

ARKANSAS STATE PLANT BOARD
BUREAU OF STANDARDS ENFORCEMENT RESPONSE REGULATION

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APPENDIX A - Penalty Matrix

I. STATEMENT OF PURPOSE

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. This will assure that uniformity and accuracy will benefit and protect both buyers and sellers in the commercial transactions.

The purpose of the regulations is to provide a fair and consistent mechanism by which compliance with the Arkansas Uniform Weights and Measures Law, the Engine Fuels and Lubricants Law, the Arkansas Catfish Marketing Law, the Arkansas Foreign Fish Law, the Arkansas Catfish – “Identification by Restaurants” Law, and regulations pursuant thereto shall be achieved.

II. DEFINITIONS - As used in this policy:

- A. Level of Enforcement: The category by which a violation is considered a first, second, or third offense.

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 Plant Board. The previous violation or violations must have occurred within the past 3 years.

- B. Minor Violation: A violation which does not involve public health or safety, endanger the environment, or cause financial harm to any party.

- C. Major Violation: A violation that affects public health, safety or the environment; causes financial harm to any party; or creates a competitive advantage in the market place.

- D. Respondent: 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 Arkansas State Plant Board.

III. LEGAL AUTHORITY

- A. “Arkansas Uniform Weights and Measures Law” A.C.A. 4-18-301 et seq. and regulations promulgated under A.C.A. 4-18-328.
B. “Arkansas Fuels and Lubricants Law” A.C.A. 4-108-201 et seq. and regulations 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.

IV. ENFORCEMENT ACTIONS

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

- A. **Stop Use/Stop Sale:** The stop-use or stop-sale of a non-compliant commodity or commercial device will remain in effect until violation is corrected. 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.
- B. **Warning Letter:** For minor, 1st level violations, the Director of the Arkansas Bureau of Standards will issue a warning letter. The letter will cite the specific violation. 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.
- C. **Informal Agreement:** Plant Board Staff may meet with the respondent in an informal hearing to review the alleged violation/violations. The purpose of the informal hearing is to resolve a complaint or incident. The group will seek consensus on an appropriate enforcement action for recommendation to the Bureau of Standards Committee of the Plant Board. Enforcement action based on the Penalty Matrix (Appendix A) will include Civil Penalty and/or registration suspension, revocation, or non-renewal. If the respondent does not agree with the allegations of staff, the respondent may request a formal committee hearing. The Plant Board acts on all recommendations resulting from the informal hearing.
- D. **Civil Penalty:** The amount is assessed by the Plant Board in accordance with the Penalty Matrix.
- E. **Board/Committee Hearing:** 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 Plant Board. Enforcement action may include Civil Penalty and/or registration suspension, revocation, or non-renewal. Following the Committee hearing, a written Findings of Fact, Conclusions of Law, and a recommendation will be submitted to the Plant Board. The Plant Board will act on all recommendations of the Committee. The director and board will follow the Arkansas Administrative Procedures Act, A.C.A. 25-15-201 et seq. in the proceedings (Notice and Hearings).
- F. **Restraining Order and Injunction.** 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 these subchapters (A.C.A. 4-18-325, *A.C.A. 4-108-210, A.C.A. 20-61.203, and A.C.A 20-61-301).
- G. **Suspension or Revocation of Registration under A.C.A. 4-18-344.** The director may suspend or revoke the certificate of registration of a registered service agent for violating any provision of this subchapter. 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 year. When the suspension or revocation of a certificate is proposed, the director and board will follow the Arkansas Administrative Procedures Act, A.C.A. 25-15-201 et seq. in the proceedings (Notice and Hearings).

V.

INVESTIGATION

An investigation will be initiated when:

- A. Routine compliance inspection indicates a violation may have occurred.
- B. A formal complaint has been made that an alleged violation has occurred.

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

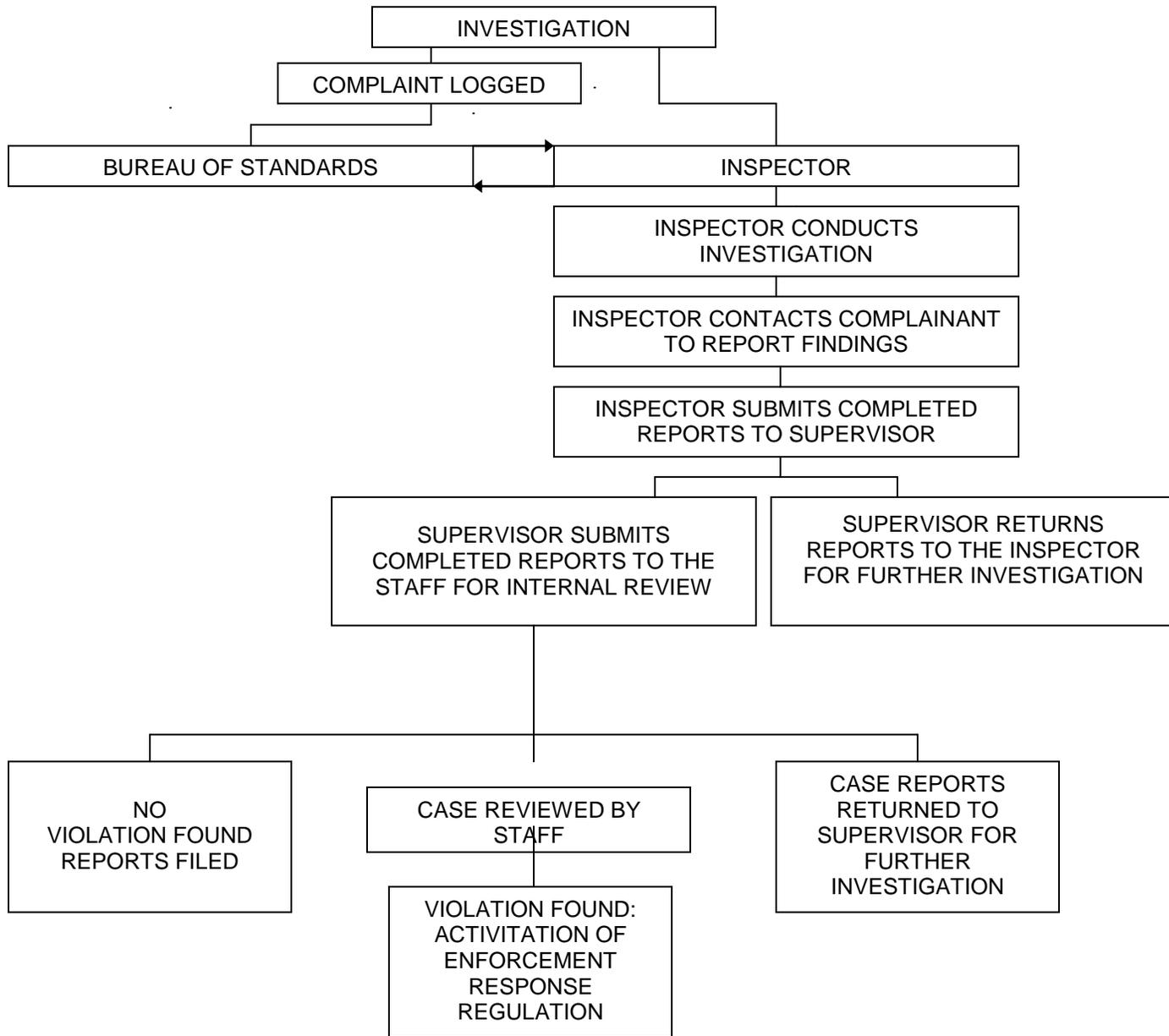
Criminal Penalties: Also under the Arkansas Code, (A.C.A. 4-18-324) whoever intentionally commits any of the acts enumerated in A.C.A. 4-18-322 is guilty of a Class A misdemeanor.

Criminal Penalties: Also under the Arkansas Code, (A.C.A. 4-108-209) Any person that intentionally violates this subchapter or regulations promulgated shall be guilty of a Class A misdemeanor.

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

Any person who knowingly violates any provision of A.C.A. 20-61-301 et seq. for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than fifty dollars (\$50) for the first offense and not more than five hundred dollars (\$500) for the second and subsequent offenses.

FIGURE I
PROCESSING SEQUENCE



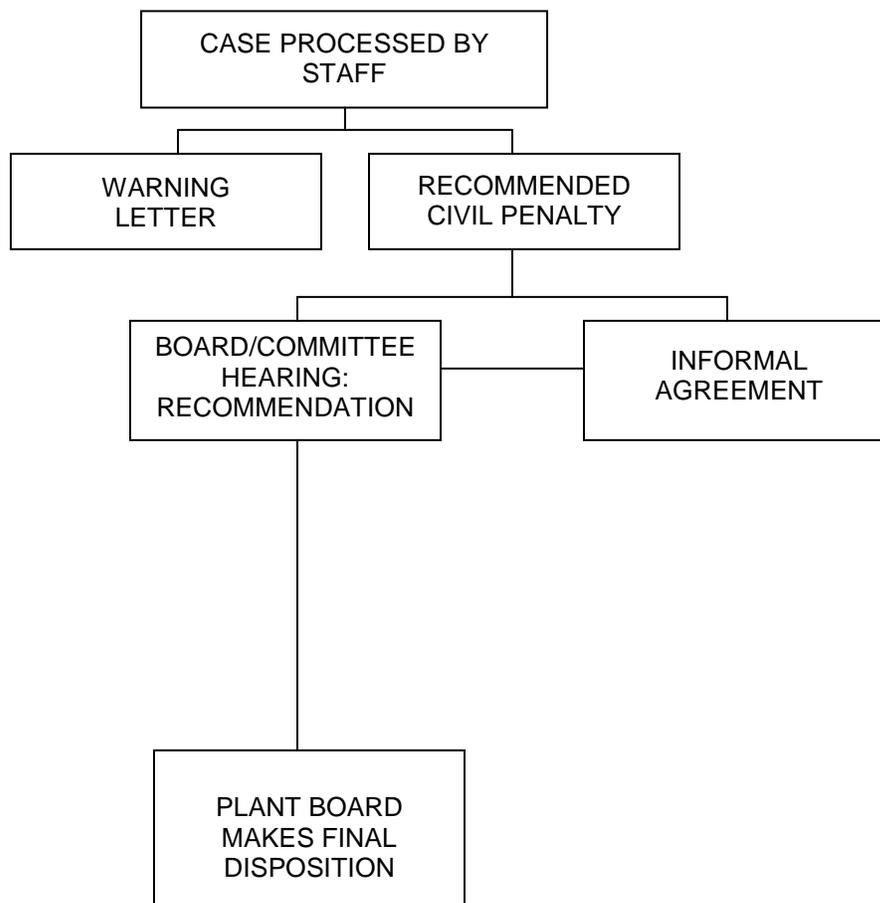
VI. ACTIVATION OF ENFORCEMENT RESPONSE REGULATIONS

An alleged violation of law and/or regulation must be documented and submitted to a supervisor on a Bureau of Standards report to initiate enforcement action.

Documentation must conform to the requirements of the Bureau of Standards Division.

The sequence of events within the Enforcement Response Regulations is as follows:

FIGURE II
RESPONSE PROCESS



VII. INTERNAL REVIEW

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

- A. That apparent violation(s) have occurred.
- B. Whether the apparent violation(s) are Minor and/or Major violations.
- C. The level of enforcement is based on the penalty matrix and the documented history of the Respondent.

VIII. HEARINGS

A violation will be determined by documentation of criteria as specified in The Penalty Matrix (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).

Other extenuating/aggravating/mitigating circumstances may also be considered.

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

IX. RIGHT OF APPEAL

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

**Penalty Matrix
Appendix A**

**Agency # 209.02
FINAL RULE**

VIOLATION	Violation Level	1 st Level of Enforcement		2 nd Level of Enforcement		3 rd Level of Enforcement	
		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
A.C.A. 4-18-322. Prohibited acts. No person shall:							
Use or have in possession for use in commerce any incorrect weight or measure:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E,G	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Sell or offer for sale for use in commerce any incorrect weight or measure:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E,G	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Remove any tag, seal, decal, or mark from any weight or measure without specific written authorization from the proper authority:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E,G	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Hinder or obstruct any weights and measures official or registered service agent in the performance of his or her duties:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E,G	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Violate any provisions of this subchapter or regulations promulgated under it:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E,F	\$100 - \$600	A,C,D,E,F	\$400 - \$1200	A,C,D,E,F,G	\$700 - \$2000
Sell or offer for sale any weight or measure for use in commerce, unless it bears an Arkansas Bureau of Standards approved seal or decal, if the seal or decal is applicable to the weight or measure:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000

ENFORCEMENT ACTION OPTIONS

A - Stop Use/Stop Sale
B - Warning letter
C - Civil Penalty

D - Informal Agreement
E - Board/Committee Hearing
F - Suspension of Registration

G - Injunction

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		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
A.C.A. 4-18-322. Prohibited acts. No person shall:							
Neglect or refuse to exhibit a weight or measure under the person's control or in the person's possession to any weights and measures official or a registered service agent for inspection, examination, or testing as required by law:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Perform an annual inspection, examination, or test on a weight or measure if that person is not a weights and measures official or a registered service agent:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Impersonate in any way the Director of the Arkansas Bureau of Standards, the deputy director, any one of the investigators, or a registered agent of the Arkansas Bureau of Standards by the use of a seal or decal, or in any other manner:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
Violate any provision of this subchapter or rules promulgated under A.C.A. 4-18-328:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000
A person may be prosecuted for a violation of this subchapter notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this subchapter:	Minor	Warning or Civil Penalty	\$100 - \$600	Warning or Civil Penalty	\$400 - \$1200	Warning or Civil Penalty	\$700 - \$2000
	Major	A,C,D,E	\$100 - \$600	A,C,D,E	\$400 - \$1200	A,C,D,E,G	\$700 - \$2000

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		Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty	Enforcement Action	Civil Penalty
A.C.A. 4-108-207 Prohibited Acts							
Represent engine fuels, petroleum products, or automotive lubricants in any manner that may deceive or tend to deceive the purchaser as to the nature, brand, price, quantity, or quality of the products:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E,G	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
Fail to register an engine fuel designed for special use:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E,F	\$100 - \$300	A,C,D,E,F,G	\$400 - \$600	A,C,D,E,F,G	\$700 - \$1000
Submit incorrect, misleading, or false information regarding the registration of an engine fuel designed for special use:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
Hinder or obstruct the State Plant Board in the performance of its duties:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
Represent an engine fuel, petroleum product, or automotive lubricant that is contrary to the provisions of this subchapter:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
Represent automotive lubricants with a Society of Automotive Engineers viscosity grade or American Petroleum Institute service classification other than those specified by the intended purchaser:	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
Violate any regulation promulgated under A.C.A. 4-108-212	Minor	Warning or Civil Penalty	\$100 - \$300	Warning or Civil Penalty	\$400 - \$600	Warning or Civil Penalty	\$700 - \$1000
	Major	A,C,D,E	\$100 - \$300	A,C,D,E	\$400 - \$600	A,C,D,E,G	\$700 - \$1000

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A.C.A. 20-61-101 Penalties "Foreign Fish Act"							
A.C.A. 20-61-101 Any violator of this section shall be assessed by the State Plant Board a civil penalty:	Major	A,C,D,E,G	\$100 - \$300	A,C,D,E,G	\$400 - \$600	A,C,D,E,G	\$700 - \$1000
A.C.A 20-61-203 Penalties "Arkansas Catfish Marketing Act" Any violation of this subchapter shall be assessed by the State Plant Board a civil penalty. The director is authorized to seek an injunction for a violation of A.C.A 20-61-203.	Major	A,C,D,E,G	\$500 - \$1000	A,C,D,E,G	\$800 - \$2000	A,C,D,E,G	\$1500 - \$2500
A.C.A. 20-61-301 "Subchapter 3 – Catfish – Identification by Restaurants" Any violation of this subchapter shall be assessed by the State Plant Board a civil penalty. The director is authorized to seek an injunction for a violation of A.C.A 20-61-301.	Major	A,C,D,E,G	\$50	A,C,D,E,G	\$50-\$500	A,C,D,E,G	\$50-\$500

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C - Civil Penalty

D - Informal Agreement
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G - Injunction