

## **Title 2. Agriculture**

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

#### **Subchapter C. Pesticides**

#### **Part 73. Pesticide Enforcement Response Rules**

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

##### "III. LEGAL AUTHORITY

- A. "Arkansas Pesticide Use and Application Act" A.C.A. 20-20-201 et. Seq. And Rules.
- B. "Arkansas Pesticide Control Act" A.C.A. 2-16-401 et. Seq. And Rules."

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

##### **2 CAR § 73-101. Statement of purpose.**

(a) Pesticides are valuable to Arkansas's agricultural production and the protection of people and their possessions from:

- (1) Insects;
- (2) Rodents;
- (3) Weeds;
- (4) Plant diseases; and
- (5) Other pests.

(b) It is essential to the public health and welfare that pesticides be used properly to prevent adverse effects on people and the environment.

(c) The purpose of this part is to provide a fair and consistent mechanism by which compliance with the Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., as amended, and the Arkansas Pesticide Control Act, Arkansas Code § 2-16-401 et seq., as amended, and this part written pursuant thereto can be achieved.

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

## **2 CAR § 73-102. Definitions.**

As used in this part:

(1) "Auxin pesticides" means Group 4 herbicides as categorized by the Weed Science Society of America (WSSA);

(2) "Base fine" means the midpoint of a civil penalty range;

**Example:** The civil penalty range for refusal to keep proper records (first level of enforcement) is one hundred dollars (\$100) to five hundred dollars (\$500). The base fine is three hundred dollars (\$300).

(3)(A) "Case Development Review Panel" means an internal committee of staff including the:

- (i) Appropriate division director or the appropriate section manager;
- (ii) Agency assistant director; and
- (iii) Agency director or the director's designee.

(B) The Case Development Review Panel will carefully review all case documentation to ensure completeness and to ensure that the recommended enforcement action is appropriate;

(4)(A) "Damage" means the presence of symptomology commonly associated with exposure to an herbicide on a plant.

(B) For purposes of determining a regulatory response, damage does not indicate any level of economic impact but rather exposure to a chemical that results in expression of a physical change in the exposed plant, including but not limited to:

- (i) Necrotic spots;
- (ii) Cupping of leaves;
- (iii) Epinasty;
- (iv) Chlorotic spots; or
- (v) Necrotic plants;

(5)(A) "Egregious violation" means a violation occurring after August 1, 2017, and prior to March 11, 2019, that causes significant off-target crop damage occurring as a result of an application of:

- (i) Dicamba;
- (ii) An auxin-containing herbicide; or
- (iii) Any new herbicide technology released after August 1, 2017.

(B) For violations occurring on or after March 11, 2019, a violation where application of one (1) of the following herbicides is used intentionally in violation of the federal label requirements or a state law or rule regarding its application:

- (i) Dicamba;
- (ii) An auxin-containing herbicide; or
- (iii) A new herbicide technology released after August 1, 2017;

(6)(A) "Level of enforcement" means the category by which a violative incident is considered a first, second, third, or fourth offense.

(B)(i) 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 State Plant Board.

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

(7)(A) "Major violation" means:

- (i) A violative incident which affects human health, safety, or the environment;
- (ii) Other incidents of noncompliance which create a competitive advantage over licensees in full compliance; or
- (iii) A history of repetitive violative incidents.

(B) In no case shall a single application or drift incident by a pesticide applicator be considered multiple violations based on the number of complaints;

(8) "Minor violation" means a violative incident which does not involve:

- (A) Human health, safety, or endangerment of the environment; or

(B) Other incidents of noncompliance which do not create a competitive disadvantage for licensees in full compliance;

(9) "Off-target" means any area outside the target area (or within or across any buffer zone if rules require one) where an application, included as part of production practices, was made;

(10) "Off-target crop damage" means any symptomology from an off-label application; and

(11)(A) "Respondent" means a dealer, manufacturer, firm, applicator, or individual charged with a violation of the:

(i) Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., as amended;

(ii) Arkansas Pesticide Control Act, Arkansas Code § 2-16-401 et seq., as amended; and

(iii) Rules written pursuant thereto.

(B)(i) The firm shall be named as the responsible party for a violative incident.

(ii)(a) 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.

(b) If license suspension is the indicated level of enforcement, the license of the pilot making the application is the license to be suspended.

(c) However, in no case shall the pilot making the application be responsible for violative actions for which the firm is responsible.

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

### **2 CAR § 73-103. Enforcement actions.**

(a) Under the Arkansas Code, the State Plant Board has several options for enforcement action.

(b) These are:

(1)(A) Warning letter.

(B) For minor, first level of enforcement violations, the board or board staff will issue a warning letter.

(C) The letter will cite the specific violation.

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

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

(B) 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;

(3)(A) Informal agreement.

(B) When a violation has been alleged, the respondent has the option of:

(i) Accepting the prepared settlement agreement prepared in accordance with the requirements of this part;

(ii) An informal hearing; or

(iii) A board/committee hearing.

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

(ii) A hearing officer will meet jointly with the respondent and board staff.

(iii) The group will seek consensus on an appropriate enforcement action for recommendation to the board.

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

(i) Civil penalty and/or license suspension;

(ii) Revocation;

(iii) Nonrenewal; or

(iv) Registration cancellation.

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

(4)(A) Board/committee hearing.

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

(C) Enforcement action will include:

- (i) Civil penalty and/or license suspension;
- (ii) Revocation;
- (iii) Nonrenewal; or
- (iv) Registration cancellation.

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

(E) The board will act on all recommendations of the committee;

(5)(A) Immediate suspension of license.

(B) Under the Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., only.

(C) The board may suspend, pending inquiry, for not more than ten (10) days, any license or permit issued by the board for violation of the Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq.;

(6)(A) Referral to prosecuting attorney.

(B) The board has the option of referring violations of the Arkansas Pesticide Use and Application Act, Arkansas Code § 20-20-201 et seq., and the Arkansas Pesticide Control Act, Arkansas Code § 2-16-401 et seq., to the prosecuting attorney; and

(7)(A) Referral to the United States Environmental Protection Agency.

(B) The board will negotiate cases of referral with the United States Environmental Protection Agency to determine the appropriate action.

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

**2 CAR § 73-104. Incident investigation.**

(a) An incident investigation will be initiated when:

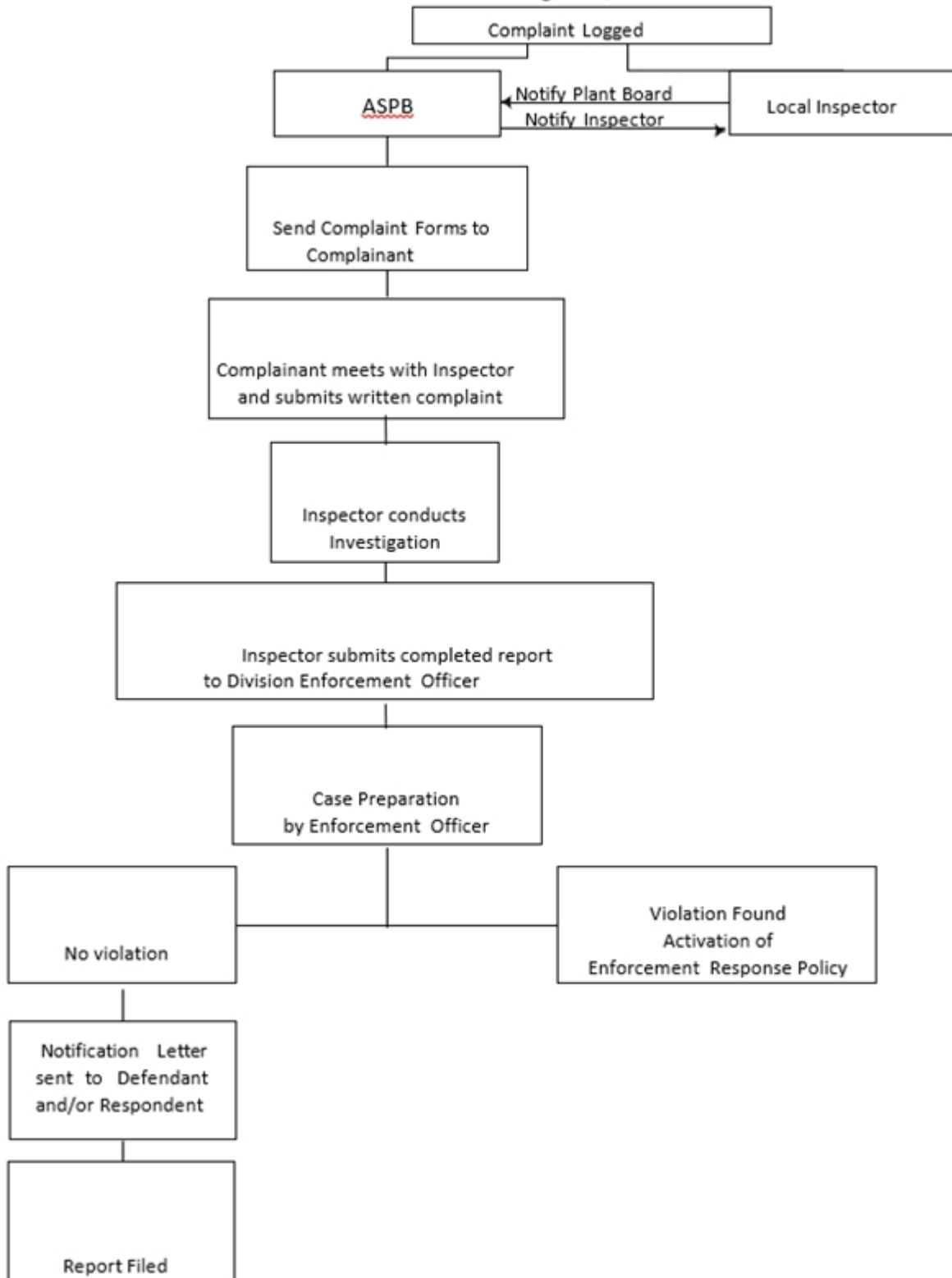
(1) Routine compliance monitoring indicates a violation has occurred; or

(2)(A) A formal complaint that an alleged violative incident has occurred (filing of a written form by a complainant).

(B) 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.

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

FIGURE I  
Processing Sequence

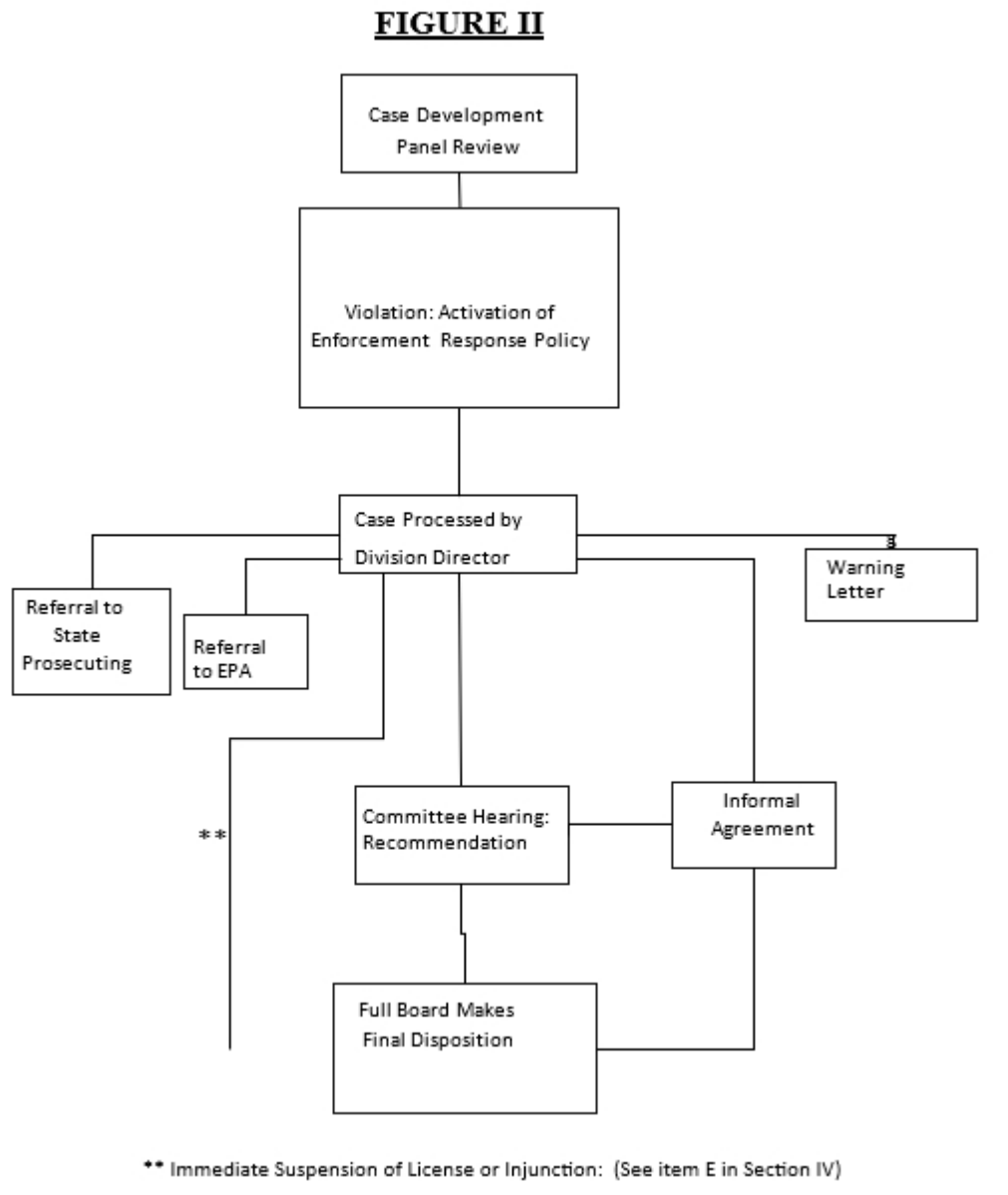


**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

**2 CAR § 73-105. Activation of enforcement response policy.**

(a) An apparent violation of law and/or rule must be documented to initiate an enforcement action.

(b) Documentation must conform to the requirements of the Pesticide Section.



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

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

**2 CAR § 73-106. Internal review.**

(a) The Case Development Review Panel will carefully review all documentation and records to determine:

- (1) That apparent violations have occurred;
- (2) Whether the apparent violations are minor and/or major violations; and
- (3) The correct level of enforcement, based on the penalty matrix and the documented history of the applicator and/or company, is proposed.

(b) Concurrence with the Pesticide Section's finding by the panel must be unanimous before further action can be taken on the case.

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

**2 CAR § 73-107. Hearings.**

(a) The informal hearing officer and/or the appropriate committee and/or the full State Plant Board will carefully review the documentation and hear cases of alleged violations.

(b)(1) A violation will be determined by documentation of criteria as specified in Appendix A.

(2) The severity and level of enforcement of a violation will be determined by the three (3) factors in 2 CAR § 73-106, as they are applied to the Penalty Matrix, see Appendix A.

(c)(1) If a violation is determined in this sequence, the following factors will be considered:

- (A) Cooperation of the respondent; and
- (B) Other extenuating/mitigating circumstances.

(2) The hearing officer/committee/board may use these factors to accelerate or mitigate enforcement action.

(3)(A) When a civil penalty is the preferred action, the base fine may be increased or decreased based on these factors.

(B) The civil penalty will not be more or less than the range for the specific violation listed in Appendix A.

(d) The full board will take action to determine the final disposition of the case.

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

### **2 CAR § 73-108. Right of appeal.**

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

**Authority.** Arkansas Code §§ 20-20-206, 2-16-406.

### **Appendix A. Penalty Matrix**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/13/2CARpt.73AppendixA.pdf>