

IDAHO STATE DEPARTMENT OF AGRICULTURE
IDAHO PESTICIDES AND CHEMIGATION LAW
Penalty Assessment Guidelines and Matrix
Effective June 20, 2000



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Any person who violates applicable provisions of the Idaho Pesticides and Chemigation Law (Idaho Code, Title 22, Chapter 34) and/or the Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application, IDAPA 02.03.03, shall be subject to enforcement action by the Idaho State Department of Agriculture (the Department).

The Department must first establish, through investigations and evidentiary documentation, that the person violated the Idaho Pesticides and Chemigation Law and/or the Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application. After the Department determines the nature of the violation and the applicable charge under the Idaho Pesticides and Chemigation Law and/or the Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application, the Department will refer to the Penalty Assessment Guidelines and Matrix. The Penalty Assessment Guidelines and Matrix are intended to assist the Department in determining an appropriate level of enforcement for the violation(s).

The Penalty Assessment Guidelines and Matrix are designed to include most violations, which may be committed by licensed or unlicensed applicators, mixer-loaders and dealers. These guidelines are only intended to suggest levels of enforcement for violations. Situations may arise which are not adequately addressed by these guidelines. In such cases, the Director or designated representative of the Director may levy any penalty appropriate under existing law.

To expedite resolution of alleged violations, the Department encourages all persons who may be subject to enforcement action to confer informally with the Director's representative regarding alleged violations and proposed penalties.

Nothing in these guidelines shall prevent the Department from:

- (1) Choosing not to pursue a case administratively.
- (2) Referring any violation to the Environmental Protection Agency or to the appropriate prosecuting authority for legal action regardless of the Department's level of enforcement for that action.

Definitions

In using these guidelines, the following definitions shall apply:

1. "Adverse effect(s)" means a possibility of pesticide exposure that could cause damage or injury to humans, animals, plants, or the environment. Factors considered include, but are not limited to, the risk associated with a particular action(s) and the pesticide(s) involved.
2. "Knowingly" means that the alleged violator knew or should have known that conditions existed that would result in adverse effect(s) or knew that a violation would occur. In determining whether an alleged violator knew or should have known about potential adverse

effects or the nature of a violation, the Department will consider a person's licensing status, prior contact(s) with the Department, prior audits related to the violation, past enforcement action(s) (to the extent these factors apply), and any other relevant evidence.

3. "Level of violation" means that the alleged violation is a first, second, third, fourth or more violation.

(a) "First violation" means that the alleged violator has no prior incident(s), which resulted in a violation within three years prior to the alleged violation under review.

(b) "Second violation" means that the alleged violator has one prior incident, which resulted in a violation within three years prior to the alleged violation under review.

(c) "Third violation" means that the alleged violator has two prior incidents, which resulted in a violation within three years prior to the alleged violation under review.

(d) "Fourth or more violation" means that the alleged violator has at least three prior incidents, which resulted in a violation within three years prior to the alleged violation under review.

4. "Licensing violation(s)" means those violations relating specifically to licensure, including but not limited to operating without a license or proper category on a license issued by the Department; or aiding and abetting an individual to operate without a license or proper category on a license issued by the Department. Licensing violations shall remain a permanent record and shall be considered in determining any penalty assessment for licensing violation(s).

5. "Not probable" means that the alleged violator's conduct most likely would not have an adverse effect.

6. "Probable" means that the alleged violator's conduct most likely would have an adverse effect.

7. "Regulatory Letter" means a type of enforcement action for a violation, which requires the violator to submit a written response explaining the situation and proposing safeguards to prevent a similar incident from occurring again. A warning letter may be issued if a violator has taken corrective action or has already provided a written response during the course of the ongoing investigation or inspection.

8. "Unknowingly" means that the alleged violator did not act knowingly.

9. "Violation" means commission of an act or acts prohibited by the Idaho Pesticides and Chemigation Law, (Idaho Code, Title 22, Chapter 34) and/or the Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application, IDAPA 02.03.03. Violations may result in the following enforcement actions: warning letter; regulatory letter; civil penalty; and/or licensing suspension, modification, denial, or revocation. Alleged violations may also be referred for criminal prosecution. Prior violation(s) may be used by the Department for the purpose of determining the appropriate penalty for the current alleged violation(s).-

10. "Warning letter" means a type of enforcement action for a first time, minor violation, which does not require a written response from the violator.

Calculation of Penalty

Using the matrix below, the Department shall determine the penalty range based on the level of violation, the probability of adverse effect(s) at the time of the incident(s) giving rise to the violation, and the knowledge of the alleged violator. The median penalty will apply, unless an adjustment is deemed appropriate due to aggravating or mitigating factors as listed below.

Gravity of the violation

The gravity of the violation is based upon the risk posed to human health and the environment of a particular action and the pesticide involved. In assessing risk associated with a particular action, the Department may consider whether the violation: (1) occurred in a highly populated area, public parks, and roads, or environmentally sensitive areas; (2) was a threat to food, feed or food service equipment; (3) had a potential to affect larger or smaller geographical areas; (4) resulted in actual harm; and (5) whether serious consequences were likely. In assessing the risk associated with a particular pesticide used, the Department may consider: (1) the acute toxicity of the pesticide used, (label states “Danger” and/or “Poison” as opposed to “Warning” and “Caution”); (2) whether there are any known chronic health effects of the pesticide used; (3) the amount of pesticide involved relative to the manner of application (structural vs aerial); and (4) the persistence or residue capability of the pesticide used. The Department may increase or decrease the civil penalty and/or the licensing action depending on the circumstances in the particular case.

Aggravating factors. The Department may consider circumstances enhancing the seriousness of the violation, including, but not limited, to the following:

- Number of other violations occurring during the same incident
- Similarity of prior violations
- High magnitude of harm, or potential harm caused by the violation
- Disregard for the safety/health of others or the environment
- Existence of prior audits which revealed the violation or similar violations
- Little or no attempt(s) to come into compliance
- Hindrance to the investigation

Mitigating Factors. The Department may consider circumstances reducing the seriousness of the violation, including, but not limited to, the following:

- Voluntary disclosure of violation
- Low magnitude of harm, or potential harm, caused by the violation
- Cooperation with the investigation
- Corrective action(s) taken for prior violation(s)
- Corrective action(s) taken for pending violation
- No similar prior violations

Discretionary Penalty Modification

In lieu of total license and certification suspension, the Department may elect to suspend the licensee's certification in selected categories only or place special restrictions on the licensee's certification.

The license suspension/denial/revocation actions must be executed through a consent order signed by the Director of the Department, or by procedures pursuant to the provision of Idaho Code, Title 67, Chapter 52. The Department may set the license suspension to commence at any time during the year.

Alternative Penalty Assessment

The Department may assess a penalty, which requires the violator to attend a pesticide workshop or training session in lieu of all or part of a typical enforcement action. For example, the Department may require a professional applicator to send all of his/her licensed applicators to a Department-approved workshop. Failure to comply with an alternative penalty assessment will subject the violator to enforcement action, as determined by the Department.

PENALTY ASSESSMENT MATRIX

Level of Violation	Adverse Effect(s)	Unknowingly			Knowingly		
		Minimum	Median	Max.	Minimum	Median	Max.
First	Not Probable	Warning Letter	Warning Letter	Reg. Letter	Warning Letter	Reg. Letter	\$250 & 2 days*
	Probable	Warning Letter	Warning Letter	Reg. Letter	Reg./Warn. Letter	Reg. Letter	\$500 & 4 days
Second	Not Probable	Reg. Letter	Reg. Letter	\$250 & 2 days	Reg. Letter	\$250 & 2 days	\$500 & 4 days
	Probable	Reg. Letter	\$250 & 2 days	\$500 & 4 days	\$250 & 2 days	\$500 & 4 days	\$1000 & 8 days
Third	Not Probable	\$250 & 2 days	\$500 & 2 days	\$750 & 6 days	\$500 & 4 days	\$750 & 6 days	\$1500 & 10 days
	Probable	\$500 & 4 days	\$750 & 6 days	\$1000 & 8 days	\$750 & 6 days	\$1000 & 8 days	\$2000 & 12 days
Fourth or more	Not Probable	\$500 & 4 days	\$750 & 6 days	\$1500 & 10 days	\$1000 & 8 days	\$1500 & 10 days	\$2500 & 30 days
	Probable	\$750 & 6 days	\$1000 & 8 days	\$2000 & 12 days	\$1500 & 10 days	\$2000 & 12 days	\$3000 & 60 days

* “days” means the number of days a license is under suspension.

Directions for using the Matrix.

1. Determine the “Level of Violation” (First, Second, Third, etc.).
2. Determine if “Adverse Effects” were probable or not probable.
3. Determine if the alleged violation occurred “Knowingly or Unknowingly.”
4. Evaluate mitigating and aggravating factors, to determine the level of enforcement action (Minimum, Median, or Maximum).

Effective Date

Patrick A. Takasugi, Director
Idaho State Department of Agriculture