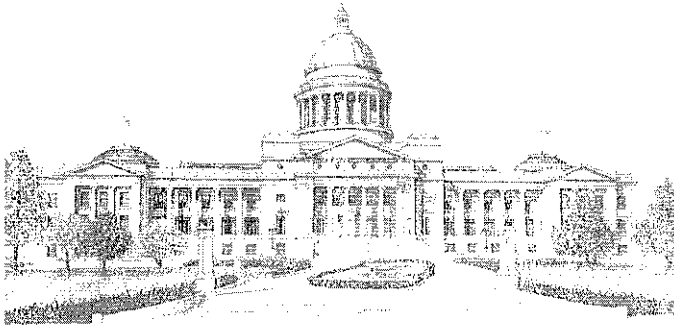


# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State  
**John Thurston**  
 500 Woodlane, Suite 026  
 Little Rock, Arkansas 72201-1094  
 (501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Agriculture

Department State Plant Board

Contact Scott Bray E-mail scott.bray@agriculture.arkansas.gov Phone 501-225-1598

Statutory Authority for Promulgating Rules Arkansas Code Ann. § 2-16-207(c)(1)

**Rule Title:** Produce Safety Rule and Produce Safety Enforcement and Response Rules

**Intended Effective Date**

(Check One)

		Date
<input type="checkbox"/>	Emergency (ACA 25-15-204)	March 27 - 29, 2020
<input checked="" type="checkbox"/>	10 Days After Filing (ACA 25-15-204)	April 25, 2020
<input type="checkbox"/>	Other _____ (Must be more than 10 days after filing date.)	June 19, 2020
	Adopted by State Agency .....	March 13, 2019

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Linda Luebke linda.luebke@agriculture.arkansas.gov June 23, 2020  
 Contact Person E-mail Address Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
 In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Scott Bray  
 Signature

501-225-1598 scott.bray@agriculture.arkansas.gov  
 Phone Number E-mail Address

Director, Arkansas State Plant Board  
 Title

June 23, 2020  
 Date



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205  
agriculture.arkansas.gov  
(501) 225-1598



Wes Ward  
Secretary of Agriculture

June 23, 2020

Honorable John Thurston  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

Enclosed are Transmittal Sheets and copies of **Final Rules** as listed below.

The **Produce Safety Rule and Produce Safety Enforcement and Response Rules** was approved by the Arkansas State Plant Board at a meeting held December 3, 2019. The rules were reviewed and approved by the Senate and House Ag Committee on May 12, 2020, the Arkansas Legislative Council Administrative Rules Subcommittee on June 17, 2020 and the Arkansas Legislative Council on June 19, 2020. Final Rules enclosed.

The **State Plant Board Rules on Reciprocal, Temporary, and Provisional Licensure** was approved by the Arkansas State Plant Board at a meeting held December 3, 2019. The rules were reviewed and approved by the Arkansas Legislative Council Administrative Rules Subcommittee on June 17, 2020 and the Arkansas Legislative Council on June 19, 2020. Final Rule enclosed.

If more information is needed, please contact me.

Sincerely,

*SB* Scott Bray, Director  
Arkansas State Plant Board

SB:ll

Enclosures

# **ARKANSAS DEPARTMENT OF AGRICULTURE PRODUCE SAFETY ENFORCEMENT RESPONSE RULES**

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## I. STATEMENT OF PURPOSE

Produce Safety is valuable to Arkansas' agricultural production and the protection of man from microbial contaminants attained during the growing, harvesting, packing and holding of produce for human consumption. It is essential to the public health and welfare that produce be handled properly to prevent adverse microbial effects on man.

The purpose of the rule is to provide a fair and consistent mechanism by which compliance with the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (CFR Title 21 Part 112), also known as the Produce Safety Rule (PSR), as amended, and the rules written pursuant thereto can be achieved.

## II. DEFINITIONS

(As used in this policy)

- A. **Base Civil Penalty:** The midpoint of a civil penalty range. [Example: The civil penalty range for a Minor Violation (1st level of enforcement) is \$100.00 to \$500.00. The base penalty is \$300.00]
- B. **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 Arkansas Department of Agriculture. The previous violation/violations must have occurred within the past 3 years.
- C. **Level 1 Violation:** A violative incident which does not involve human health and/or safety e.g. conditions that will not cause contamination of covered produce; or other incidents of non-compliance which do not create a competitive disadvantage for covered farms in full compliance.
- D. **Level 2 Violation:** A violative incident which affects human health and/or safety e.g. conditions that may cause contamination of covered produce if conditions or practices continue; or other incidents of non-compliance which create a competitive advantage over covered farms in full compliance; or a history of repetitive violative incidents.
- E. **Level 3 Violation:** A violative incident involving a practice, condition, or situation on a covered farm that is reasonably likely to lead to:
- Serious adverse health consequences or death from the consumption of or exposure to covered produce;
  - An imminent public health hazard is posed if corrective action is not taken immediately (example: edible portions of produce contacting a potential source of contamination).
- Covered produce means: produce that is subject to the requirements of 21 CFR Part 112, in accordance with 21 CFR 112.1 and 112.2. The term “covered produce” refers to the harvestable or harvested part of the crop (see 21 CFR 112.3).
- F. **Covered produce farm:** Any farm engaged in the growing, harvesting, packing, or holding of produce for human consumption which is subject to the requirements of the FDA Food Safety Modernization Act – Produce Safety Rule (21 CFR Part 112).
- G. **Produce:** Any fruit or vegetable (including mixes of intact fruits and vegetables) and includes mushrooms, sprouts (irrespective of seed source), peanuts, tree nuts, and herbs. A fruit is the edible

reproductive body of a seed plant or tree nut (such as apple, orange, and almond) such that fruit means the harvestable or harvested part of a plant developed from a flower. A vegetable is the edible part of an herbaceous plant (such as cabbage or potato) or fleshy fruiting body of a fungus (such as white button or shiitake) grown for an edible part such that vegetable means the harvestable or harvested part of any plant or fungus whose fruit, fleshy fruiting bodies, seeds, roots, tubers, bulbs, stems, leaves, or flower parts are used as food and includes mushrooms, sprouts, and herbs (such as basil or cilantro). Produce does not include food grains meaning the small, hard fruits or seeds of arable crops, or the crops bearing these fruits or seeds, that are primarily grown and processed for use as meal, flour, baked goods, cereals and oils rather than for direct consumption as small, hard fruits or seeds (including cereal grains, pseudo cereals, oilseeds and other plants used in the same fashion). Examples of food grains include barley, dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat, and oilseeds (e.g., cotton seed, flax seed, rapeseed, soybean, and sunflower seed).

- H. **Respondent:** A covered produce farm charged with a violation of the Arkansas Produce Safety Law, as amended, and the rules written pursuant thereto.

### III. LEGAL AUTHORITY

- A. "The Arkansas Plant Act" A.C.A. 2-16-203 et. seq. and Rules.

### IV. ENFORCEMENT ACTIONS

**Under the preceding Arkansas Codes, the Arkansas Department of Agriculture has several options for enforcement action. These are:**

- A. **Warning Letter:** For Level 1 Violation, 1st level of enforcement violations, the Arkansas Department of Agriculture will issue a Notice of Warning (NOW) 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 contaminated covered produce; practices that will pose a significant risk to human health and/or safety; or at the request of FDA, etc., will remain in effect until violation is corrected.
- C. **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 Arkansas Department of Agriculture 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 further legal action. The Full Board acts on all recommendations resulting from the informal hearing.
- Excluding Level 3 violations.
- 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 Food Safety Committee of the Board. Enforcement action will include Civil Penalty and/or further legal action. 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. **Injunction:** The Board may apply for an injunction to any court of competent jurisdiction for violations of the Produce Safety Law. The court, upon hearing and for cause, has the option of temporary or permanent injunction restraining any person from violating any provisions of the Arkansas Produce Safety Law and rules.
- F. **Referral to Prosecuting Attorney:** The Plant Board has the option of referring violations of the Arkansas Produce Safety Law to the prosecuting attorney.

## **V. INCIDENT INVESTIGATION**

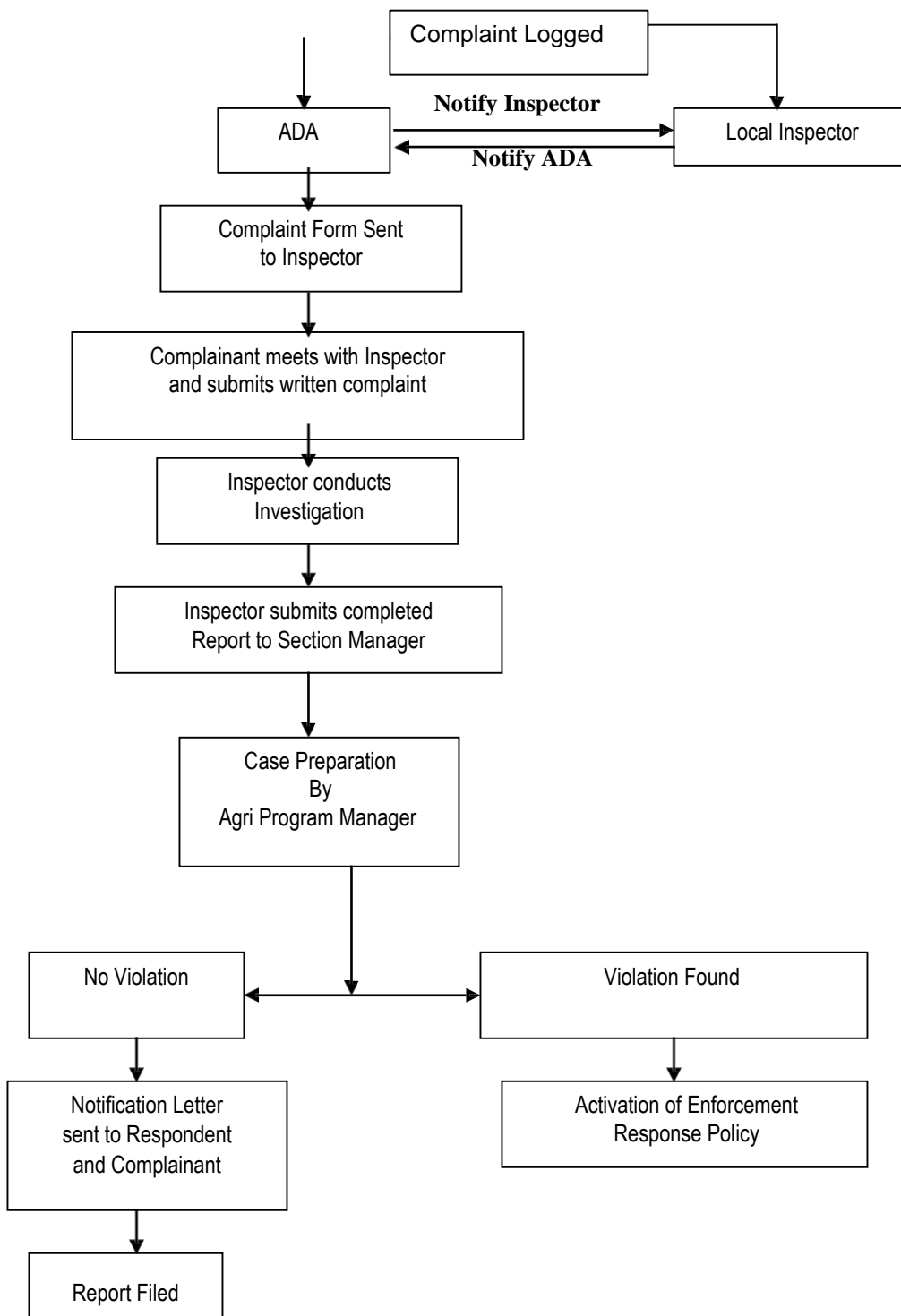
### **An incident investigation will be initiated when:**

- A. Routine compliance monitoring indicates a violation has occurred.
- B. A formal complaint that an alleged violative incident has occurred (Filing of a written form by a complainant). In cases of apparent immediate endangerment to the public health, 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



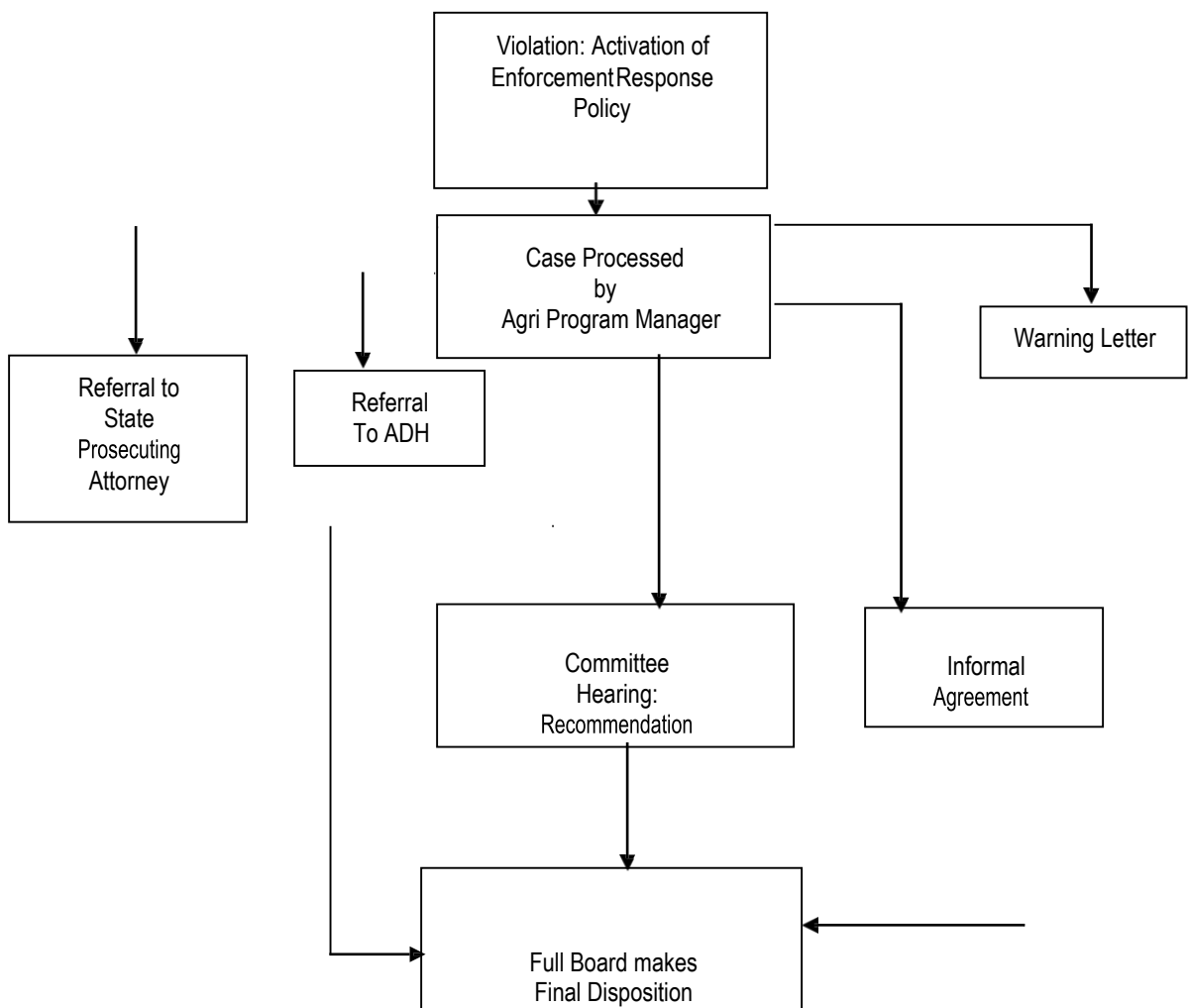
## VI. ACTIVATION OF ENFORCEMENT RESPONSE POLICY

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

Documentation must conform to the requirements of the Plant Industries Division.

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

### FIGURE II





## **VII. INTERNAL REVIEW**

Staff will carefully review all documentation and records to determine:

- A. That apparent violation / violations have occurred.
- B. Whether the apparent violation or violations are **Level 1, Level 2** and/or **Level 3** violations.
- C. The correct level of enforcement based on the penalty matrix and the documented history of the respondent.

Concurrence with the Program's finding by the staff 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.

Should it be determined a violation(s) has occurred, the severity and level of enforcement of each 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 penalty 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 Full 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 Full Board be set aside.

# **APPENDIX - A**

## **PENALTY MATRIX**

# ADA Produce Safety Compliance and Enforcement Penalty Matrix

## Compliance History

SEVERITY	Initial Inspection	Routine Inspection	Non-Compliance
<p><b>Level 1</b></p> <p><i>Conditions that will not cause contamination of produce</i></p>	<ul style="list-style-type: none"> <li>- The observation is discussed <b>with the farm during the inspection</b> and reviewed at the next routine inspection.</li> </ul>	<ul style="list-style-type: none"> <li>- The observation is discussed with the farm during the inspection and potentially documented on an inspection form.</li> <li>- A timeline for corrective actions and preventive measures is established. The observation may be reviewed during a follow-up inspection.</li> </ul>	<ul style="list-style-type: none"> <li>- The uncorrected observation is discussed with the farm during the inspection and documented on an inspection form.</li> <li>- A timeline for corrective actions and preventive measures is established. A follow-up inspection may be scheduled within 30, 60, or 90 days.</li> <li>- Additional enforcement actions may be taken to ensure compliance, which may include issuing a Notice of Warning (NOW) letter or Notice of Violation (NOV) with administrative penalties of up to \$500 per violation.</li> </ul>
<p><b>Level 2</b></p> <p><i>Conditions that may cause contamination of produce if conditions or practices continue</i></p>	<ul style="list-style-type: none"> <li>- The observation is discussed with the farm during the inspection and reviewed at the next routine inspection.</li> </ul>	<ul style="list-style-type: none"> <li>- The observation is discussed with the farm during the inspection and documented on an inspection form.</li> <li>- A timeline for corrective actions and preventive measures is established. A follow-up inspection may be scheduled within 30, 60, or 90 days.</li> <li>- A Notice of Warning (NOW) letter may be issued detailing possible enforcement actions that may be taken if the observation is not corrected.</li> </ul>	<ul style="list-style-type: none"> <li>- The uncorrected observation is discussed with the farm during the inspection and documented on an inspection form.</li> <li>- A timeline for corrective actions and preventive measures is established. A follow-up inspection may be scheduled within 30, 60, or 90 days.</li> <li>- Additional enforcement actions may be taken to ensure compliance, which may include issuing a Notice of Violation (NOV) with administrative penalties of up to \$1,000 per violation.</li> </ul>
<p><b>Level 3</b></p> <p><i>Produce is contaminated, or conditions will likely cause an imminent public health hazard if not corrected</i></p>	<ul style="list-style-type: none"> <li>- The observation is discussed with the farm during the inspection and documented on an inspection form.</li> <li>- An evaluation is made to determine whether contaminated produce has entered commerce and whether an embargo, stop sale, or recall is required. Immediate actions must be initiated to ensure adequate mitigation and correction of the egregious conditions. A timeline for further corrective actions and preventive measures is established and a follow-up inspection is scheduled within 10, 30, 60, or 90 days.</li> <li>- Additional enforcement actions may be taken to ensure compliance, which may include issuing a Notice of Violation (NOV) with administrative penalties of up to \$1,000 per violation.</li> </ul>		



**FINAL RULE**  
**AGENCY NO. 209.02**

**PRODUCE SAFETY RULE**

**Incorporation by reference of federal produce safety regulations**

The Department hereby incorporates by reference Title 21 of the Code of Federal Regulations, Part 112 (most current revision) regarding standards for the growing, harvesting, packing, and holding of produce for human consumption as provisions of this rule as though set forth herein line for line and word for word, except that unless the context otherwise dictates, references to “We”, “the United States Food and Drug Administration”, and “FDA” shall refer to the “Arkansas Department of Agriculture” or “Department”, and all words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

**Definitions**

The following words or terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise:

**“Covered farm”** means a farm or farm mixed-type facility with an average annual monetary value of produce sold during the previous 3–year period of more than \$25,000 (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment. Covered farms subject to this part must comply with all applicable requirements of this part when conducting a covered activity on covered produce.

A farm is not a covered farm if it satisfies the requirements in 21 C.F.R § 112.5 and the Department has not withdrawn the farm's exemption in accordance with the requirements of Part 112, Subpart R.

**“Department”** means the Arkansas Department of Agriculture.

**“Produce”** means any fruit or vegetable (including mixes of intact fruits and vegetables) and includes mushrooms, sprouts (irrespective of seed source), peanuts, tree nuts, and herbs. A fruit is the edible reproductive body of a seed plant or tree nut (such as apple, orange, and almond) such that fruit means the harvestable or harvested part of a plant developed from a flower. A vegetable is the edible part of an herbaceous plant (such as cabbage or potato) or fleshy fruiting body of a fungus (such as white button or shiitake) grown for an edible part such that vegetable means the harvestable or harvested part of any plant or fungus whose fruit, fleshy fruiting bodies, seeds, roots, tubers, bulbs, stems, leaves, or flower parts are used as food and includes mushrooms, sprouts, and herbs (such as basil or cilantro). Produce does not include food grains meaning the small, hard fruits or seeds of arable crops, or the crops bearing these fruits or seeds, that are primarily grown and processed for use as meal, flour, baked goods, cereals and oils rather than for direct consumption as small, hard fruits or seeds (including cereal grains, pseudo cereals, oilseeds and other plants used in the same fashion). Examples of food grains include barley, dent- or flint-corn, sorghum, oats, rice, rye, wheat,

amaranth, quinoa, buckwheat, and oilseeds (e.g., cotton seed, flax seed, rapeseed, soybean, and sunflower seed).

### **Farm Registration**

- (a) All covered farms shall register with the Department and provide a business name, mailing address, physical address, and telephone number.
- (b) Registered covered farms shall notify the Department of any change in the information provided at registration within ninety (90) days of the change.
- (c) Covered farms shall register with the Department no later than July 1 of each year.
- (d) The Department may post the inflation-adjusted annual threshold on its website.

### **Penalties**

Any person who violates a provision of this rule may be subject to one or more of the following:

- (a) Actions detailed in the Compliance and Enforcement Penalty Matrix;
- (b) A stop sale order;
- (c) Civil penalties under the authority of the Arkansas Plant Act of 1917, A.C. A. Section 2-16-203.

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

DEPARTMENT/AGENCY Arkansas Department of Agriculture  
DIVISION State Plant Board/ Plant Industries  
DIVISION DIRECTOR Scott Bray, State Plant Board Director  
CONTACT PERSON Wade Hodge  
ADDRESS #1 Natural Resources Drive, Little Rock, AR 72205  
PHONE NO. 501-219-6361 FAX NO. \_\_\_\_\_  
E-MAIL scott.bray@agriculture.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Wade Hodge; Scott Bray  
PRESENTER E-MAIL wade.hodge@agriculture.arkansas.gov;  
Scott.Bray@agriculture.arkansas.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:

Jessica C. Sutton  
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? Produce Safety Rule and Enforcement Response Rule
2. What is the subject of the proposed rule? To incorporate the provisions of the Federal Produce Safety Rule and provide an enforcement mechanism for the Department
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes \_\_\_\_\_ No x \_\_\_\_\_  
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 x \_\_\_\_\_  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_  
When does the emergency rule expire? \_\_\_\_\_  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No \_\_\_\_\_

5. Is this a new rule? Yes  No  If yes, please provide a brief summary explaining the rule. See the attached memo.

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."** (See attachment)

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 2-16-207(c)(1)
7. What is the purpose of this proposed rule? Why is it necessary?  
The Produce Safety Modernization Act of 2011 enabled the FDA to respond to foodborne illnesses, but allows them to delegate enforcement authority to the states.
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? If requested. Yes  No   
If yes, please complete the following:  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Place: \_\_\_\_\_
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
TBD
11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
Ten days after filing with Secretary of State
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.
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

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.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Agriculture  
**DIVISION** State Plant Board  
**PERSON COMPLETING THIS STATEMENT** Wade Hodge  
**TELEPHONE NO.** 501-219-6361 **FAX NO.** \_\_\_\_\_  
**EMAIL:** wade.hodge@agriculture.arkansas.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** Arkansas Pest Control Law Rules and Regulations

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_ \_\_\_\_\_ No X \_\_\_\_\_
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 x \_\_\_\_\_ 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 x \_\_\_\_\_ 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;
- (b) The reason for adoption of the more costly rule;
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
- (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_



Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_ 0 \_\_\_\_\_

Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_ 0 \_\_\_\_\_

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

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_ 0 \_\_\_\_\_

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_ 0 \_\_\_\_\_

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.

**Current Fiscal Year**

**Next Fiscal Year**

\$\_0 \_\_\_\_\_

\$\_0 \_\_\_\_\_

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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**

**Next Fiscal Year**

\$\_none \_\_\_\_\_

\$\_none \_\_\_\_\_

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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.



Asa Hutchinson  
Governor

# ARKANSAS DEPARTMENT OF AGRICULTURE

1 Natural Resources Drive, Little Rock, AR 72205  
agriculture.arkansas.gov  
(501) 225-1598



Wes Ward  
Secretary of Agriculture

## Summary of Proposed Produce Safety Rule and Enforcement Response Rule

### **Purpose:**

The purpose of the Arkansas State Plant Board (Plant Board) Produce Safety Rule (the Rule) is to adopt U.S. Food and Drug Administration (FDA) standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. There is also an accompanying Produce Safety Enforcement Response Rule.

### **Background**

Pursuant to the FDA Food Safety Modernization Act (the Act), the FDA has delegated enforcement of the Produce Safety Rule to States that have implemented state programs.

The Rule incorporates FDA minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The FDA Produce Safety Rule went into effect on January 26, 2016. The FDA has delegated program enforcement to the Department.

Historically, Department programs have focused efforts on produce quality as opposed to safety. This has been accomplished through inspections (done on a fee for service basis) at state shipping points. In preparation for its expanded role, the Department has conducted nine initial inspections and multiple farm inventories to prepare for enforcement of the Rule. None of the inspections or inventories will result in enforcement action.

### **Key Points**

- Incorporates the Federal Produce Safety Rule
- Provides enforcement mechanism for the Department
- Provides clear direction for which commodities are covered and which are exempt

### **Discussion**

The Rule will apply to all farms with food sales averaging more than \$25,000 a year over a three-year period. It does not apply to farmers of commodities rarely consumed raw, certain food grains, and produce grown for the farmer's personal consumption. The rule provides an exemption for produce that receives commercial processing that adequately reduces the presence of microorganisms that are a public health concern and allows modified requirements for eligible farms (farms with sales less than \$500,000 to qualified single food consumers and food retail establishments that are either in-state or within 275 miles of the farm).

The Rule expands the Department's role as the primary regulatory for produce safety beyond mere inspection and detection of diseases, insect pests, and noxious weeds to the enforcement of minimum standards for, among other things, the safe growing, harvesting, and packaging of produce (i.e. prevention). Further, the Rule will expand the Department's authority to include regulation of the use, treatment, and testing of agricultural water to ensure that all agricultural water is safe and of adequate sanitary quality for its intended use.