

ARKANSAS STATE PLANT BOARD

Seed Enforcement Response Policy

Effective August 1996

ARKANSAS STATE PLANT BOARD
SEED ENFORCEMENT RESPONSE POLICY

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I. STATEMENT OF PURPOSE

The quality of planting seed has long been recognized as one of the most important factors in crop production. The Arkansas Plant Act of 1917 (as amended) and its regulations, and the Seed certification Act of 1947 (and its standards) were developed to assure truth in labeling of agricultural seed sold or offered for sale, and availability of high quality planting seed for the farmer.

The purpose of this policy is to insure compliance with laws and regulations under the authority of the Plant Board, and to provide fair and consistent enforcement actions for documented violations of the Plant Act and Seed Certification Act, and their regulations/standards.

II. DEFINITIONS

As used in this policy:

- A. Minor violation: Incidents of non-compliance which do not create a competitive disadvantage for licensees in full compliance.
- B. Major violation: Incidents of non-compliance which create a competitive disadvantage over licensees in full compliance; a violative incident which affects human health, safety or endangers the environment; or a history of repetitive violative incidents.
- C. Case Development Review Panel: An internal committee of staff including: 1) the Seed Division Director, 2) the appropriate Section Manager, 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.
- D. 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 a second or subsequent offense, it must meet the following criteria:

- 1. A repeat of a violation for which a previous enforcement action (with an adverse finding to the respondent), has been taken by the Plant Board. The previous violation(s) must have occurred within the past 3 years.
- E. Respondent: A dealer, farmer, firm or individual charged with a violation under this policy.

III. LEGAL AUTHORITY

- A. Arkansas Plant Act A.C.A. 2-16-203 et. seq. and Regulations
- B. Arkansas Seed Certification Act 73 OF 1931 (Sections 77-315-77-322 AR Stats. 1947) and Standards.
- C. Federal Seed Act (Memorandum of Understanding)

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 as outlined in the Penalty Matrix. 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. **10% Late Charge:** Tonnage Fee Reports are required to be filed each quarter. The Plant Board may assess a 10% additional charge for late reports.
- C. **Stop Sale:** Selling, offering for sale or distributing agricultural seed for planting purposes within or into Arkansas without a valid seed dealer's license or not labeling in accordance with regulations will result in a stop sale notice issued by the staff. The notice will remain in effect until the violation is corrected.
- D. **Inspection fee:** If seed are found mislabeled, or required tags not attached, or some other requirement not met, the seedsman who labeled the seed, or the seedsman who made the shipment, or the person to whom the notice was issued, may be required to pay to the Plant Board as an inspection fee the sum of \$15.00.
- E. **Referral to Federal Regulatory/Testing Branch:** The Federal Seed Act regulates interstate and foreign commerce in seeds, as well as sale of varieties of seed protected under the Plant Variety Protection Act specifying sale only as a class of certified seed (Title V). The Plant Board's "Memorandum of Understanding" with the Federal Regulatory/Testing Branch requires cooperation with federal regulators for enforcement/compliance with the Federal Seed Act.
- F. **Informal Agreement:** When a violation has been alleged, the respondent has the option of 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 may include Civil Penalty and/or license probation, suspension, revocation, non-renewal, or cancellation. The Full Board acts on all recommendations resulting from the informal hearing.

- G. Board/Committee Hearing: If the respondent chooses to bypass the informal agreement process, or if an agreement cannot be reached during the informal process; a hearing will be held by an appropriate Committee of the Board. Enforcement action will include Civil Penalty and/or license probation, suspension, revocation, non-renewal, or cancellation. Following a 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 a committee.
- H. Referral to Prosecuting Attorney: The Plant Board has the option of referring violations of the Arkansas Plant Act and the Seed Certification Act to the prosecuting attorney.

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 environment, the written notification may be waived and the investigation of the alleged incident will begin immediately.

VI. 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 number of counts of each violation/violations.
- D. The correct level of enforcement based on the documented history of the individual/company.

VII. 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. The severity and level of enforcement of a violation will be determined by the four factors in Section VI., as they are applied to the Penalty Matrix.

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 informal hearing officer/Committee/Full Board will assign a +1 to all factors that merit an increase in the penalty; a -1 to all factors that merit a reduction in the penalty, and 0 to factors for which there is no information.

The Hearing Officer/Committee/Board may use these factors to accelerate or mitigate enforcement action. When a civil penalty is the preferred action, the fine will be increased or decreased by \$100.00 for each factor. The civil penalty will not be more or less than the range for the specific violation listed in Appendix B.

The Full Board will take action and make final disposition of the case.

VIII. 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.

IX. EXAMPLES

How does it work?

- A. Someone advertises seed for sale (newspaper, flyer, notice on co-op wall, inspector observes, etc.) and does not have a current license or permit as required (Violation # 1 in matrix). First action would be either a stop-sale (C) or a warning letter (A) stating the need for a license or cease selling or advertising. With a stop-sale, a \$15 inspection fee (D) is generally charged. If the sale involved a PVP Title V protected variety, referral could be made to the Federal Seed Marketing Division (E). Refusal to comply with warning/stop-sale would automatically be brought to process

of informal agreement (F)/committee hearing (G).

A database would be kept of all enforcement actions taken. Any repeat violation within the next three years would be considered under the second level of enforcement, informal agreement (F) or Board/Committee hearing (G). The Full Board acts on all recommendations resulting from the informal or committee hearings.

- B. A quarterly report of tonnage fees owed is not received on time. This is a minor violation (# 2 on matrix) and would result in a 10% late charge (B) assessed. If not included with the late report, a letter is mailed stating amount due. Routine auditing showing additional amounts not reported would also be assessed a 10% late charge. Failure to pay or refusal to pay tonnage fees could result in stop-sale (C) issued on any seed offered for sale.

Audits that show repeated under-reporting would be considered a major violation. Enforcement actions could include 10% late charges, stop-sale and inspection fees, informal agreement or Board/Committee hearings.

Further problems with failure to pay tonnage fees would be handled under the second level of enforcement.

- C. Routine testing of regulatory samples found other crop to be out of tolerance with the label (violation # 5 in matrix). This would be a minor violation and a stop-sale (C) and inspection fee (D) would be issued.

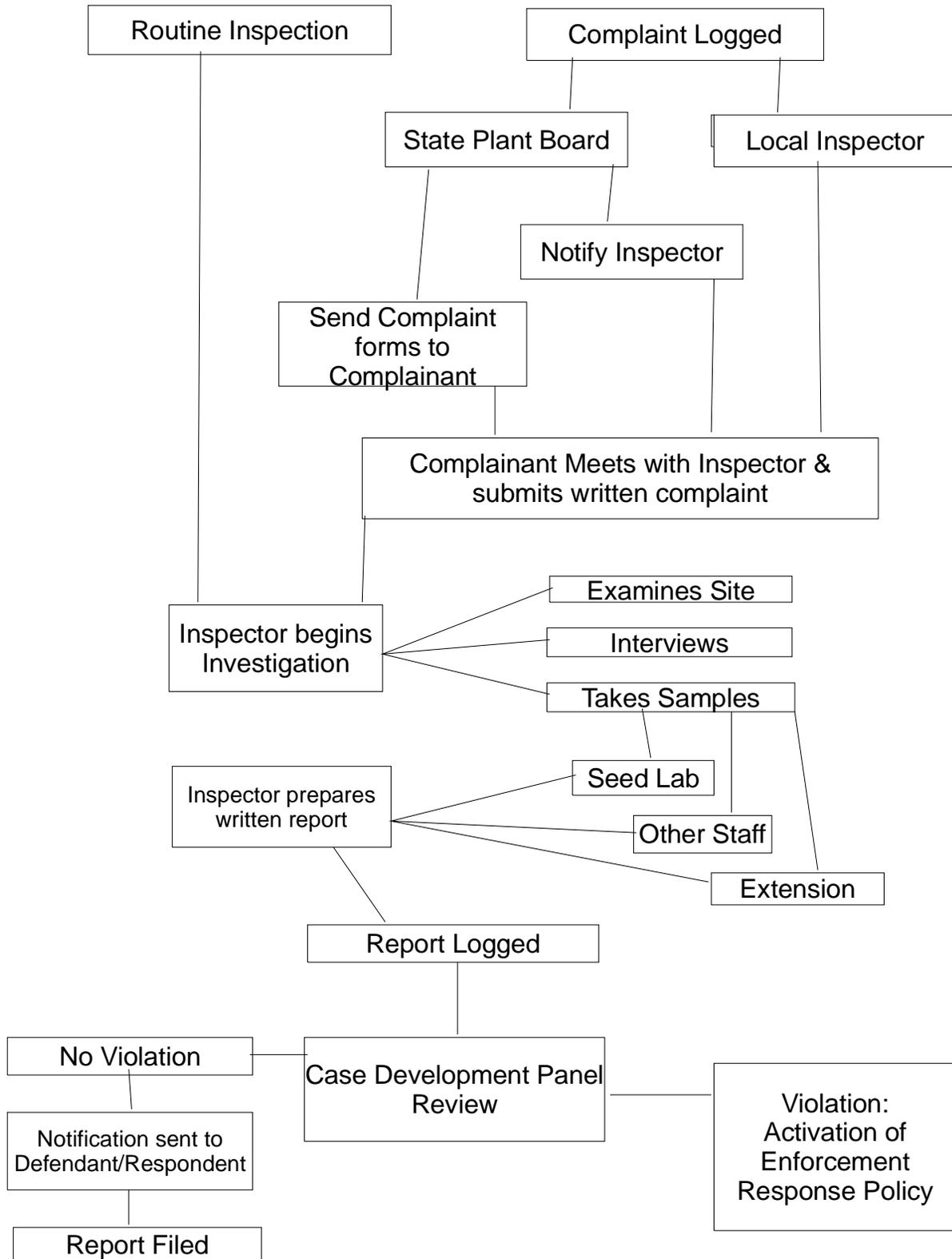
Consistent high mislabeling (10% or more) for two consecutive years would be sent a warning letter (A).

Consistent high mislabeling (10% or more) for three consecutive years would be considered a major violation, requiring informal agreement (F) or Board/Committee hearing (G).

Future high mislabeling (10% or more) in the following three years would be considered under the second level of enforcement, etc.

- D. An inspector or auditor found a certified grower selling seed out of his bin that had been field inspected but no complete analysis or approval for a certified grade had been received (violation # 12 on matrix). A stop-sale (C) with inspection fee (D) and warning letter (A) would be the first enforcement actions. If the variety involved was PVP Title V, referral would also be made to the Federal Testing Branch (E). Refusal to come into compliance would add informal agreement (F) and or Board/Committee hearings (G). Repetitive violations would be considered under the second level of enforcement, etc.

FIGURE I: Processing Sequence



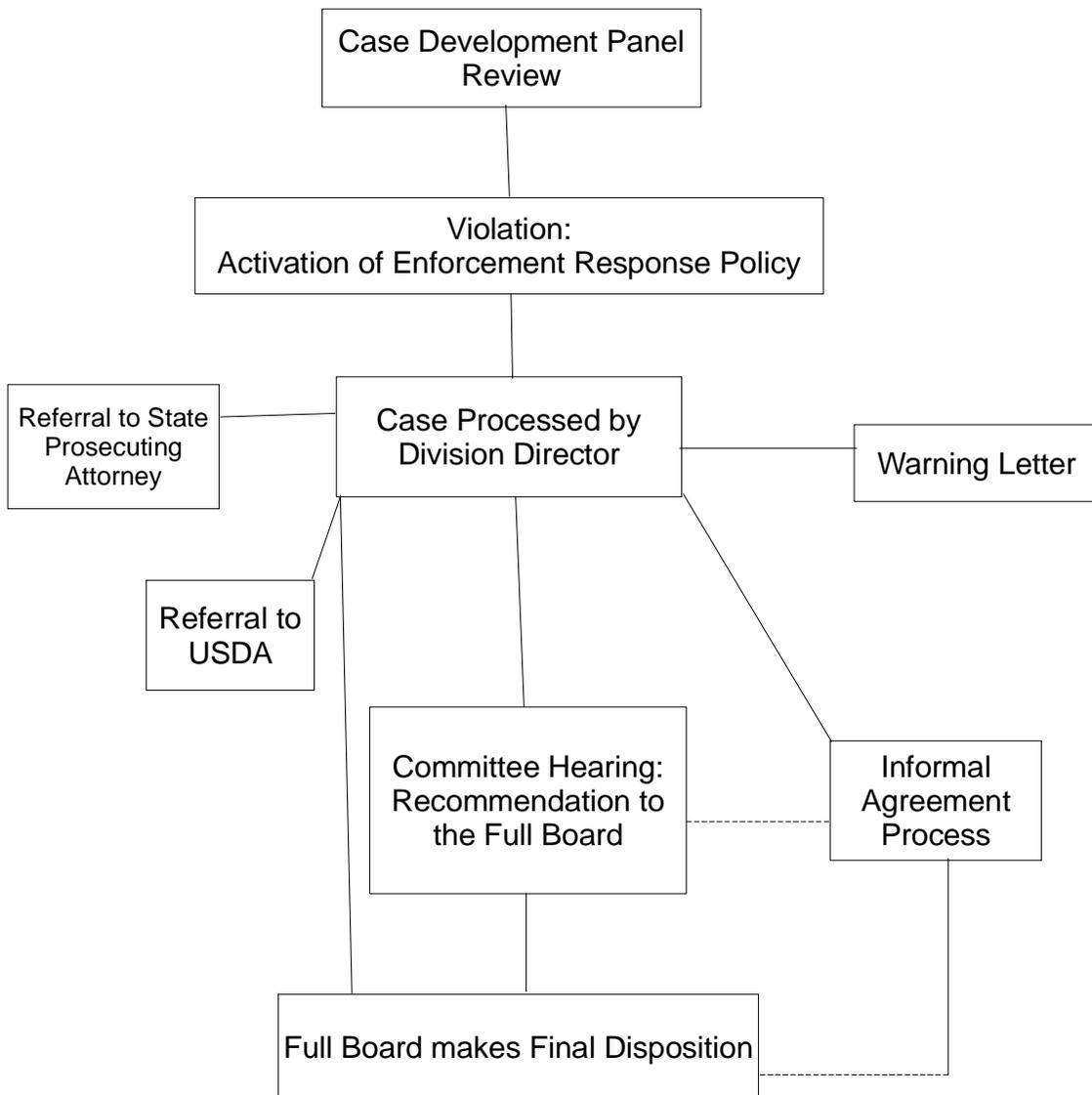
X. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

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

Documentation must be consistent with standards established in Appendix A for the specific violation.

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

Figure II:



APPENDIX A

VIOLATION	EXAMPLES OF CASE DOCUMENTATION TO ESTABLISH A VIOLATION
<p>1. Failure to secure license for selling, offering for sale, or distributing agricultural seed for planting purposes.</p>	<p>A. Advertisements of seed for sale. This could include signed statements from inspectors or individuals who witnessed notices on bulletin boards or chalk boards in co-ops or other places with planting seed for sale.</p> <p>B. Copies of invoices, receipts, delivery tickets or similar documents verifying sale or distribution of planting seed.</p> <p>C. Verification that at time of sale, distribution or offering for sale, the person or company did not have a valid seed dealer's license issued from the Plant Board.</p>
<p>2. Failure to pay required tonnage fees on seed sold within or into Arkansas.</p>	<p>A. Verification that no records are on file in Plant Board Accounting Office or Seed Division Office for receipt of fees for seed tonnage sold.</p> <p>B. Copies of correspondence from Plant Board staff to licensee showing tonnage report not filed or tonnage fee not paid.</p> <p>C. Copies of incomplete or inaccurate records or reports.</p>
<p>3. Selling, offering for sale, or distributing seed for planting without required labeling.</p>	<p>A. Signed statement and/or report of inspection from Plant Board agent that required labeling was not attached to bag/invoice on planting seed offered for sale, sold, or distributed for sale within or into Arkansas.</p> <p>B. Copies of incomplete labeling.</p>
<p>4. Failure to obtain required test data on planting seed sold, offered for sale or distributed within or into Arkansas.</p>	<p>A. Signed statement and/or report of inspection by any agent of the Plant Board detailing inspection of records, reports, invoices, etc. stating required test data not present.</p> <p>B. Copies of test data that are incomplete.</p>
<p>5. Failure of labeled seed to be within limitations allowed or recognized tolerances of analysis on label. Major - consistent high mislabeling percentages for 3 or more consecutive years.</p>	<p>A. Reports or copies of reports of analyses performed by Ar Plant Board Seed Lab or USDA Seed Testing Division showing labeled seed out of tolerance or incorrect on any portion of analysis or statement on label.</p> <p>B. Reports of annual compilations of seedsmen's labeling records and analysis reports showing labeled seed out of tolerance.</p> <p>C. Correspondence between Seed Division and Seed Labeler documenting high mislabeling percentages.</p>

VIOLATION	EXAMPLES OF CASE DOCUMENTATION TO ESTABLISH A VIOLATION
6. Disseminate any false or misleading advertisement concerning agricultural seed in any manner or by any means.	<ul style="list-style-type: none"> A. Copies of advertisements or other materials stating claims. B. Signed statement from any individual citing claims made and identifying individual or company making claims. C. Documentation of truthfulness or fraudulence of the claims.
7. Failure to secure license for Seed Treating Plant.	<ul style="list-style-type: none"> A. Invoice or bill for seed treating services rendered. B. Signed statements from consumers or Plant Board agent verifying seed treatment was applied. C. Verification that no records are on file at Plant Board Office for seed treater's license application.
8. Failure to comply with labeling requirements when selling, offering for sale or distributing treated seed for planting.	<ul style="list-style-type: none"> A. Signed statement and/or report of inspection from Plant Board agent that required treatment labeling was not attached to bag/invoice on planting seed offered for sale, sold, or distributed for sale within or into Arkansas. B. Copies of incomplete or insufficient labeling. C. Laboratory analysis of seed being distributed.
9. Selling, giving away or using treated seed for any purpose other than planting.	<ul style="list-style-type: none"> A. Signed statement and/or report of inspection detailing or documenting charge. B. Copies of laboratory analysis of contaminated feed, food, water, etc.
10. Detach, alter, deface or destroy any label required in regulations, or any test data required to use for labeling.	<ul style="list-style-type: none"> A. Signed statement and/or report of inspection by any agent of the Plant Board detailing inspection of records, invoices, analysis reports or on any portion of analysis or information on label. B. Copies of analysis reports, labels, or tags in question. C. Signed statement from consumer invoiced.

VIOLATION	EXAMPLES OF CASE DOCUMENTATION TO ESTABLISH A VIOLATION
11. Failure to keep records or make records available for inspection.	<p>A. Signed statement and/or report of inspection from Plant board agent that the records are incomplete or unavailable upon request at reasonable times.</p> <p>B. Copies of incomplete records and/or written request for records from the Plant Board.</p> <p>C. Signed statement from consumer, receipts, invoices, weight tickets, or delivery tickets or similar documents indicating sales or distributions of planting seed, along with verification that these sales or distributions were recorded incompletely or not at all.</p>
12. Sell, offer for sale, or distribute seed as certified, registered or foundation grade without being produced and or labeled in compliance with rules/regulations of certifying agency.	<p>A. Verification that no records are on file in Plant Board Certification Office or other official seed certifying agency showing requirements/standards met for certification at time of sale, distribution or offer for sale.</p> <p>B. Copies of advertisements, invoices, receipts or affidavits from individuals indicating a person or company is offering for sale or distributing seed as certified without being in compliance with rules/regulations.</p> <p>C. Copies of correspondence from Plant Board indicating incomplete or inaccurate records or reports on file regarding certification of seed in question..</p>
13. Representing a lot as "Certified Seed" without an official seed certifying agency label attached to each container.	<p>A. Signed statement from consumer and/or report of inspection from Plant Board agent that required labeling was not attached to bag on Certified planting seed offered for sale, sold, or distributed for sale within or into Arkansas.</p> <p>B. Copies of invoices or other documentation stating the seed is Certified.</p>
14. Representing agricultural seeds which are indistinguishable by seed characteristics to be of a recognized variety, without having adequate information for such representation.	<p>A. Copies of labels, advertisements, or other materials stating claims.</p> <p>B. Signed statement and/or report of inspection by any agent of the Plant Board detailing inspection of records, reports, invoices, etc. stating adequate information not present.</p> <p>C. Documentation of truthfulness or fraudulence of the claims.</p>

PENALTY MATRIX

Arkansas Plant Act and Seed Certification Act

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine						
1. Failure to secure license for selling, offering for sale, or distributing agricultural seed for planting purposes.	Minor								
	Major	A, C, D, F, G, H	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
2. Failure to pay required tonnage fees on seed sold within or into Arkansas.	Minor	A, B, C, D							
	Major	B, C, D, F, G	200 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
3. Selling, offering for sale, or distributing seed for planting without required labeling.	Minor	A, C, D, E							
	Major	C, D, E, F, G	0 - 400	F, G	400 - 800	F, G	600 - 1000	F, G, H	800 - 1000
4. Failure to obtain required test data on planting seed sold, offered for sale or distributed within or into Arkansas.	Minor								
	Major	A, C, D, E, F, G	0 - 400	F, G	400 - 800	F, G	600 - 1000	F, G, H	800 - 1000
5. Failure of labeled seed to be within limitations allowed or recognized tolerances of analysis on label. Major - consistent high mislabeling percentages for 3 or more consecutive years.	Minor	A, C, D, E							
	Major	F, G	0 - 400	F, G	0 - 600	F, G	600 - 1000	F, G, H	800 - 1000

ENFORCEMENT ACTION OPTIONS

**A) Warning letter
10% Late Charge**

**C) Stop Sale
D) Inspection Fee**

**E) Referral to Fed. Regulatory/Testing Branch
F) Informal Agreement**

**G) Board/Committee Hearing
H) Referral to Pros. Attorney**

PENALTY MATRIX

Arkansas Plant Act and Seed Certification Act

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine						
6. Disseminate any false or misleading advertisement concerning agricultural seed in any manner or by any means.	Minor								
	Major	A, C, D, E, F, G	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
7. Failure to secure license for Seed Treating Plant.	Minor								
	Major	A, C, D, F, G	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
8. Failure to comply with labeling requirements when selling, offering for sale or distributing treated seed for planting.	Minor	A, C, D							
	Major	C, D, E, F, G	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
9. Selling, giving away or using treated seed for any purpose other than planting.	Minor								
	Major	A, C, D, E, F, G, H	0 - 400	F, G, H	400 - 1000	F, G, H	600 - 1000	F, G, H	800 - 1000
10. Detach, alter, deface or destroy any label required in regulations, or any test data required to use for labeling.	Minor								
	Major	A, C, D, F, G	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000

ENFORCEMENT ACTION OPTIONS

**A) Warning letter
10% Late Charge**

**C) Stop Sale
D) Inspection Fee**

**E) Referral to Fed. Regulatory/Testing Branch
F) Informal Agreement**

**G) Board/Committee Hearing
H) Referral to Pros. Attorney**

PENALTY MATRIX

Arkansas Plant Act and Seed Certification Act

VIOLATION	Violation Level	1st Level of Enforcement		2nd Level of Enforcement		3rd Level of Enforcement		4th Level of Enforcement	
		Enforcement Action	Civil Penalty Fine						
11. Failure to keep records or make records available for inspection.	Minor	A							
	Major	F, G	0 - 400	F, G	400 - 1000	F, G	600 - 1000	F, G, H	800 - 1000
12. Sell, offer for sale, or distribute seed as certified, registered or foundation grade without being produced and or labeled in compliance with rules/regulations of certifying agency.	Minor								
	Major	A, C, D, E, F, G	0 - 400	E, F, G	400 - 1000	E, F, G	600 - 1000	E, F, G, H	800 - 1000
13. Representing a lot as "Certified Seed" without an official seed certifying agency label attached to each container.	Minor								
	Major	A, C, D, E, F, G	0 - 400	E, F, G	400 - 1000	E, F, G,	600 - 1000	E, F, G, H	800 - 1000
14. Representing agricultural seeds which are indistinguishable by seed characteristics to be of a recognized variety, without having adequate information for such representation.	Minor	A, C, D							
	Major	E, F, G	0 - 400	E, F, G	400 - 1000	E, F, G	600 - 1000	E, F, G, H	800 - 1000
	Minor								
	Major								

ENFORCEMENT ACTION OPTIONS

**A) Warning letter
10% Late Charge**

**C) Stop Sale
D) Inspection Fee**

**E) Referral to Fed. Regulatory/Testing Branch
F) Informal Agreement**

**G) Board/Committee Hearing
H) Referral to Pros. Attorney**