

Penalty Assessment Guidelines and Schedule for Enforcement Actions

Version 1.1



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Approval Signatures

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Date

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This Enforcement Actions Guidance Version 1.1 becomes effective on date of the last signature, or other date, if so designated. This document is designed to be used in conjunction with the Case Review Guidance.

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NOTE: This guidance was developed to direct the Enforcement Actions process. However, the purpose of this guidance is to ensure thoroughness, and each listed action may not be applicable to every situation. Without prior notification the Case Reviewer has the right to expand or modify this guidance to achieve a successful Enforcement Actions process that meets the relevant Idaho Code. Significant changes may be documented by the Case Reviewer. Additionally, this Enforcement Actions process may lead to further actions and/or investigations on part of ISDA to ensure that the Idaho Code is being supported through ISDA actions.

Any references in this Guidance to external documents, such as IDAPA, are for informational purposes only. The intent of these references is to guide the enforcement action process and associated requirements. Any changes to external documents or references shall not require immediate updates to this Guidance if there are no changes to the intent or activities described in this Guidance.

Guidance for Enforcement Actions

1 Authority and Jurisdiction

Authority to assess enforcement actions is provided by Idaho Code, Chapter 34 Title 22. Additional authority is provided through a cooperative agreement with the U.S. Environmental Protection Agency (EPA), which allows primacy to the Idaho State Department of Agriculture (ISDA) to conduct activities related to compliance with the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

Idaho Code § 22-3408, states:

STOP SALE, USE OR REMOVAL ORDER AND CHEMIGATION STOP WORK ORDER.

- (1) The department may issue and enforce a written stop sale, use or removal order to the owner or custodian of any pesticide or device to hold such pesticide or device at a designated place when the department finds such pesticide or device being distributed in violation of any of the provisions of this act or rules, or is likely to cause unreasonable adverse effects on the environment. The director shall release the pesticide or device by written order when the owner or custodian has complied with all of the provisions of this act and rules.
- (2) The department may issue and enforce a written or printed chemigation stop work order to any person engaged in, conducting or carrying on chemigation when the department finds the chemigation is in violation of the provisions of this chapter or any rules promulgated pursuant to this chapter.
- (3) The chemigation stop work order shall be in effect until the provisions of this chapter or rules promulgated pursuant to this chapter have been complied with.

Idaho Code § 22-3409, states:

DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE OR PERMIT. The director is authorized subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, to deny, suspend, revoke or modify any license or permit provided for in this act in any case in which he finds that the holder of an applicator's license, operator's license or permit has been convicted or is subject to a final order imposing a civil penalty under Section 14, Federal Insecticide, Fungicide, Rodenticide Act, or that there has been a failure or refusal to comply with the provisions of this act or rules promulgated by the director.

Idaho Code § 22-3412, states:

DELEGATION OF DUTIES: All authority vested in the director by virtue of the provisions of this act may with like force and effect be executed by designated employees of the department of agriculture as the director may from time to time designate for said purpose.

Idaho Code § 22-3414, states:

INSPECTIONS:

- 1) For the purpose of carrying out the provisions of this act the director may enter on any public or private premises at reasonable times in order to have access for the purpose of observing the use and application of pesticides, inspecting records that are required to be maintained by this act, spraying equipment, storage facilities, disposal areas, investigation complaints of injury, inspection and sampling of land and sampling pesticides being distributed, offered for sale, applied or to be applied.
- 2) Should the director be denied access to any land where such access was sought for the purposes set forth in this act, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may, upon such application, issue the search warrant for the purposes requested.

Idaho Code § 22-3422, states:

PENALTIES FOR OPERATING WITHOUT LICENSE. Any person operating as a professional or private applicator or dealer without a license shall forfeit to the state for each day's operation one hundred dollars (\$100) as a civil penalty and such operation may be enjoined upon complaint of the director.

Idaho Code § 22-3423, states:

PENALTY FOR VIOLATIONS

- (1) Any person who shall forge, alter, counterfeit, simulate or falsely represent, or who shall without proper authority use any license issued by the director under this act, or who shall violate or fail to comply with any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than three (3) months no more than twelve (12) months or be subject to both such fine and imprisonment.
- (2) Any person who violates or fails to comply with any provision of this act or any rules promulgated under this act may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the

department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section, may within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule shall be deposited in the state treasury and credited to the pesticide account of the department.

- (3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes the public interests will be best served by suitable warning so or other administrative action.

2 Purpose/Objectives

Any person who violates applicable provisions of the Idaho Pesticides and Chemigation Law (Idaho Code, Title 22, Chapter 34) and/or the 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 (ISDA).

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

The Enforcement Actions Guidance is 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.

Nothing in these guidelines shall prevent the ISDA from:

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

3 Definitions

- 1) “Level of violation” means that the alleged violation is a first, second, third or subsequent violation. Previous violations identified within three years prior to the alleged violation under review may be considered when determining the level of violation.
 - a. “First violation” means that the alleged violator has no prior incidents(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. “Subsequent violation” means that the alleged violator has three or more prior incidents, which resulted in a violation within three years prior to the alleged violation under review.
- 2) “Licensing violation” 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 ISDA; or aiding and abetting an individual to operate without a license or proper category on a license issued by the ISDA. Licensing violations shall remain a permanent record and shall be considered in determining any penalty assessment for licensing violations.
- 3) “Mandatory follow up” means a meeting or inspection following an enforcement action that requires a violator to confirm corrective action and compliance with the related violation(s). Further violation revealed during the follow up may be subject to additional enforcement action.
- 4) “Regulatory letter” means a type of enforcement action for a violation, which requires the violator to respond with corrective action pending a stop sale, use or removal order or a chemigation stop work order.
- 5) “Violation” means commission of an act or acts prohibited by or omission of an act required 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. Distinct occurrences of the same violation may be considered as separate or unique violations. Violations may result in the following enforcement actions: warning letter; regulatory letter; mandatory follow-up, 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 ISDA for the purpose of determining the appropriate penalty for the current alleged violation(s).

- 6) “Warning letter” means a type of enforcement action which does not require a written response from the violator.

4 Penalty Schedule

Using the penalty schedule below, the ISDA may determine the penalty range based on the nature and level of violation. Table 1A may be used to determine the appropriate level of enforcement on violations for which individuals are responsible. Table 1B may be used to determine the appropriate level of enforcement on violations for which establishments or companies are responsible. The nature of violations may include, but are not limited to recordkeeping violations, non-pesticide handling violations, violations associated with the handling of a general use pesticide, violations associated with the handling of a restricted use pesticide, and violations associated with documented human exposure.

Table 2 may be used to determine the appropriate level of enforcement for violations associated with pesticide registration and labeling including but not limited to products that are unregistered, misbranded, adulterated, and/or repackaged. This table also identifies appropriate penalties for violating a stop sale, use or removal order.

Table 3 may be used to determine the appropriate level of enforcement for violations associated with chemigation. This table also identifies appropriate penalties for violating a chemigation stop work order.

Table 1A – Individual

<i>Type of Violation</i>	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>Subsequent</i>
Recordkeeping / Non-handling	WL	WL + Mandatory Follow Up	\$250	\$500 + 15-day suspension
General Use Pesticide - Impacts Self	WL	WL + Mandatory Follow Up	\$500 + 15-day suspension	\$1,000 + 30-day suspension
General Use Pesticide – Impacts Others/Env.	WL	\$500 + 15-day suspension	\$1,000 + 30-day suspension	\$2,000 + 60-day suspension
Restricted Use Pesticide – Impacts Self	WL	\$750 + 15-day suspension	\$1,500 + 30-day suspension	\$2,500 + 60-day suspension
Restricted Use Pesticide – Impacts Others/Env.	\$500 + 15-day suspension	\$1,000 + 30-day suspension	\$2,000 + 60-day suspension	\$3,000 + Revocation
Documented Human Exposure – General Use Pesticide	\$500 + 15-day suspension	\$1,500 + 30-day suspension	\$2,500 + 60-day suspension	\$3,000 + Revocation
Documented Human Exposure – Restricted Use Pesticide	\$1,000 + 15-day suspension	\$2,000 + 30-day suspension	\$3,000 + Revocation	

*Significant cases may also be referred outside of the ISDA

Table 1B – Company/Establishment

<i>Type of Violation</i>	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>Subsequent</i>
Recordkeeping / Non-handling	WL	WL + Mandatory Follow Up	\$500	\$1,000
General Use Pesticide	WL	\$750	\$1,500	\$2,500
Restricted Use Pesticide	\$750	\$1,500	\$2,500	\$3,000
Documented Human Exposure	\$1,500	\$2,000	\$3,000	\$3,000

*Significant cases may also be referred outside of the ISDA

Table 2 – Pesticide Registration and Labeling

<i>Type of Violation</i>	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>Subsequent</i>
Unregistered Product	RL pending Registration or SSURO			
Misbrand, adulterate, repackage, EPA unregistered	SSURO + Refer to EPA			
SSURO Violation	\$500	\$1,000	\$2,000	\$3,000

Table 3 - Chemigation

<i>Type of Violation</i>	<i>1st</i>	<i>2nd</i>	<i>3rd</i>	<i>Subsequent</i>
Actively chemigating violation	CSWO			
Chemigation Violation	WL + Mandatory Follow Up	\$500 + 15-day suspension	\$1,000 + 30-day suspension	\$2,000 + 60-day suspension
CSWO Violation	\$1,000 + 15-day suspension	\$2,000 + 30-day suspension	\$3,000 + 60-day suspension	\$3,000 + Revocation

**Situations may arise which are not adequately addressed by these guidelines. In such cases, the ISDA may levy any penalty appropriate under the existing law. The nature, circumstance, extent, and gravity of the violation may be taken into consideration.

***License suspension shall be consecutive days during active application season

5 Referring Cases

- a. Regardless of the level of enforcement action initiated by the ISDA, cases may be referred to the USEPA, other appropriate agencies, and/or prosecuting authorities. The ISDA is sometimes required to refer to the USEPA, cases involving a significant complaint.

Appendix A. Revision Record

This table needs to be updated as revisions and changes are made to this guidance, or serve to document if/when reviewed. If no changes are made, in a new line retain Revision Number, but update the Date, Responsible Party, and in the Description of Changes add in “Reviewed, no changes.” Text in this section/table should not be changed or modified, but new lines in the table may be added.

Revision	Date	Responsible Party	Legal Review	Section	Summary of Changes
1.1			Yes or No NAME	All	

Appendix B. Forms

All associated forms are retained and can be downloaded from the computer server located in Boise, ID.