

# COMMISSIONER'S OFFICE

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## ADMINISTRATIVE CODE

### CHAPTER 80-5-1 STANDARDS FOR ASSESSMENT OF CIVIL PENALTIES

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**80-5-1-.01 Purpose.**

(1) The purpose of Chapter 80-5-1 is to set maximum amounts of civil penalties for various violations of Code of Ala. 1975, Chapters 27 and 28 of Title 2, and rules promulgated

thereunder, as authorized by Act No. 89-741, **Acts of Alabama 1989.**

(2) Before the enactment of Act No. 89-741, the only authorized penalty other than criminal prosecution was revocation of a permit or license. In some cases, these above penalties were too harsh. It is anticipated that the Commissioner of Agriculture and Industries will many times impose the penalties authorized by Act No. 89-741 and these rules in lieu of criminal prosecution or revocation of a license or permit, but it is understood that a civil penalty and/or revocation and/or criminal prosecution are all available to the Commissioner.

(3) It is understood that not every situation will fit and that in some cases penalties are authorized to be imposed against persons not licensed or permitted.

(4) The penalties set out in Chapter 80-5-1 are maximum and there is no intention by the adoption of this Chapter to imply that maximum amounts should be imposed. The decision to impose a penalty and its amount, up to the maximum allowed in these rules, are wholly within the discretion of the Commissioner of Agriculture and Industries.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18(b).

**History:** Filed February 21, 1990.

**80-5-1-.02 Maximum Penalties For Pesticide Misuse.**

(1) Pesticide misuse is defined, for purposes of this rule, as the use of any pesticide inconsistent with its label or printed instructions issued by the manufacturer for said pesticide use.

(2) The provisions of this rule shall be applicable to those persons, companies or entities who dispense or use pesticides for hire, and that are licensed or permitted under the provisions of Code of Ala. 1975, Chapters 27 and 28 of Title 2.

(3) The maximum penalty for the proven misuse of a restricted use pesticide is \$10,000.

(4) The maximum penalty for the proven misuse of a nonrestricted use pesticide is \$5,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.03 Maximum Penalties For Violation Of**

**Code of Ala. 1975, § 2-27-14.** The maximum penalty for a proven violation of any prohibited or unlawful act described in Code of Ala. 1975, § 2-27-14, with the exception of any violation covered in any other rule in Chapter 80-5-1, is \$5,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.04 Maximum Penalties For Operating Without Being Licensed.**

(1) Operating without being licensed, for the purposes of this rule, means doing any act which requires a license, permit, certification or registration in the absence of a valid license, permit, certification or registration which is prohibited under law and duly promulgated rules without said authorization. It specifically includes, but is not limited to, the following sections of Code of Ala. 1975, and rules under the Alabama Administrative Code:

(a) Registration of a pesticide under § 2-27-9.

(b) Selling of restricted use pesticides under § 2-27-10.

(c) Using restricted use pesticides under § 2-27-11, and Rule 80-1-13-.06.

(d) Engaging in the custom application of pesticides under § 2-27-53, and Chapter 80-1-14.

(e) Engaging in professional work or services requiring certification in that occupation under § 2-28-2, and Rules 80-10-9-.04, 80-10-9-.05, and 80-10-9-.06.

(f) Engaging in professional work or services requiring a permit under § 2-28-4.

(2) The maximum penalty for the proven violation of operating without being licensed is \$3,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.05 Maximum Penalties For Failure To Keep Required Books And Records.**

(1) For purposes of this rule, the failure to keep required books and records means those books and records required to be kept under Code of Ala. 1975, Chapters 27 and 28 of Title 2, and Chapters 80-1-13, 80-1-14 and 80-10-9, Alabama Administrative Code. The nonexistence of a record as well as an incomplete record falls under this definition.

(2) The maximum penalty for a proven violation of failure to keep required books and records is \$1,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.06 Maximum Penalties For Violation Of Chapters 27 And 28.** The maximum penalty for a proven violation of Code of Ala. 1975, Chapters 27 and 28 of Title 2, not specifically addressed in those rules appearing in Chapter 80-5-1, Alabama Administrative Code, is \$2,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.07 Maximum Penalties For Violation Of Pesticide And Professional Work And Service Rules.** The maximum penalty for a proven violation of any rule appearing in Chapters 80-1-13, 80-1-14 and 80-10-9, Alabama Administrative Code, not specifically addressed in those rules appearing in Chapter 80-5-1, Alabama Administrative Code, is \$2,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.08 Stacking Of Maximum Penalties Prohibited.** The maximum penalty for multiple violations arising out of the same set of circumstances or facts concerning the same permittee or licensee shall be no greater than the single largest penalty allowed for any one proven violation.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.09 Maximum Penalties For Violation Of Departmental Orders.**

(1) The maximum penalty for the proven violation of an official suspension or stop sale order under Code of Ala. 1975, § 2-27-15, is \$5,000.

(2) The maximum penalty for the proven violation of an official written order of the Commissioner of Agriculture and Industries resulting from a hearing before him

concerning a violation of Code of Ala. 1975, Chapters 27 or 28 of Title 2, and official rules promulgated thereunder is \$2,000.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.

**80-5-1-.10 Maximum Penalties For Subsequent Violations.**

(1) The maximum penalty imposed by any rule of Chapter 80-5-1 is increased by 100% up to the maximum allowed by law if there is a subsequent proven violation of the same offense committed by the same person or entity within 12 months of the first violation.

(2) The maximum penalty is increased by 50% if the subsequent violation occurs after 12 months, but less than 24 months of the first violation.

(3) The maximum penalty is increased by 25% if the subsequent violation occurs after 24 months, but less than 36 months of the first violation.

(4) No increase of maximum penalties is allowed for subsequent proven violations occurring after 36 months of the first violation.

**Author:** Charles H. Barnes

**Statutory Authority:** Code of Ala. 1975, § 2-2-18.

**History:** Filed February 21, 1990.