

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas State Plant Board  
DIVISION Pesticide Division  
DIVISION DIRECTOR Susie Nichols  
CONTACT PERSON Susie Nichols or Brandi Reynolds  
ADDRESS P.O. Box 1069, Little Rock, AR 72203  
PHONE NO. 501-225-1598 FAX NO. 501-312-7053 E-MAIL Susie.Nichols@aspb.ar.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Susie Nichols  
PRESENTER E-MAIL Susie.Nichols@aspb.ar.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

\*\*\*\*\*

1. What is the short title of this rule? Pesticide Enforcement and Response Regulation
2. What is the subject of the proposed rule? Civil Penalties
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? August 1, 2017  
When does the emergency rule expire? 120 days from effective date

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Pesticide Enforcement

Yes

No

5. Is this a new rule? Yes No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.  
\_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Pesticide Use and Application Act A.C.A. 20-20-201 et Seq. and Regulations, Arkansas Pesticide Control Act A.C.A. 2-16-401

7. What is the purpose of this proposed rule? Why is it necessary? To increase the maximum civil penalty from \$1000 to \$25,000. In order to insure better compliance with pesticide requirement and any applicable federal and state laws and regulations.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.aad.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: Unknown

Time: Unknown

Place: Arkansas State Plant Board

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
Unknown

11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
August 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. N/A

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library  
Revised January 2017

as required pursuant to Ark. Code Ann. § 25-15-204(e). N/A

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown at this time

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas State Plant Board

**DIVISION** Pesticide Division

**PERSON COMPLETING THIS STATEMENT** Susie Nichols

**TELEPHONE** 501-225-1598 **FAX** 501-312-7053 **EMAIL:** Susie.Nichols@aspb.ar.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Pesticide Enforcement and Response Regulation

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes  No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;  
n/a

(b) The reason for adoption of the more costly rule;  
n/a

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
n/a

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
n/a

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue 0

General Revenue 0

Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

**Next Fiscal Year**

General Revenue	<u>0</u>
Federal Funds	<u>0</u>
Cash Funds	<u>0</u>
Special Revenue	<u>0</u>
Other (Identify)	<u>0</u>
Total	<u>0</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. Individuals who comply with the law will not have any financial impact. Anyone found to have committed an egregious violation will be subject to a civil penalty of up to \$25,000

**Current Fiscal Year**

\$ Unknown

**Next Fiscal Year**

\$ Unknown

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

## **RULE SUMMARY**

This rule is to amend the Enforcement Response Regulations in accordance with ACT 778 of 2017 that increases the maximum civil penalty from \$1000 to \$25,000 for egregious violations from applications of Dicamba, or an Auxin containing herbicide, or any new herbicide technology released after August 01, 2017. The purpose of the amendment is to define terms in ACT 778 and to incorporate the penalty range of “up to \$25,000” into the civil penalty matrix.



STATE OF ARKANSAS  
ASA HUTCHINSON  
GOVERNOR

June 30, 2017

Mr. Wes Ward  
Secretary  
Arkansas Agriculture Department  
#1 Natural Resources Drive  
Little Rock, AR 72205

Mr. Terry Walker  
Director  
Arkansas Plant Board  
# Natural Resources Drive  
Little Rock, AR 72205

**Re: Plant Board Emergency Rules – “Ban on the Sale and Use of Dicamba” and  
“Pesticide Enforcement Response Regulation”**

Dear Secretary Ward and Director Walker:

On June 27, 2017, I received two proposed emergency rules from the Arkansas State Plant Board entitled “Ban on the Sale and Use of Dicamba” and “Pesticide Enforcement Response Regulation.”

Regarding the proposed “Ban on the Sale and Use of Dicamba” rule, I am concerned that more limited options were not fully debated and considered because of the need for quick action. I know the Plant Board also shares my concern that this action is being taken in the middle of a growing season, but the volume of complaints do justify emergency action.

Because I consider the Plant Board to have a significant expertise in agriculture and crop science, I give great deference to its findings and conclusions. As a result, I am approving the submittal of the dicamba emergency rule to the Legislative Council for its review.

In addition to the approval of the rule submission, I would like your departments to convene a task force to review the dicamba technology, investigate the current problems with its use and application, and make longer term recommendations for the future. This debate will continue into future planting seasons, and Arkansas needs a long-term solution.

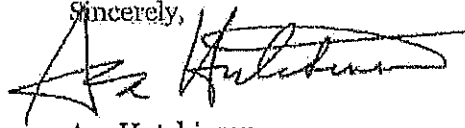
The second proposal, entitled "Pesticide Enforcement Response Regulation," has been submitted to my office as both an emergency rule as well as a regularly proposed rule so that it will be allowed to stay in effect beyond the 120-day period of an emergency rule.

During the 2017 legislative session, the Arkansas General Assembly passed Act 778 which amended the Arkansas Plant Act of 1917, allowing the Plant Board to assess a civil penalty greater than one thousand dollars (\$1,000) but not more than twenty-five thousand dollars (\$25,000) for egregious violations. Egregious violations are defined as significant off-target crop damage occurring as a result of the application of dicamba or an auxin-containing herbicide or any new herbicide technology released after the effective date of Act 778. Unfortunately, Act 778 does not become effective until August 1, 2017.

The "Pesticide Enforcement Response Regulation" submitted by the Plant Board is in response to Act 778 and is an effort to make sure that the Board can utilize this authority granted to it by the legislature as soon as possible. As I have stated since January of this year, the Plant Board should have an adequate and an effective enforcement mechanism to deter the illegal application of chemicals that are a significant burden to our agricultural producers.

In conclusion, I approve the promulgation of the Plant Board's proposed rules, and by this letter, I am forwarding them to you for appropriate action.

Sincerely,

A handwritten signature in black ink, appearing to read "Asa Hutchinson", written over a horizontal line.

Asa Hutchinson



MARK-UP

Agency No. 209.02

ARKANSAS STATE PLANT BOARD

PESTICIDE ENFORCEMENT RESPONSE REGULATIONS

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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 (1<sup>st</sup> 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. Auxin Pesticides: Group 4 herbicides as categorized by the Weed Science Society of America (WSSA).**
- G. Egregious Violation: Significant off target crop damage occurring as a result of an application of:**
- 1. Dicamba, or**
  - 2. An Auxin containing herbicide, or**
  - 3. Any new herbicide technology released after August 01, 2017.**
- H. Off-target: Any area outside the target area (or within or across any buffer zone if regulations require one) where an application, included as part of production practices, was made.**
- I. Off Target Crop Damage: Any symptomology from an off label application.**
- J. Damage: The presence of symptomology, commonly associated with exposure to a herbicide, on a plant. 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 necrotic spots, cupping of leaves, epinasty, chlorotic spots or necrotic plants.**
- K. 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.**
- L. 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, 1<sup>st</sup> 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 may 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 cannot 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.

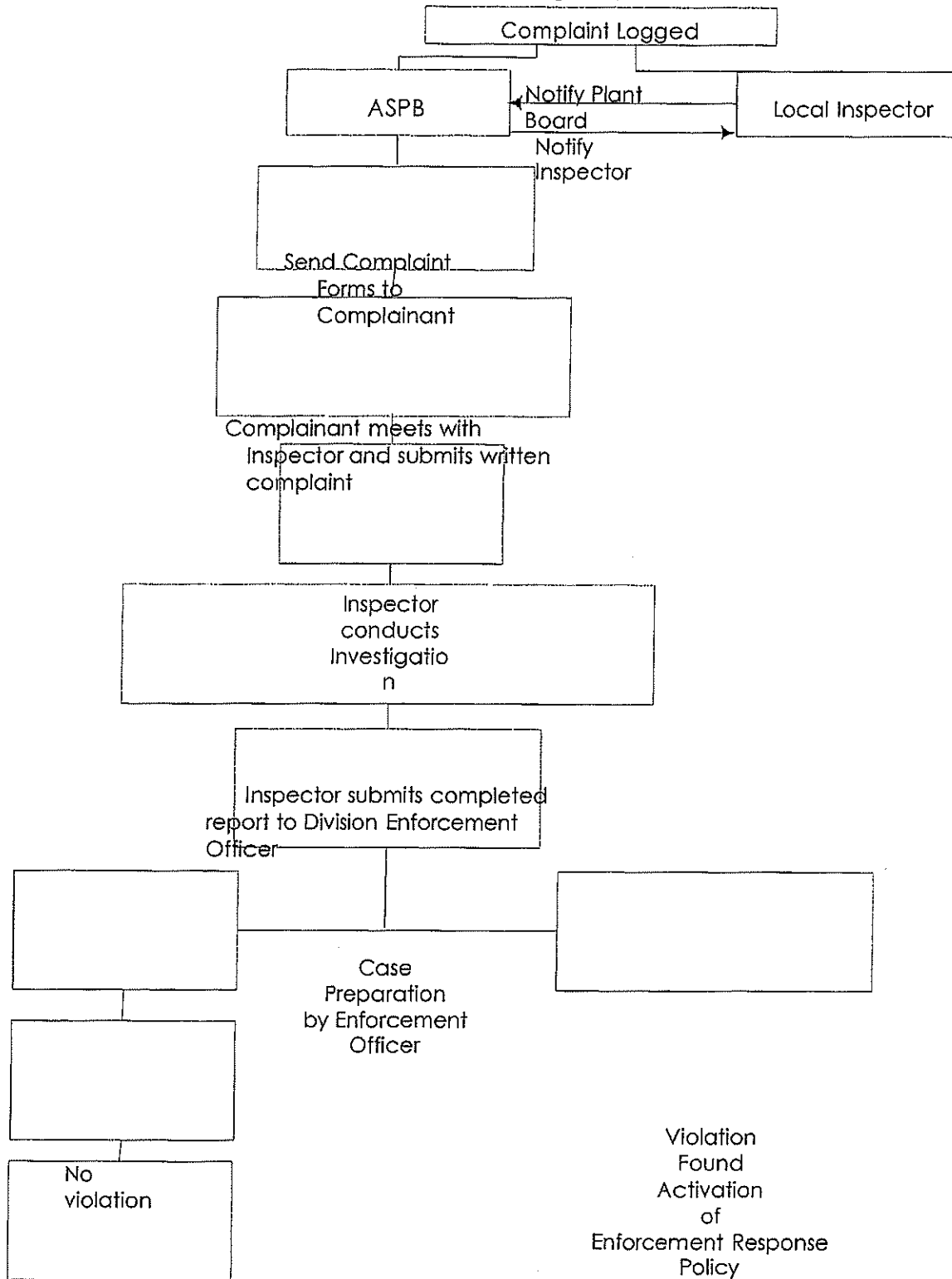
**INCIDENT INVESTIGATION**

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



Notification Letter  
sent to Defendant  
and/or  
Respondent

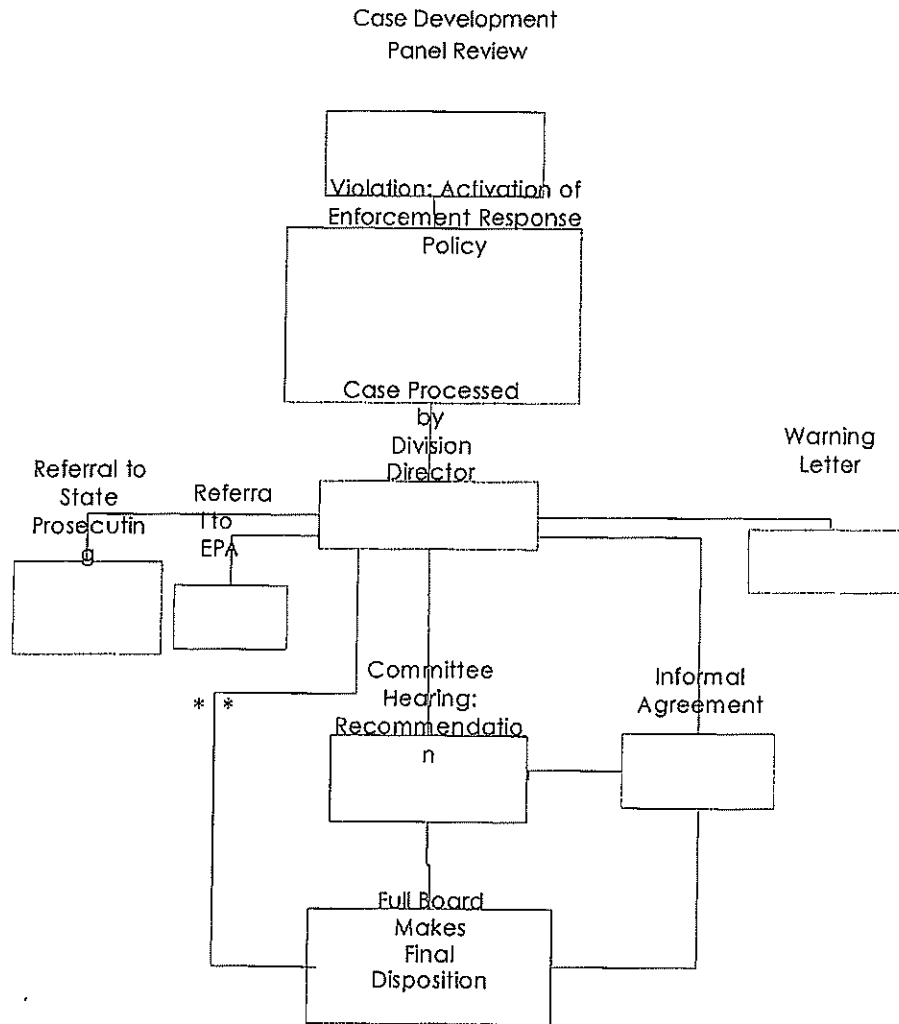
Report Filed

**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	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> 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**

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> 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

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**

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> 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

**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

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> 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

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**

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> 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 (e) (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

**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**

VIOLATION	Violation Level	1 <sup>st</sup> Level of Enforcement		2 <sup>nd</sup> Level of Enforcement		3 <sup>rd</sup> Level of Enforcement		4 <sup>th</sup> Level of Enforcement	
		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 the 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	400-800	C, D	600-1000	C, D	800-1000
42-Failure to comply with the applicable requirements of the Container and Containment Rule, 40 CFR Part 165, Subpart A through E, or applicable State law or regulation.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000
43- Application of a dicamba or auxin-containing herbicide or any new herbicide technology released after the effective date of Act 778 (August 01, 2017) of the 2017 regular session of the General Assembly, that results in significant off-target crop damage.	Minor	A							
	Major	C, D	200-600	C, D	400-800	C, D	600-1000	C, D	800-1000
	Egregious	C, D	Up to 25,000	C, D	Up to 25,000	C, D	Up to 25,000	C, D	Up to 25,000

**ENFORCEMENT ACTION OPTIONS**

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

**The existing rules adopted by the Board establishing conditions for the use of dicamba have not proven to be effective in preventing off-target movement, and this off-target movement has resulted in exposure of thousands of acres to non-dicamba resistant soybeans. Many other instances of exposure of non-target crops being exposed to dicamba have been reported and this situation poses a grave threat to the farm economy of Arkansas and therefore the public interest requires taking action to prevent unintentional**

PENALTY MATRIX

Appendix A

exposure of non-target crops to dicamba. Therefore, the Board finds that there is imminent peril to the public health, safety and welfare that requires adoption of emergency regulations and that the regulation regarding Enforcement Response 43 and the definitions relevant thereto should take effect August 1, 2017.

May 16, 2017





**State of Arkansas**  
**Bureau of**  
**Legislative Research**

Marty Garrity, Director  
Kevin Anderson, Assistant Director  
for Fiscal Services  
Tim Carlock, Assistant Director  
for Information Technology  
Matthew Miller, Assistant Director  
for Legal Services  
Richard Wilson, Assistant Director  
for Research Services

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**Memorandum**

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**TO: Members, ALC – Executive Subcommittee**

**FROM: Rebecca Miller-Rice, Legislative Attorney, Administrative Rules Review Section, Legal Services Division**

**CC: Marty Garrity, Director, Bureau of Legislative Research;  
Jessica Sutton, Administrator, Administrative Rules Review Section, Legal Services Division**

**DATE: July 3, 2017**

**SUBJECT: Legal Authorization for the Arkansas State Plant Board’s Emergency Promulgation of the Pesticide Enforcement and Response Regulation**

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The instant proposed emergency rule will implement the provisions of Act 778 of 2017 and will not become effective until August 1, 2017, when the Act goes into effect.<sup>1</sup> Act 778 creates penalties under the State Plant Board for the misuse of dicamba or dicamba-related products; limits the use of penalties above one thousand dollars (\$1,000); and directs moneys to scholarships and training of personnel. The Act amends Arkansas Code Annotated § 2-16-203(b)(1)(A), which currently allows the Board to assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of any statute, rule, or order enforceable by the Board. Under the Act, the Board is specifically permitted to assess a civil penalty greater than one thousand dollars (\$1,000), but not more than twenty-five thousand dollars (\$25,000), but only if the Board finds that a violation is egregious. As defined by the Act, “[a] violation is egregious only if significant off-target crop damage occurred as a result of the application of dicamba or an auxin-containing herbicide or any new herbicide technology released after the effective date of this act.” Act 778 of 2017, § 1. Pursuant to Ark. Code Ann. § 2-16-203(b)(2)(A), the Board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under the statute for violation of each statute, rule, or order over which it has regulatory control. See Ark. Code Ann. § 2-16-203(b)(2)(A). The Board may also promulgate any other regulation necessary to carry out the intent of the statute. See Ark. Code Ann. § 2-16-203(b)(2)(B).

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<sup>1</sup> Acts of the Ninety-First Arkansas General Assembly with no emergency clause or specified effective date will become effective on August 1, 2017. See Ark. Att’y Gen. Op. No. 2017-052.