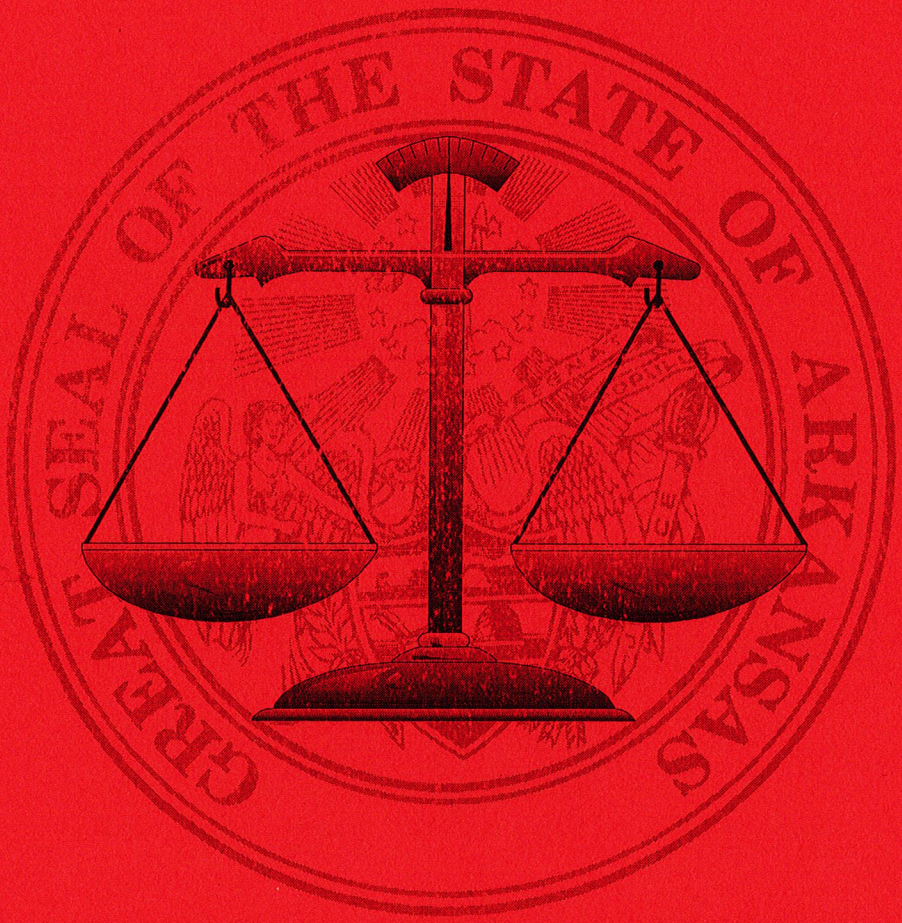
ENFORCEMENT RESPONSE REGULATIONS

PESTICIDE DIVISION



ARKANSAS STATE PLANT BOARD

(Rev. 06/08)

ARKANSAS STATE PLANT BOARD

PESTICIDE ENFORCEMENT RESPONSE REGULATIONS

TABLE OF CONTENTS

SECTION		PAGE
I.	Statement of Purpose	2
II.	Definitions	2
III.	Legal Authority	3
IV.	Enforcement Actions	3
V.	Incident Investigation	4
VI.	Activation of Enforcement Response Policy	6
VII.	Internal Review	7
VIII.	Hearings	7
IX.	Right of Appeal	7

APPENDIX A - Penalty Matrix

I. STATEMENT OF PURPOSE

Pesticides are valuable to Arkansas' agricultural production and the protection of man and his possessions from insects, rodents, weeds, plant diseases, and other pests. It is essential to the public health and welfare that pesticides be used properly to prevent adverse effects on man and the environment.

The purpose of the regulation is to provide a fair and consistent mechanism by which compliance with the Pesticide Use and Application Act, as amended, and the Pesticide Control Act, as amended, and the regulations written pursuant thereto can be achieved.

II. DEFINITIONS

As used in this policy:

A. Base Fine: The midpoint of a civil penalty range. [Example: The civil penalty range for refusal to keep proper records (1st level of enforcement) is $100.00 to $500.00. The base fine is $300.00]

B. Case Development Review Panel: An internal committee of staff including: 1. The appropriate Division Director, or the appropriate Section Manager, 2. The Agency Asst. Director, and 3. The Agency Director or the director's designee. The Case Development Review Panel will carefully review all case documentation to insure completeness and to insure that the recommended enforcement action is appropriate.

C. Level of Enforcement: The category by which a violative incident is considered a first, second, third, or fourth offense.

For a violation to be considered as a second or subsequent offense, it must be a repeat of a violation for which a previous enforcement action has been taken by the Plant Board. The previous violation/violations must have occurred within the past 3 years.

D. Minor Violation: A violative incident which does not involve human health, safety, or endanger the environment; or other incidents of non-compliance which do not create a competitive disadvantage for licensees in full compliance.

E. Major Violation: A violative incident which affects human health, safety, or the environment; or other incidents of non-compliance which create a competitive advantage over licensees in full compliance; or a history of repetitive violative incidents.

- In no case shall a single application or drift incident by a pesticide applicator be considered multiple violations based on the number of complaints.

F. Respondent: A dealer, manufacturer, firm, applicator, or individual charged with a violation of the Pesticide Use and Application Act as amended, the Arkansas Pesticide Control Act, as amended, and the regulations written pursuant thereto.

G. The firm shall be named as the responsible party for a violative incident. Except that for a violative application incident, the enforcement level for an aerial application firm shall be determined by the past record of violations of the pilot making the application. If license suspension is the indicated level of enforcement, the license of the pilot making the application is the license to be suspended. However, in no case shall the pilot making the application be responsible for violative actions for which the firm is responsible.

III. LEGAL AUTHORITY

A. "Arkansas Pesticide Use and Application Act" A.C.A. 20-20-201 et. Seq. And Regulations.

B. "Arkansas Pesticide Control Act" A.C.A. 2-16-401 et. Seq. And Regulations.

IV. ENFORCEMENT ACTIONS

Under the preceding Arkansas Codes, The Plant Board has several options for enforcement action. These are:

A. Warning Letter: For minor, 1st level of enforcement violations, the Board or Board Staff will issue a warning letter. The letter will cite the specific violation. The letter will also identify any corrective action that mat be needed and notify the respondent that further violations will result in more severe enforcement action.

B. Stop Use/Stop Sale: The use or sale of unregistered, deficient, or adulterated pesticides; the use of faulty equipment; or an invalid applicator's registration, etc., will remain in effect until violation is corrected.

C. Informal Agreement: When a violation has been alleged, the respondent has the option of accepting the prepared settlement agreement prepared in accordance with the requirements of this regulation, an informal hearing or a board/committee hearing. The purpose of the informal hearing is to resolve a complaint or incident. A hearing officer will meet jointly with the respondent and Plant Board Staff. The group will seek consensus on an appropriate enforcement action for recommendation to the Board. Enforcement action based on the Penalty Matrix (Appendix A) will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. The Full Board acts on all recommendations resulting from the informal hearing.

D. Board/Committee Hearing: If the respondent chooses to bypass the informal agreement process or if an agreement can not be reached during the informal hearing, a hearing will be held by the Pesticide Committee of the Board. Enforcement action will include Civil Penalty and/or license suspension, revocation, non-renewal, or registration cancellation. Following the Committee hearing, a written Finding of Fact, Conclusion of Law, and recommendation will be submitted to the Board. The Full Board will act on all recommendations of the Committee.

E. Immediate Suspension of License: (Arkansas Pesticide Use and Application Act Only) The Board may suspend, pending inquiry, for not more than 10 days, any license or permit issued by the Board for violation of A.C.A. 20-20-201 et.seq.

F. Referral to Prosecuting Attorney: The Plant Board has the option of referring violations of the Pesticide Use and Application Act, and the Pesticide Control Act to the prosecuting attorney.

G. Referral to EPA: The Plant Board will negotiate cases of referral with EPA to determine the appropriate action.

V. INCIDENT INVESTIGATION

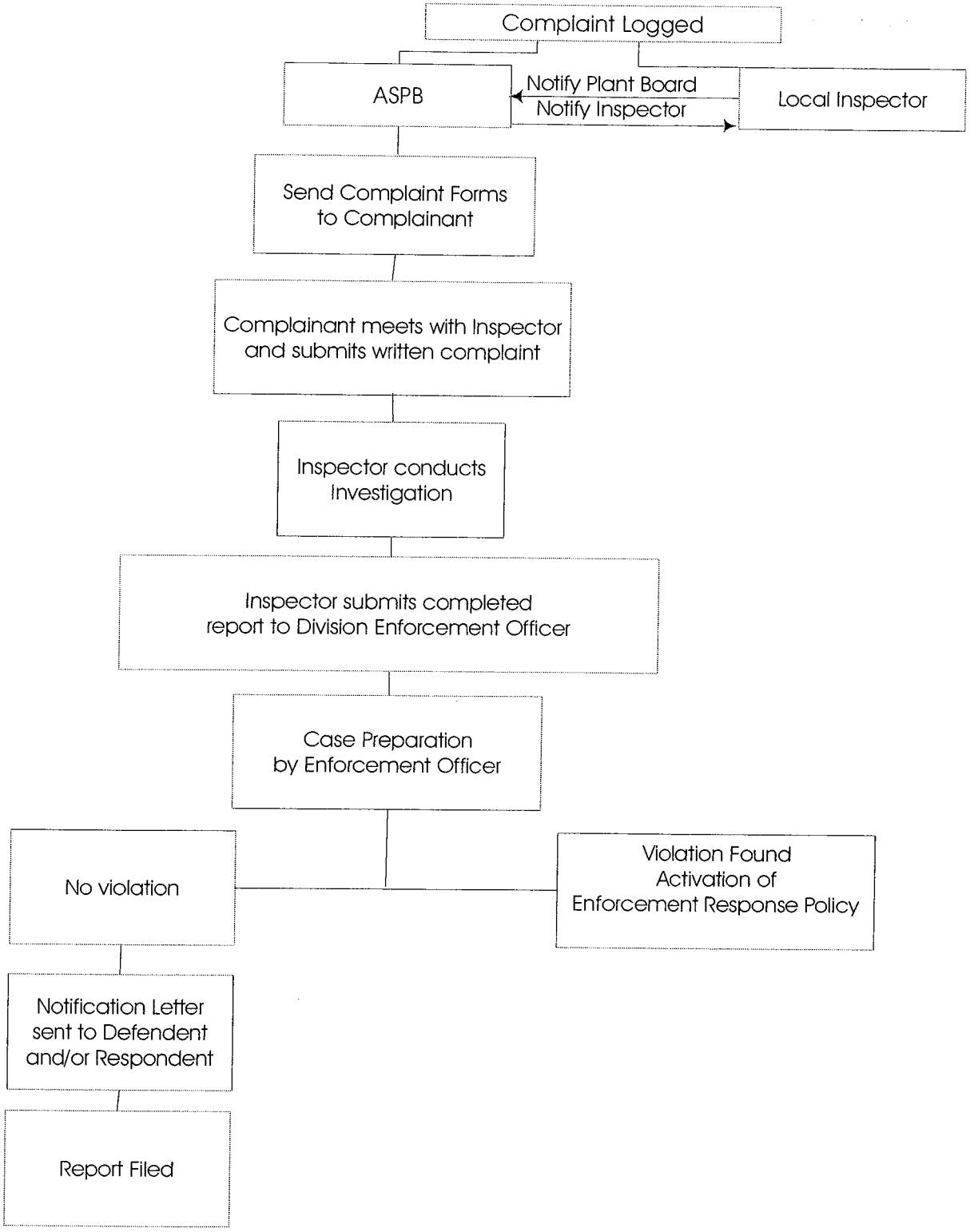
An incident investigation will be initiated when:

A. Routine compliance monitoring indicates a violation has occurred.

B. A formal complaint that an alleged violative incident has occurred. (Filing of written form by a complainant). In cases of apparent immediate endangerment to health or the environment, the written notification may be waived and the investigation of the alleged incident will begin immediately.

The processing sequence for an incident investigation is outlined in Figure I.

FIGURE I
Processing Sequence



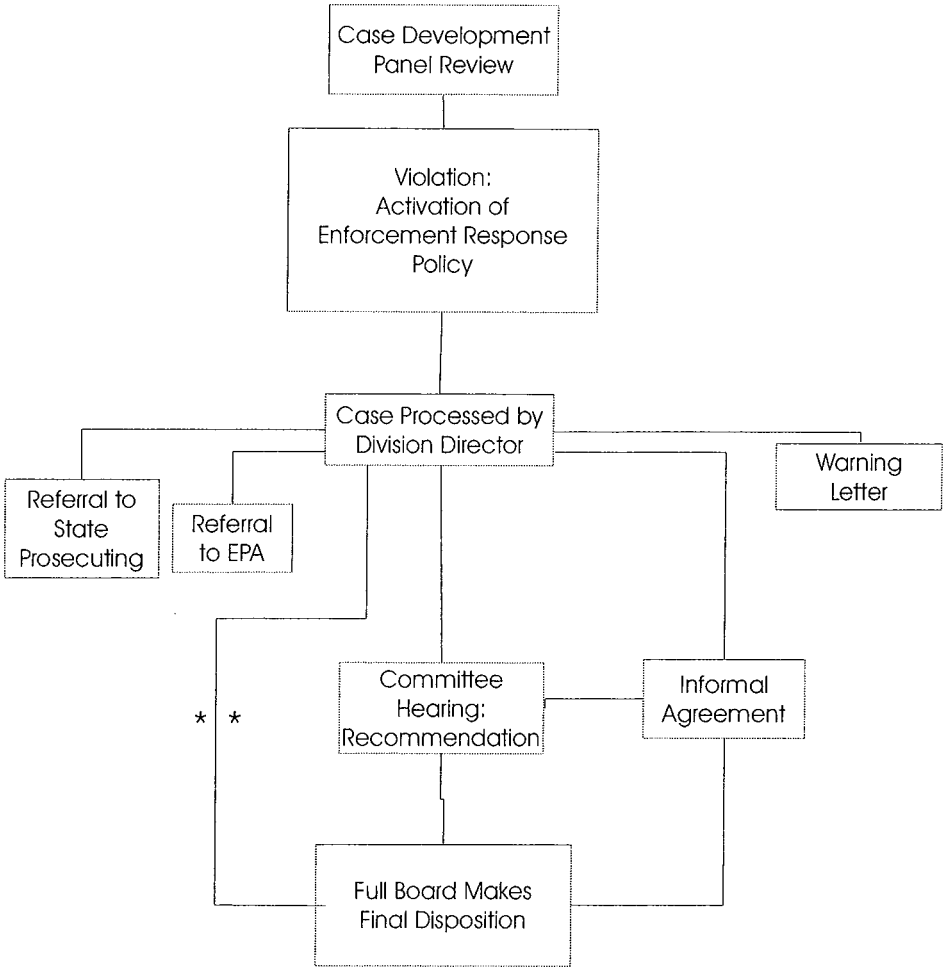
VI. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

An apparent violation of law and/or regulation must be documented to initiate an enforcement action.

Documentation must conform to the requirements of the Pesticide Division.

The sequence of events within the enforcement response policy is as follows:

FIGURE II



** Immediate Suspension of License or Injunction:
(See item E in Section IV)

VII. INTERNAL REVIEW

The Case Development Panel will carefully review all documentation and records to determine:

A. That apparent violation/violations have occurred.

B. Whether the apparent violations are Minor and/or Major violations.

C. The correct level of enforcement based on the penalty matrix and the documented history of the applicator and/or company is proposed.

Concurrence with the Division's finding by the Panel must be unanimous before further action can be taken on the case.

VIII. HEARINGS

The informal hearing officer and/or the appropriate Committee and/or the Full Board will carefully review the documentation and hear cases of alleged violations.

A violation will be determined by documentation of criteria as specified in Appendix A. The severity and level of enforcement of a violation will be determined by the three (3) factors in Section VII; as they are applied to the Penalty Matrix (Appendix A).

If a violation is determined in this sequence; the following factors will be considered:

A. Cooperation of the respondent.

B. Other extenuating/mitigating circumstances.

The Hearing Officer/Committee/Board may use these factors to accelerate or mitigate enforcement action. When a civil penalty is the preferred action, the base fine may be increased or decreased based on these factors. The civil penalty will not be more or less than the range for the specific violation listed in Appendix A.

The Full Board will take action to determine the final disposition of the case.

IX. RIGHT OF APPEAL

Any person aggrieved by any action of the Plant Board may obtain a review thereof by filing in circuit court within 30 days of notice of the action, a written petition praying that the action of the Plant Board be set aside.

PENALTY MATRIX

Appendix A

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
1 - Commercial Applicators. Failure to secure applicator license.	Minor								
	Major	C, D	200-1000	C, D	400-1000	C, D, E	600-1000	C, D, E	800-1000
2-Failure to Maintain responsibility.	Minor								
	Major	C, D	200-600	C, D	400-800	C, D, E	600-1000	C, D, E	800-1000
3-Failure to place decal on aircraft and/or ground equipment.	Minor	A			200-500				
	Major			C, D	400-800	C, D	600-1000	C, D, E	800-1000
4-Non-Commercial Applicators. Failure to secure applicator license.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D, E	600-1000	C, D, E	800-1000
5-Records-Commercial/ Non-Commercial. Failure to keep and maintain required records.	Minor	A		C, D	200-500				
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D, E	800-1000
6-Private Applicators. Failure to secure applicator license.	Minor	A							
	Major	C, D	100-400	B, C, D	200-600	B, C, D	400-800	B, C, D	800-1000
7-Pilots. Failure to secure applicator license.	Minor								
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D	600-1000	B, C, D	800-1000
8-Pesticide Dealers. Failure to secure restricted use pesticide dealers license.	Minor	A, B							
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D	600-1000	B, C, D	800-1000

ENFORCEMENT ACTION OPTIONS

A - Warning letter
B - Stop Use/Stop Sale
C - Informal Agreement
D - Board/Committee Hearing
E - Immediate Suspension of License
F - Injunction
G - Referral to Prosecuting Attorney
H - Referral to EPA

PENALTY MATRIX **Appendix A Cont.**

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
9-Failure of dealer to keep and maintain records related to restricted use pesticide sales.	Minor	A							
	Major	B, C, D	200-600	C, D	200-800	C, D	600-1000	C, D	800-1000
10-Unlawful Acts. Make false or fraudulent claims through any media misrepresenting the effectiveness of pesticides or methods utilized.	Minor	A							
	Major	C, D	100-500	C, D	400-800	C, D	600-1000	C, D, E	800-1000
11-Recommendation(s) of use or use of a pesticide in a manner inconsistent with the registered label, or other mandated restrictions.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D, E	800-1000
12-Application of known ineffective or improper pesticides,.	Minor								
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D, E	800-1000
13-Operation of faulty or unsafe equipment,	Minor	A, B							
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D	600-1000	B, C, D, E	800-1000
14-Operation of equipment, in a careless or negligent manner,	Minor	A, B							
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D	600-1000	B, C, D, E	800-1000
15-Failure to comply with provisions of Act 389, after notice, and rules thereof, or any lawful order from the Arkansas State Plant Board	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D, E	800-1000
16-Failure to keep proper records and make timely filing of reports.	Minor	A							
	Major	C, D	100-500	C, D	400-800	C, D	600-1000	C, D, E	800-1000

ENFORCEMENT ACTION OPTIONS

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PENALTY MATRIX **Appendix A**

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
17-Issuance of false or fraudulent records, invoices, or reports.	Minor	A							
	Major	C, D	100-500	C, D	400-800	C, D	600-1000	C, D, E	800-1000
18-Application of pesticides on others property without the benefit of a commercial applicator's license.	Minor								
	Major	C, D	200-1000	C, D	400-1000	C, D, E	600-1000	C, D, E	800-1000
19-Operation of un-licensed equipment	Minor	A, B							
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D, E	600-1000	B, C, D, E	800-1000
20-Use of fraud or misrepresentation in making application for, or renewal of, a license, permit, or certification.	Minor								
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D, E	600-1000	B, C, D, E	800-1000
21-Failure to comply with any limitations or restrictions of a duly issued license, permit, or certification.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D, E	600-1000	C, D, E	800-1000
22-Aid, or abet, any person to evade the provisions of Act 389; conspire with any person to evade the provisions of Act 389, or allow use of a license, permit, or certification by another person.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000
23-False or misleading statements made during or after an inspection concerning an infestation or infection of pests found on one's property.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000
24-Impersonation of any federal, state, county	Minor								
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000

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VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
25-Distribution of pesticide labeled for restricted use to any person or his agency who does not have a valid license to use, supervise the use, or distribute restricted use pesticides.	Minor	A							
	Major	C, D	200-1000	C, D	400-1000	C, D	600-1000	C, D	800-1000
26-Application of any pesticide by aircraft without a pilot's license to apply pesticides.	Minor								
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D, E	600-1000	B, C, D, E	800-1000
27-Employment of a pilot to apply pesticides by air that does not have a license to do so.	Minor	A							
	Major	C, D	200-1000	C, D	400-1000	C, D, E	600-1000	C, D, E	800-1000
28-Misbranded Selling misbranded pesticides.	Minor	A, B							
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D, E	600-1000	B, C, D, E, H	80-1000
29-Registration Failure to register a pesticide with the Arkansas State Plant Board.	Minor	A, B							
	Major			B, C, D	400-800	B, C, D	600-1000	B, C, D	800-1000
30-Unlawful Acts Distribution of any pesticide not registered in Arkansas under the provisions of Act 410 or FIFRA	Minor	A, B							
	Major			B, C, D	400-800	B, C, D	600-1000	B, C, D	800-1000
31-Distribution of pesticide with different label claims, us directions, or composition not consistent with the registration process.	Minor	A, B							
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D	600-1000	B, C, D, H	800-1000
32-Distribution of pesticides in containers other than manufacturer's unbroken immediate container.	Minor	A, B							
	Major	B, C, D	200-1000	B, C, D	400-1000	B, C, D	600-1000	B, C, D, H	800-1000

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VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
33-Distribution of pesticides that have not been colored/discolored pursuant of Section 9(1) (d) of 410 or of Section 25 (c) (5) or FIFRA	Minor	A, B							
	Major	B, C,D	200-600	B, C, D	400-800	B, C, D	600-1000	B, C, D, H	800-1000
34-Distribution of adulterated and/or misbranded pesticides.	Minor	A, B							
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D	600-1000	B, C, D, H	800-1000
35-Distribution of pesticides in containers which are unsafe due to damage.	Minor								
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D	600-1000	B, C, D, H	800-1000
36-Detach, alter, deface, or destroy any label or labeling, or add any substance, or take away, that ay act to defeat the purpose of Act 410.	Minor	A, B							
	Major	B, C, D	200-600	B, C, D	400-800	B, C, D	600-1000	B, C, D, H	800-1000
37-Use for personal advantage of any information relative to formulas of products obtained by Section 6, or other trade secrets.	Minor								
	Major	C, D	200-600	C, D	400-800	C, D	700-1000	C, D	800-1000
38-Handle, display, store, transport, or make distribution of pesticides in such a manner to endanger man or the environment, or other products.	Minor								
	Major	C, D	200-600	C,D	400-800	C, D	600-1000	C, D, H	800-1000
39-Dispose discard, or store any pesticide or pesticide containers in a manner to cause injury to humans, vegetation, crops, livestock, wildlife beneficial insects, or to pollute water and soil	Minor								
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D, H	800-1000

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		Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine	Enforcement Action	Civil Penalty Fine
40-Failure to comply with the provisions of Act 410, its regulations or othe lawful order from the Arkansas State Plant Board.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000
41-Failure to comply with the Worker Protection Standards and/or requirements of 40 CFR Parts 156 and 170, state law or applicable regulations promulgated by the State Plant Board.	Minor	A							
	Major	C, D	200-600	C, D	40-800	C, D	600-1000	C, D	800-1000

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