed.

Section 6. Wood-destroying Organism Reports. (1) A person holding a commercial structural pest control applicator's license shall submit to the department a monthly report of all work done for control or prevention of wood-destroying organisms. Each office or branch office shall file a separate report.

(2) Reports shall be made on the "Monthly Report of Wood-Destroying Organism Treatments" form and received by the department no later than the 15th of the month following treatment.

(3) All reports shall be signed by the licensed applicator or authorized agent for that company.

(4) Upon performance of treatment for control or prevention of wood-destroying organisms, a contract shall be made between the company and the property owner. This shall be, at minimum, a duplicate contract, one (1) copy being issued to the property owner and one (1) copy retained by the company.

Section 7. Consumer Disclosure. All contracts issued except those for preconstruction treatments shall be accompanied by a consumer disclosure signed by the consumer or an individual authorized by the consumer and a graph. If a signature cannot be obtained, a detailed explanation for the absence of the signature shall be included on the form.

Section 8. Inspections by the Department. (1) The commissioner or his authorized representative may examine properties treated for the purpose of determining compliance with the treatment standards established in Section 5 of this administrative regulation.

2. The pest control operator shall not accompany the inspector on the initial inspection unless requested by the department.

3. If violations are found, the license holder shall be notified and given a reasonable length of time in which to abate the violations.

4. If the license holder neglects or refuses to abate the violations, the license shall be suspended, as provided by KRS 217B.545, except for good cause shown.

(5) If a license is suspended, the license holder shall:

- (a) Retreat all properties on which a violation has been found;
- (b) not otherwise service any current contracts or solicit any new business; and
- (c) notify the department of the dates of all reexaminations and retreatments.

(6) When all properties previously reported in an unsatisfactory condition have been reexamined and retreated, the department shall make the reinspections at its earliest convenience.

(7) If the department, on reinspection, finds all the properties in satisfactory condition, the suspension shall be removed. Otherwise, the license shall be permanently revoked.

Section 9. Rodent Control. Since most rodenticides are toxic to humans and domestic animals, care shall be exercised and precautionary steps taken to avoid accidental poisoning of human beings and domestic animals. Rodenticides shall be used only according to label directions.

Section 10. Fumigation. (1) Fumigation crews. For purposes of safety, at least two (2) individuals shall compose a crew for the release of any fumigant or fumigants operation shall not be conducted unless at least two (2) individuals work jointly and concurrently in the release of a fumigant or fumigants. This subsection shall not apply to spot fumigation.

(2) Official notice of fumigation.

(a) Before performing general fumigation in a structure or enclosed space, a license or certification holder shall notify in writing the fire department and the police department having jurisdiction over the location where the fumigation operation is to be performed.

(b 1. Except as provided in subparagraph 2 of this paragraph, the written notification shall be given to each fire department and police department at least three (3) hours prior to the time stated in the notice for the release of the fumigant.

2. Notification shall be provided in advance of the fumigating operation, without the time limit established by subparagraph 1 of this paragraph, for fumigation of vessels, aircraft, boxcars, trucks, or common carriers.

(c) The notice shall give the following information:

- 1. Location of structure or enclosed space to be fumigated as well as its character and use;
- 2. The fumigant to be used;
- 3. The date and time of release of fumigant and approximate exposure period; and
- 4. The name and day and night telephone numbers of the operator in charge.

(3) If trucks, boxcars, or other common carriers are in transit during the fumigation operation, the carrier and the receiver shall be notified that fumigation has taken place. Other than trucks, boxcars, or other common carriers, this subsection shall not apply to spot fumigation.

(4) Structures to be vacant.

(a) Human beings or domestic animals shall not occupy the structure to be fumigated, or any part or parts thereof, during the period of fumigation. In addition, structures or enclosed spaces which are physically joined to or in contact with the structure to be fumigated shall not be occupied by human beings or domestic animals during the period of fumigation.

(b) The operator in charge shall make a careful examination of all parts of the structure to be fumigated and structures or enclosed spaces physically joined to or in contact with the structure, to verify that no human beings or domestic animals are remaining in the structure and that all necessary precautions have been taken to safeguard the lives and health of all persons.

(5) Notice of warning shall be served upon the occupants of the structure or enclosed space to be fumigated no later than three (3) hours in advance of any fumigation operation by leaving the notice with a responsible adult person or by attaching the notice in a conspicuous manner on the entrance or entrances of the structures or enclosed spaces occupied by human beings.

(6) The operator in charge shall make a personal inspection and examination of the structure or enclosed space to be fumigated.

(7) Danger signs.

(a) Prior to releasing the fumigant, warning signs shall be posted at the ground level on all doors or entrances as follows:

(Skull and Crossbones)	Danger Fumigation with (Name of Fumigant) Deadly Poison All persons are warned to keep away	(Skull and Crossbones)
------------------------	--	------------------------

Name of Fumigator:

Address:

Telephone:

Operator in Charge:

Day Phone:

Night Phone:

(b) The signs shall be printed in indelible red ink or insoluble paint on a white background. The words "danger" and "deadly poison" shall be in block letters two (2) inches high and all other letters shall be in proportion.

(8) Final prefumigation inspection. Immediately before the fumigant is to be released, the operator in charge shall make a final inspection and shall ascertain the following:

(a) That all preparations have been completed;

(b) That no human beings or domestic animals are present within the structure or enclosed space to be fumigated, or in any adjacent structures or enclosed spaces that were to be vacated because of danger from the fumigation operation;

(c) That no open fires or open flames, pilot lights or oil lamps are burning;

(d) That all personnel engaged in the fumigation operation are outside the structure or enclosed space to be fumigated unless proper application of the fumigant requires personnel to be within the enclosed space at the time of application; and

(e) That all doors, windows, and all other means of access have been locked, barred, or guarded. All doors or other entrances which can be opened from the outside shall be locked.

(9) Guards and watchmen.

(a) During the period of fumigation, and until the structure has been ventilated and declared safe, at least one (1) capable, alert watchman or guard, shall remain on duty at the structure or enclosed space being fumigated. One (1) guard or watchman shall be considered sufficient for each fumigation operation unless, in the judgment of the operator in charge, the conditions and circumstances necessitate additional guards or watchmen.

(b) The guard or watchman shall prevent the entrance of unauthorized personnel into the structure or enclosed space during the exposure period and while the structure or enclosed space is being ventilated after the exposure period.

(c) Spot fumigation shall not require a guard or watchman, unless deemed necessary in the judgment of the operator in charge. (d) If a warning agent is used, the requirements established in this subsection shall not apply unless specified by the label.

(10) Declaring structure or enclosed space fumigated safe for reoccupancy. The operator in charge shall not permit or allow any unauthorized person to enter the structure or enclosed space fumigated until he has ascertained that it is safe for human occupancy.

(11) Spot fumigation. Spot fumigation may be performed by persons under the full-time supervision of a person certified to apply fumigants. Spot fumigation may be performed without the posting of guards as required for general fumigation. This shall not relieve the operator in charge of the duty to comply with all other safety precautions and requirements.

(12) The following procedures shall not be considered fumigation operations if nonrestricted use pesticides are used according to label directions:

(a) Aerosol dispersions; and

(b) Any equipment or device which produces a fog, smoke, or mist.

Section 11. Structural Pest Control and Fumigation Licenses. (1) A person holding a general pest and wood-destroying organism or fumigation license may continue to do business in those categories of pest control for which the person is licensed under KRS 217B.515(1)(b). A general pest and wood-destroying organism or fumigation certification shall not be a manager's or applicator's license and shall not entitle the holder to engage in business in all the categories that a manager or applicator may engage.

(2) Commercial structural pest control or fumigation licenses shall be renewed by June 30 of each year and shall be subject to all the terms and conditions of other licenses issued under this administrative regulation. These licenses may be modified, suspended, or revoked for the same reasons, and using the same procedures, that a manager's or applicator's license may be modified, suspended, or revoked. These license holders shall meet the application standards and obey the requirements for contracting, recordkeeping, and reporting, established by KRS 217B.150 and by 302 KAR 29:020.

(3) A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the Federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 29:020. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 29:060.

Section 12. Pesticide Application in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling dangerous and destructive pests with the judicious use of pesticides. An integrated pest management program shall include the items specified in this section:

(1) Advance notification of pesticide use.

(a) If a pesticide is to be applied in or around a school, an advance notification of pesticide use shall be given or sent by the school at least twenty-four (24) hours prior to the pesticide application to all staff members, health professionals assigned to provide services at the school and parents or guardians of students enrolled in the school as determined by the contact information maintained on file. Notice shall not be required if:

1. A pesticide is to be applied at a time the school is not in session under the calendar set by the school board; and

2. Persons other than the applicators and the minimum number of school staff necessary to allow the applications are not scheduled to be in the building during the application and for at least twenty-four (24) hours after the application.

(b) A master copy of the notification shall be maintained by the school in a file marked IPM for twenty four months after the notice is issued and shall be subject to inspection upon request by Division of Environmental Services personnel.

(2) The notification shall include the following:

(a) The date of possible pesticide application;

(b) A description of the general location of the pesticide application;

(c) description of pests treated, the brand name of the pesticides applied, including the list of active ingredients, and the pesticide application method; and

(d) A telephone number that parents and staff can use to contact the school for more information.

(3) If special circumstances arise that prevent advance notice from being provided as required, such as the emergency application of pesticides to control organisms that pose an immediate health threat, the school shall provide the notice as soon as possible. The notice shall explain the reasons why advance notice was not provided and shall also include the information required in subsection 2(a) to (d) of this section.

(4) The certified applicator shall only be responsible to furnish to the school the information needed by the school to comply with subsections (2)(a) to (c) of this section:

(a) At least thirty-six (36) hours prior to the application of the pesticide, if the school notification is provided as required by subsection (1)(a) of this section; or

(b) As early as possible, if the school notification is provided as required by subsection (3) of this section;

(5) Qualifications for pesticide applicators. Persons who apply pesticides in schools shall be certified under Category 7(a), General Pest and Wood-destroying Organisms, and Category 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

(6) Exemptions. This administrative regulation shall not apply to application of the following types of pesticides:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians; and

(d) Manufactured paste or gel bait insecticides placed in areas where humans or pets do not have reasonable access to the bait; or

(e) Paraffin-based rodent control products placed in industry identified tamper-resistant bait stations.

Section 13. Qualifications for Pesticide Application for Health Care Centers. Pesticide applicators who apply pesticides in health care centers shall be certified in 7(a), General Pest and Wood-destroying Organisms, and 7(b), Integrated Pest Management, to apply pesticides. Applicators currently holding a Category 7(a) certification on the effective date of this administrative regulation shall receive their Category 7(b) certification without additional examination.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commercial Structural Pest Control Examination Application", 2002;

(b) "Monthly Report of Wood-Destroying Organism Treatments" form, 11/99;

(c) "Structural Pest Control Renewal Form", December 2006; and

(d) "Consumer Disclosure Form", 2010.



(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at [www.kyagr.com](http://www.kyagr.com). (28 Ky.R. 749; Am. 1378; eff. 12-19-2001; 33 Ky.R. 889; 1607; 1794; eff. 2-2-07; 37 Ky.R. 114; 686; eff. 9-8-2010.)

### **302 KAR 29:060. Certification.**

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

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.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Certification. Except as provided by Section 7 of this administrative regulation, the certifications established in this administrative regulation shall be valid for three (3) years and shall be renewed and maintained in accordance with Section 7 of this administrative regulation.

Section 2. Types of Certification. (1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall cover all persons using or supervising the use of pesticides only for structural pests in, on, or around food-handling establishments, human dwellings, educational facilities, health care centers, and industrial establishments, including warehouses and grain elevators and any other structures and adjacent areas, public or private; or for the protection of stored, processed, or manufactured products. Industrial, institutional, structural, and health-related pest control certification shall be divided into the following subcategories:

(a) Structural pest control certification shall cover the use of pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation. Persons certified under this section shall be exempt from the certification requirements of 302 KAR Chapters 27 and 28 if using or supervising the use of pesticides for the control of structural-invading pests in areas adjacent to or outside any structure being treated by the person pursuant to 302 KAR Chapter 29;

(b) Integrated pest management certification shall cover an environmentally-sound approach to pest management in schools and health care facilities with the goal of the judicious use of pesticides; and

(c) Structural fumigation certification shall cover the use of pesticides in the form of poisonous gases.

(2) Category 8. Public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of pesticides in management and control of pests in public health programs.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 28. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification if the person selling or distributing pesticides is licensed as a pesticide sales agent.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in this administrative regulation. The examination and testing shall include the general standards of competency in Section 4 of this administrative regulation and the specific standards of competency in Section 5 of this administrative regulation for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to submit a completed "Structural Pest Control License Form" specifying the category or categories in which a license is requested. After ninety (90) days have expired, a person shall retake the exam before activation of a license may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling;

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to humans, and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers; and

(g) The proper selection and use of personal protective equipment for the handling and application of pesticides;

(3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms; and

(d) Drainage patterns;

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control;

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures;

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment;

(7) Application techniques; factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment; and.

(8) Laws and regulations. Knowledge of pertinent aspects of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 7. Industrial, institutional, structural, and health-related pest control. This category shall be subdivided as follows:

(a) Structural pest control. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants shall demonstrate practical knowledge of the specific factors which may lead to a hazardous condition. Because structural pest control may involve outdoor applications, persons shall also demonstrate practical knowledge of environmental conditions.

(b) Integrated pest management. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper waste management, structural repair, maintenance, biological and mechanical control techniques, and pesticide application. A prerequisite for integrated pest management certification shall be 7(a) certification. Regardless of the original issue date of a 7(b) integrated pest management certification, its expiration and renewal dates shall be the same as the corresponding 7(a) certification.

(c) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by 302 KAR Chapter 29 and by good operating practice. For those persons holding both a category 7(a) and 7(c) certification, the expiration and renewal dates of the 7(c) certification shall be the same as the corresponding 7(a) certification regardless of its original issue date.

(2) Category 8. Public health. Each person with certification in category 8 in effect on September 8, 2010 shall be granted certification in category 7(a) and category 7(b) with an expiration date of December 31, 2012.

(3) Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

Section 6. License Examination. Structural. The examinations administered by the department pursuant to KRS 217B.530 and this administrative regulation for licensees to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply pesticides under this administrative regulation. If a person obtains a license to do business in one (1) or more of the above categories, that person shall be certified to purchase, use, or apply pesticides in the appropriate subcategory of industrial, institutional, structural, or health-related pest control.

Section 7. Certification Maintenance. To maintain a category 7(a), or category 12 certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training, approved by the department, in the use and application of pesticides. To maintain a category 7(b) certification, an additional three (3) continuing education units of training shall be required. And, to maintain a category 7(c) certification, each person certified in this category shall in any three (3) year period, attend at least nine (9) continuing education units and three (3) category specific continuing education units of training. For those persons holding a category 7(a) certification who are also seeking to maintain a category 7(c) certification, an additional three (3) category specific continuing education units shall be required. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2015. Credit shall be given in full continuing education unit increments only.

Section 8. Credentials. (1) If a person meets all the requirements to obtain a license to do business under KRS 217B.500 to 217B.585 and this administrative regulation, the department shall issue a document signifying that he is licensed to do business in the category for which he qualifies.

(a) Inactive status. If an applicator or operator for any reason changes status and is no longer employed but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall maintain certification and pay the annual renewal fee required by KRS 217B.535. The licensee shall not perform any type of regulated activity until the license is reactivated.

(b) Employee commercial license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any active commercial pesticide license or active certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any commercial pesticide license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.

(2) If a person qualifies for certification incident to qualification for a license to do business, the department shall issue him one (1) document which shall be the license to do business and shall contain the certification category number.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a certification to any person who holds a valid certification in another state if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

(4) A certification may be granted, denied, suspended, or revoked independent of the grant, denial, suspension, or revocation of any license to do business. In a like manner, any license to do business may be suspended or revoked independent of the grant, denial, suspension, or revocation of any certification.

Section 9. Incorporation by Reference. (1) "Structural Pest Control License Form", October 2012, 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. 753; Am. 1380; eff. 12-19-2001; 37 Ky.R. 118; 9-8-10; 39 Ky.R. 558; 969; eff. 12-7-2012.)

#### **302 KAR 29:070. Fine schedule for violation of KRS 217B.550.**

RELATES TO: KRS 217B.515, 217B.550, 217B.585

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.990 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations set forth in KRS 217B.550. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.550.

Section 1. Notice of Noncompliance and Abatement of Violation Pursuant to KRS 217B.193. (1) The Department of Agriculture shall issue a notice of violation to license holders found to be in violation of KRS 217B.550 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(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 or certification holder that:

(a) Except for good cause shown, an administrative fine in the amount specified in Section 2 of this administrative regulation shall be assessed if the violation is not abated within the time specified in the notice of violation;

(b) He 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 mailed pursuant KRS 217B.193(1).

(4) The department may allow additional time for abatement of a violation, not to exceed ninety (90) days, if it is determined that the violation cannot be corrected within the time period specified in subsection (3) of this section.

(5) The Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for a first violation of KRS 217B.550 shall be:

(a) \$200 for a violation of KRS 217B.550(1);

(b) \$200 for a violation of KRS 217B.550(2);

- (c) \$300 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) \$200 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) \$100 for a violation of KRS 217B.550(9);
  - (j) \$100 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) \$200 for a violation of KRS 217B.550(14);
  - (o) \$200 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 KRS 217B.550(18).
- (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 set by the department pursuant to KRS 217B.193.
- (6) 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.

Section 3. Failure to pay any fine within thirty (30) days of the end of the time period prescribed 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 4. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. 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 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.

Section 6. Incorporation by Reference. (1) The "Kentucky Enforcement Response Policy" (April 1999, Revised 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. 755; Am. 1382; eff. 12-19-2001.)

**302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.**

RELATES TO: KRS Chapter 217B, 40 C.F.R., 49 C.F.R.

STATUTORY AUTHORITY: KRS 217B.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050(1) authorizes the department to promulgate administrative regulations prescribing the methods of storing fertilizers and pesticides. This administrative regulation regulates the storage and handling of pesticides and bulk fertilizers at commercial facilities.

Section 1. Definitions. (1) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control facility run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(3) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

(a) 300 U.S. gallons of liquid measure; or

(b) 300 U.S. pounds of net dry weight.

(4) "Commercial purposes" means selling a pesticide or fertilizer for compensation or other consideration.

(5) "Commercial storage facility" means a site used for a commercial purpose that, in a year, sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than:

(a) 300 U.S. gallons of liquid pesticide;

(b) 300 U.S. pounds of a dry pesticide;

(c) 5,000 U.S. gallons of a liquid bulk fertilizer; or

(d) Twenty-five (25) tons of dry bulk fertilizer.

(6) "Elephant ring" means a temporary operational containment device:

- (a) With an open top that has a storage capacity of:
1. Not less than twenty-five (25) U.S. gallons; and
  2. Not more than 100 U.S. gallons; and
- (b) Used for recovering spillage and leakage from a transfer connection or pump.
- (7) "Fertilizer" is defined in KRS 217B.040, but for purposes of this administrative regulation shall not include anhydrous ammonia fertilizer material or fertilizer packaged for household use.
- (8) "Impervious" means restricting the passage of water at a rate greater than  $1 \times 10^{-6}$  centimeters per second.
- (9) "Impregnation" means the application of a pesticide onto fertilizer.
- (10) "Lead agency" means the agency that shall be responsible for the enforcement of this administrative regulation.
- (11) "Liquid pesticide" means any pesticide in fluid form.
- (12) "Liquid fertilizer" means fertilizer in fluid form, including solutions, emulsions, suspensions, and slurries.
- (13) "Load" means the transfer of pesticide in an open storage container or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.
- (14) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate, urea, or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. It does not include aqua ammonia and nonpressure nitrogen solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions.
- (15) "Minibulk pesticides" means an amount of:
- (a) Liquid pesticide in an undivided quantity in a mobile container designed for handling and transport that is:
1. Greater than fifty-five (55) U.S. gallons; and
  2. Less than 300 U.S. gallons; or
- (b) Dry pesticide held in an undivided quantity in a mobile container designed for handling and transport that is:
1. Greater than 100 U.S. pounds; and
  2. Less than 300 U.S. pounds.
- (16) "Mobile container" means a container designed and used for transporting a pesticide or fertilizer.
- (17) "Operational area" means a site at a facility where the following occurs:
- (a) Loading, unloading, repackaging, mixing, impregnation, or transferring of a pesticide or fertilizer; or
- (b) Rinsing, washing, or cleaning of pesticide or fertilizer application equipment.
- (18) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides, including rinsate or rain water resulting from any operational activity in an operational area.
- (19) "Package pesticide" means a pesticide not defined as bulk or minibulk pesticide.
- (20) "Pesticide" is defined in KRS 217B.040(2), but for purposes of this administrative regulation, shall not include a pesticide packaged for household use.
- (21) "Primary containment" means any storage container or device used to contain a bulk pesticide, fertilizer, or rinsate at a storage facility.
- (22) "Repackaging" means the transfer of bulk pesticides, minibulk pesticides, or package pesticides from one (1) storage container to another storage container.
- (23) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application, loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.
- (24) "Roofed" means protected from precipitation.
- (25) "Secondary containment" means a dike, liner, structure, or other device used to:
- (a) Contain a product spill from a primary bulk storage container; and
- (b) Prevent runoff or leaching.
- (26) "Storage container" means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides. The definition of a "storage container" shall not include:
- (a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days if this storage is incidental to the loading or unloading of a storage container at the storage facility.
- (b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.
- (27) "Storage facility" means a commercial storage facility.
- (28) "Temporary operational containment" means any structure or system designed and constructed with the capability of movement between operational areas and designed to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer or the rinsing, washing or cleaning of pesticide and fertilizer application equipment.
- (29) "Unload" means the transfer of pesticide in an open storage container or bulk fertilizer from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) The Kentucky Department of Agriculture, Division of Pesticide Regulation shall be the designated lead agency.

(2) A commercial storage facility shall comply with this administrative regulation.

(3) A commercial storage facility shall have a written emergency response plan to be followed in the event of an emergency. A plan required by another regulatory program may be used.

(4) A commercial storage facility shall register with the Kentucky Department of Agriculture, Division of Pesticide Regulation.

(5) A commercial storage facility shall define the scope of the existing operation and facility.

(6) A commercial storage facility shall be subject to SARA Title III (42 U.S.C.A Sec. 9601) and shall:

1. Be in full compliance by the required dates; and
2. Promptly and accurately complete the required annual reporting forms.

(7) After August 2003, unless performed in the field of application, the loading, unloading, mixing and handling of dry bulk fertilizer shall be performed in accordance with Section 8 of this administrative regulation.

Section 3. Operational Area Site Specifications. (1) New permanent operational area containment located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational area containment shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

Section 4. Primary Containment of Liquid Pesticides and Liquid Fertilizer. (1) Basic requirements.

(a) A storage container and appurtenances shall be constructed, installed and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and appurtenances shall be constructed of materials which are resistant to corrosion, puncture, or cracking and shall be compatible with the product being stored.

(c) A storage container and appurtenance used for the storage of a liquid fertilizer containing potassium chloride (muriate of potash) may be constructed of ferrous materials if the following provisions are met:

1. The container and appurtenance are coated or treated with protective substances; and

2. The container or appurtenance is used for a storage period of not more than six (6) months, is completely emptied between storage periods, and is cleaned and inspected for leaks prior to being refilled.

(d) Metals used for valves, fittings, or repairs on metal containers shall be compatible with the materials used in the construction of the storage container so the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances or create a risk of release.

(e) Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subjected to in the foreseeable course of operations.

(f) Storage containers shall be properly labeled during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container shall be prohibited unless an impervious catch basin is used for the temporary collection of run-off or rinsate from containment or operational areas and it is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate shall be considered abandoned if they have been out of service for more than six (6) months due to a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured and all valves or connections shall be severed or sealed.

(c) A secondary containment facility shall not be considered abandoned for the sole reason that there have been no releases into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and appurtenances shall not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and appurtenances used for the storage of liquid fertilizers containing phosphate or chlorides shall not be constructed of aluminum alloys.

(c) Storage containers and appurtenances used for the storage of low ph (<5) liquid fertilizers shall not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and appurtenances used for the storage of low-pressure nitrogen solutions shall not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition shall not extend to nonpressure solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel shall not extend to aqua ammonia.

(e) Storage containers and appurtenances used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

(5) Filling storage containers. Storage containers shall not be filled beyond the capacity for which they are designed.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage due to gravity and other forces which may be encountered in the ordinary course of operations. Underground plumbing shall be prohibited except as specified in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level-gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level-gauging device shall not be required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured in a safe manner to protect against breakage or vandalism.

(c) External sight gauges shall be prohibited.

(8) Venting. Storage containers shall be vented to manufacturer's specifications for the product being stored in the container.

(9) Facility inspection and maintenance by owner or operator. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the primary containment. Repairable defects that occur in a primary containment shall be sealed or repaired immediately.

Section 5. Secondary Containment of Liquid Bulk Pesticide and Liquid Bulk Fertilizer. (1) A nonmobile storage container for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements shall include:

- (a) The floor and walls of a secondary containment structure shall be constructed of:
1. Concrete;
  2. Concrete block that has been capped and filled with concrete;
  3. Steel; or
  4. Another impervious material compatible with the product being stored.
- (b) The floor and walls of a secondary containment structure which contains a pesticide shall be constructed of material which will maintain structural integrity under fire conditions.
- (c) Secondary containment structures shall not have relief outlets or release valves.
- (d) Underground plumbing shall be prohibited except as provided in Section 4(2)(b) of this administrative regulation.
- (e) Secondary containment may provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing exists between the fertilizer and pesticide areas and shall provide for the interception and recovery of materials including clean-up of pesticide releases. The entire secondary containment area shall meet or exceed the total capacity requirements specified in this section.
- (f) Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours after any release into the secondary containment.
- (g) An inspection shall be conducted quarterly by the owner or operator to assure the early detection of cracks or other defects that may compromise the integrity of the secondary containment. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.
- (h) Containers, pipes, hoses and valves shall be protected against anticipated risks of damage by trucks and other moving vehicles.
- (i) Clay, natural soil clay mixtures, or clay and bentonite mixtures shall not be used to contain any bulk pesticide.
- (j) Temporary operational containment or elephant rings shall not be used as secondary containment for any bulk pesticide.
- (k) Secondary containment structures shall include a sump or collection point for collection of spillage, leakage, rinsate, or other residues. A sump or collection point shall not be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons. A sump shall be cleaned and rinsed within seventy-two (72) hours of use.
- (3) Secondary containment structures shall provide the following capacity:
- (a) If not roofed, the containment shall have a minimum containment volume that equals a six (6) inch rain storm in a twenty-four (24) hour period, plus 100 percent of the capacity of the largest tank and the volume displaced by the bases of the other tanks located within the secondary containment structure.
- (b) If roofed, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank plus the volume displaced by the bases of the other tanks located within the secondary containment structure.
- (4) Basic requirements for the secondary containment of liquid fertilizer.
- (a) Secondary containment shall be provided which meets or exceeds the requirements in subsection (2) of this section.
- (b) Secondary containment shall be constructed to a water permeability rate of  $1 \times 10^{-6}$  centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of  $1 \times 10^{-5}$  centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.
- (c) Synthetic materials or liners may be used as secondary containment if they are compatible with the substances being contained and are installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at the storage facility.
- (d) Earthen walls used for secondary containment of fertilizer shall be protected against erosion. Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical. The top width of earthen walls shall not be less than two and one-half ( $2 \frac{1}{2}$ ) feet.
- (e) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.
- (f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.
- (g) A soil liner used for secondary containment of fertilizer shall be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches, if the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.
- (h) Prefabricated secondary containment devices shall be constructed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete, synthetic liner, or synthetic materials which are resistant to corrosion, puncture, or cracking.
- (5) Exemptions from secondary containment.
- (a) A liner shall not be required to be installed directly under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to August 1998 if all the following conditions are met:
1. A second bottom made of steel shall be constructed for the storage container. The second bottom shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers;
  2. The original bottom of the storage container is tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the storage facility;
  3. The newly constructed bottom is tested for leaks before any liquid fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the storage facility; and
  4. There is a method by which leaks from the newly constructed bottom into the sand layer may be readily detected unless the storage containers are constructed of nonferrous materials which have a protection system in place consisting of synthetic liners and monitoring system.
- (b) The secondary containment requirements under this section shall not apply to railcars which are periodically transferred to and from storage.

(6) A storage facility with existing secondary containment on site and in place on August 17, 1998, shall be exempt from this section if the following conditions are met:

- (a) All requirements specified in Section 4 of this administrative regulation are met; and
- (b) All requirements specified in subsection (2) of this section are met; and
- (c) A minimum secondary containment capacity of 110 percent of the largest container plus the volume displaced by the other tanks located within the secondary containment structure exists.

Section 6. Operational Containment For Pesticides and Liquid Fertilizer. (1) The transfer of a pesticide or liquid fertilizer between storage containers at a commercial facility shall be performed within impervious operational containment designed to intercept, retain, and recover an accidental release or leakage of rinsate and residue. Transfer shall include the following:

- (a) Loading;
  - (b) Unloading;
  - (c) Repackaging;
  - (d) Impregnating;
  - (e) Mixing; or
  - (f) The cleaning of equipment.
- (2) Temporary operational area containment may be used in lieu of impervious operational containment for loading or unloading of rail cars or barges.

(3) The basic requirements for permanent operational containment structures for a pesticide and a liquid fertilizer shall include:

(a) The construction and the design of a containment structure shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is properly disposed of or used.

(b) Operational containment shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled.

(c) The owner or operator, to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment structure shall conduct inspections at least quarterly. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(d) Stormwater drainage shall be diverted away from all operational containment structures.

(e) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. A sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons. A sump shall be cleaned and rinsed within seventy-two (72) hours of use.

(f) Operational containment shall not have a relief outlet or release valve.

(g) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(h) The use of underground plumbing shall be prohibited except as provided in Section 4(2)(b) of this administrative regulation.

(4) Operational containment shall provide the following capacity:

(a) Operational area containment for a roofed permanent structure shall have a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(b) Operational area containment for an unroofed permanent structure shall have a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(5) Temporary operational containment may be utilized to meet the requirements of this section if the following conditions are met:

(a) The capacity of temporary operational containment shall not be less than 1,250 U.S. gallons; and

(b) The temporary operational containment shall be constructed of material which is compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy is maintained at the storage facility; and

(c) All requirements specified in subsection (3) of this section are met.

(6) An elephant ring may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the unloading of a truck, barge, or railcar into a storage facility.

(7) A combination of an elephant ring and concentric piping may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the loading or unloading of a railcar or barge.

Section 7. Containment of Dry Bulk Pesticides. (1) A nonmobile storage container for dry bulk pesticides shall be located within secondary containment.

(2) Dry bulk pesticide storage shall be segregated from other containment areas and be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 8. Dry Bulk Fertilizer Storage and Handling. (1) Dry bulk fertilizer material shall be stored and handled using best management practices.

(2) Dry bulk fertilizer shall be stored inside a structure or device having a cover or rooftop, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) The loading, unloading, mixing, or handling of dry bulk fertilizer, unless performed in the field of application, shall be conducted in a manner to provide for the collection and reuse of any spilled fertilizer.



Section 9. Containment Management. (1) A pesticide, fertilizer, pesticide residue, fertilizer residue, or rinsate recovered from secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with the product label. A pesticide residue or rinsate that is to be land applied shall be handled in accordance with the product labels. Rinsates may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be used to keep rinsate and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected shall be discharged from containment areas. Contaminated precipitation shall be field applied pursuant to subsection (1) of this section.

(4) Recovered or rinsate material collected in a containment system shall not be considered a hazardous waste unless it is determined that the rinsate or other recovered material cannot be applied to a labeled target area.

Section 10. Field Mixing and Transferring. (1) The following shall be performed at a field site or within operational area containment:

- (a) Field mixing of a pesticide or fertilizer;
- (b) Transferring of a pesticide or fertilizer; or (c) Rinsing of a pesticide container.

(2) The following shall not be conducted on a public highway, road, or street:

- (a) Mixing of a pesticide or fertilizer;
- (b) Transferring of a pesticide or fertilizer; or
- (c) Rinsing of pesticide or fertilizer equipment.

Section 11. Distribution. (1) Sale by weight or meter shall be the approved method of resale for pesticides and fertilizer. Both methods shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as determined by the Kentucky Department of Agriculture.

(2) A separate meter shall be required for each product distributed for sale if the product is sold through a meter. (24 Ky.R. 2243; Am. 25 Ky.R. 308; eff. 8-17-98; 29 Ky.R. 2142; 2454.)