

## **Title 2. Agriculture**

### **Chapter II. State Plant Board, Department of Agriculture**

#### **Subchapter D. Weights and Measures**

##### **Part 101. Bureau of Standards Enforcement Response Rule**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

#### "III. LEGAL AUTHORITY

- A. "Arkansas Uniform Weights and Measures Law" A.C.A. 4-18-301 et seq. and rules promulgated under A.C.A. 4-18-328.
- B. "Arkansas Fuels and Lubricants Law" A.C.A. 4-108-201 et seq. and rules promulgated under A.C.A. 4-108-212.
- C. "Arkansas Catfish Marketing Law" A.C.A. 20-61-201 et seq.
- D. "Arkansas Foreign Fish Law" A.C.A. 20-61-101.
- E. "Catfish – Identification by Restaurants" A.C.A. 20-61-301 et seq."

#### **Subpart 1. Generally**

##### **2 CAR § 101-101. Statement of purpose.**

(a)(1) Establishing measurement, packaging, quality, and advertising requirements provides a system of weights and measures to ensure that equity and fairness prevail in all commercial transactions within the marketplace.

(2) This will ensure that uniformity and accuracy will benefit and protect both buyers and sellers in the commercial transactions.

(b) The purpose of this part is to provide a fair and consistent mechanism by which compliance with the Arkansas Uniform Weights and Measures Law, Arkansas Code § 4-18-301 et seq., the Engine Fuels and Lubricants Law, Arkansas Code § 4-108-201, et seq., the Arkansas Catfish Marketing Act of 1975, Arkansas Code § 20-61-201 et seq., the Arkansas foreign fish law, Arkansas Code § 20-61-101, the Arkansas Catfish –

Identification by Restaurants law, Arkansas Code § 20-61-301 et seq., and rules pursuant thereto shall be achieved.

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

**2 CAR § 101-102. Definitions.**

As used in this part:

(1)(A) "Level of enforcement" means the category by which a violation is considered a first, second, or third offense.

(B) For a violation to be considered a subsequent offense, it must be a repeat of a violation for which previous enforcement action has been taken by the State Plant Board.

(C) The previous violation or violations must have occurred within the past three (3) years;

(2) "Minor violation" means a violation which does not:

(A) Involve public health or safety;

(B) Endanger the environment; or

(C) Cause financial harm to any party;

(3) "Major violation" means a violation that:

(A) Affects public health, safety, or the environment;

(B) Causes financial harm to any party; or

(C) Creates a competitive advantage in the marketplace; and

(4) "Respondent" means an owner or operator, manufacturer, firm, or individual charged with a violation of the acts enforced or regulated by the Arkansas Bureau of Standards, a division of the State Plant Board.

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

## **2 CAR § 101-103. Enforcement actions.**

Under the Arkansas Code, the State Plant Board has several options for enforcement action:

(1)(A) Stop use/stop sale.

(B) The stop-use or stop-sale of a noncompliant commodity or commercial device will remain in effect until the violation is corrected.

(C) A release from a stop-sale or stop-use order will be awarded only after final disposition has been agreed upon by the Director of the Arkansas Bureau of Standards;

(2)(A) Warning letter.

(B) For minor, first level violations, the Director of the Arkansas Bureau of Standards will issue a warning letter.

(C) The letter will cite the specific violation.

(D) The letter may also identify any corrective action that may be needed and notify the respondent that additional violations will result in more severe enforcement action;

(3)(A) Informal agreement.

(B) Board staff may meet with the respondent in an informal hearing to review the alleged violation or violations.

(C) The purpose of the informal hearing is to resolve a complaint or incident.

(D) The group will seek consensus on an appropriate enforcement action for recommendation to the Bureau of Standards Committee of the board.

(E) Enforcement action based on the Penalty Matrix, see Appendix A, will include:

(i) Civil penalty; and/or

(ii) Registration:

(a) Suspension;

(b) Revocation; or

(c) Nonrenewal.

(F) If the respondent does not agree with the allegations of staff, the respondent may request a formal committee hearing.

(G) The board acts on all recommendations resulting from the informal hearing;

(4)(A) Civil penalty.

(B) The amount is assessed by the board in accordance with the Penalty Matrix.

(5)(A) Board/committee hearing.

(B) If the respondent chooses to bypass the informal hearing process, or if an agreement is not reached during the informal hearing, a hearing will be held by the Bureau of Standards Committee of the board.

(C) Enforcement action may include:

(i) Civil penalty; and/or

(ii) Registration:

(a) Suspension;

(b) Revocation; or

(c) Nonrenewal.

(D)(i) Following the committee hearing, a written findings of fact, conclusions of law, and recommendation will be submitted to the board.

(ii) The board will act on all recommendations of the committee.

(E) The director and board will follow the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., in the proceedings (notice and hearings);

(6)(A) Restraining order and injunction.

(B) The Director of the State Plant Board is authorized to apply to any court of competent jurisdiction for a restraining order or a temporary or permanent injunction restraining any person from violating any provision of this part, see Arkansas Code §§ 4-18-325, 4-108-210, 20-61-203, and 20-61-301; and

(7)(A) Suspension or revocation of registration under Arkansas Code § 4-18-344.

(B) The director may suspend or revoke the certificate of registration of a registered service agent for violating any provision of this part.

(C) If the registration of a registered service agent has been suspended or revoked, then the service agent may not register with the bureau as a service agent for at least one (1) year.

(D) When the suspension or revocation of a certificate is proposed, the director and board will follow the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., in the proceedings (notice and hearings).

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

## **2 CAR § 101-104. Investigations.**

(a) An investigation will be initiated when:

- (1) Routine compliance inspection indicates a violation may have occurred; or
- (2) A formal complaint has been made that an alleged violation has occurred.

(b) The processing sequence for a violation investigation is outlined in Figure I.

(c) **Criminal penalties.**

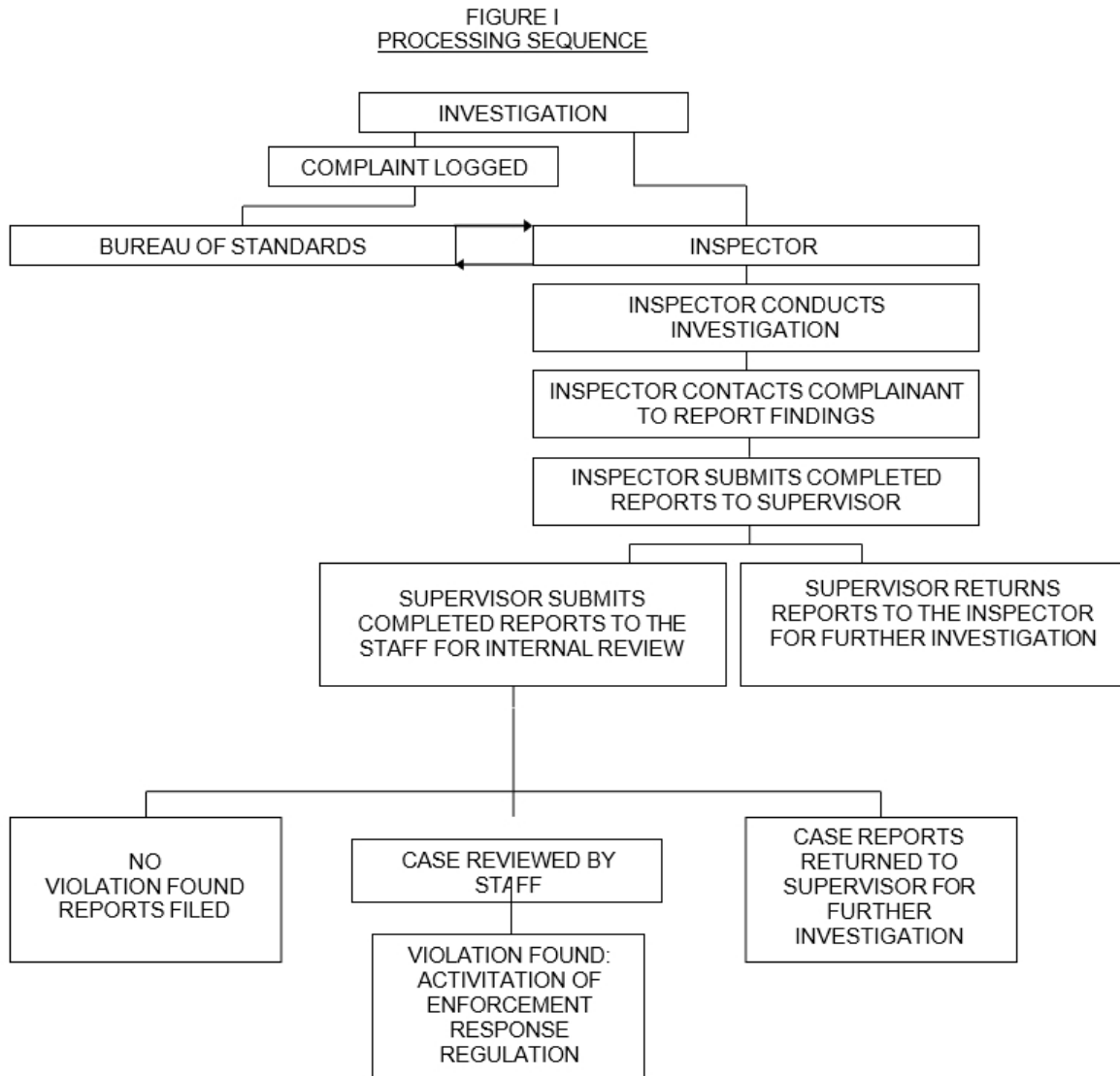
(1) Also, under the Arkansas Code, see Arkansas Code § 4-18-324, whoever intentionally commits any of the acts enumerated in Arkansas Code § 4-18-322 is guilty of a Class A misdemeanor.

(2) Also, under the Arkansas Code, (see Arkansas Code § 4-108-209), any person who intentionally violates Arkansas Code § 4-108-201 et seq., or rules promulgated thereto shall be guilty of a Class A misdemeanor.

(d) Any person who violates any provision of Arkansas Code § 20-61-201 et seq., for which no civil penalty is provided by that subchapter shall, upon conviction, be guilty of a violation and subject to a fine of not more than five hundred dollars (\$500), see Arkansas Code § 20-61-203.

(e) Any person who knowingly violates any provision of Arkansas Code § 20-61-301 et seq., for which no civil penalty is provided by that subchapter, shall, upon conviction,

be guilty of a violation and subject to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500) for the second and subsequent offenses.



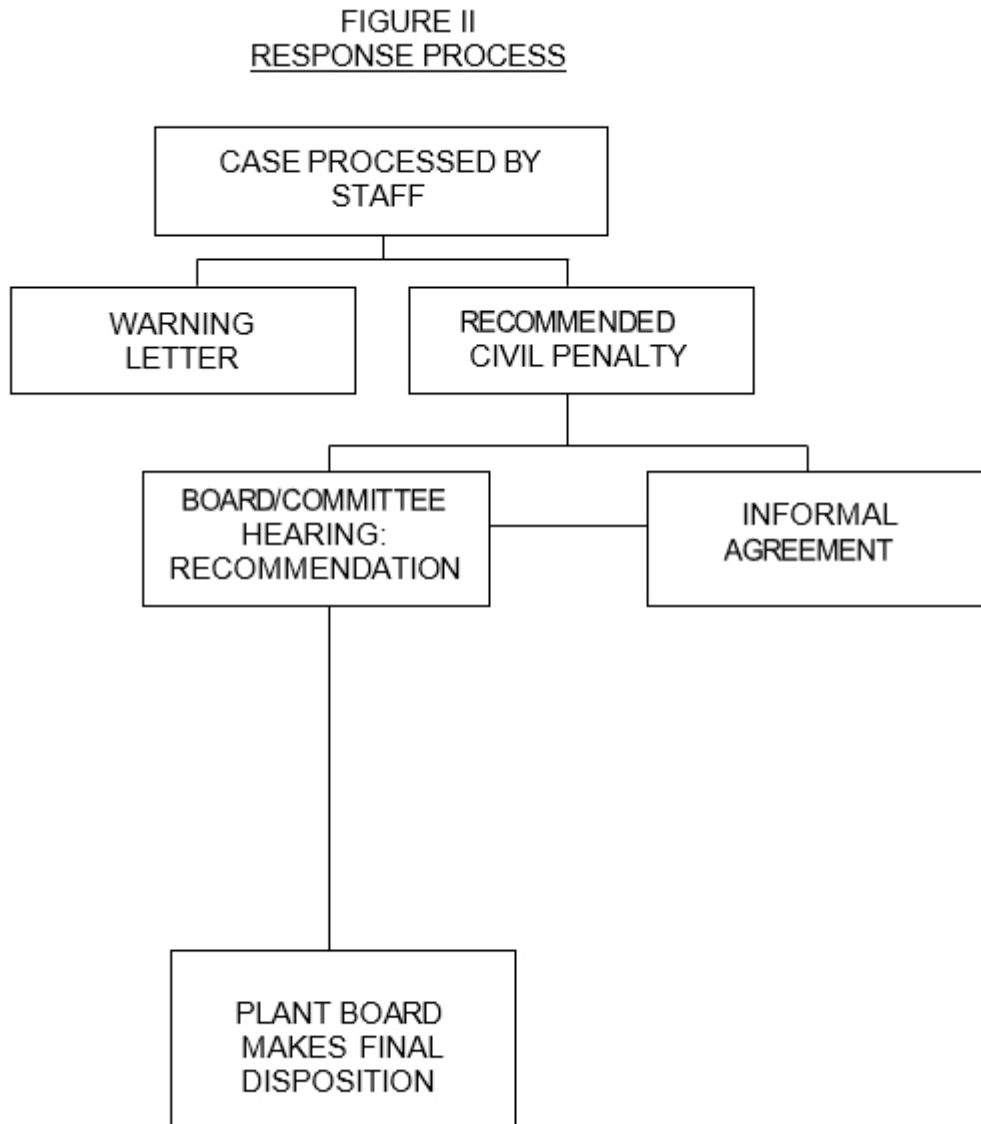
**Authority.** Arkansas Code §§ 20-61-101, 20-61-203, 20-61-205, 20-61-301, 20-61-304, 4-108-204, 4-108-209, 4-18-303, 4-18-312, 4-18-324.

**2 CAR § 101-105. Activation of enforcement response rules.**

(a) An alleged violation of law and/or rules must be documented and submitted to a supervisor on an Arkansas Bureau of Standards report to initiate enforcement action.

(b)(1) Documentation must conform to the requirements of the bureau.

(2) The sequence of events within the enforcement response rules is as follows:



**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

**2 CAR § 101-106. Internal review.**

The staff will carefully review all documentation and records to determine:

- (1) That apparent violation or violations have occurred;
- (2) Whether the apparent violation or violations are minor and/or major violations; and
- (3) The level of enforcement based on the penalty matrix and the documented history of the respondent.

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

**2 CAR § 101-107. Hearings.**

(a)(1) A violation will be determined by documentation of criteria as specified in the Penalty Matrix, see Appendix A.

(2) The severity and level of enforcement of a violation will be determined by the three (3) factors in 2 CAR § 101-106 as they are applied to the Penalty Matrix, see Appendix A.

(b)(1) Other extenuating/aggravating/mitigating circumstances may also be considered.

(2) The State Plant Board will take action to determine the final disposition of the case.

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

**2 CAR § 101-108. Right of appeal.**

Any person who believes they have been aggrieved by any final order of the State Plant Board may obtain a judicial review by filing a petition in circuit court within thirty (30) days of the board's final order.

**Authority.** Arkansas Code §§ 20-61-101, 20-61-205, 20-61-304, 4-108-204, 4-18-303, 4-18-312.

## **Appendix A. Penalty Matrix**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/12/2CARpt.101AppendixA.pdf>