

2012 Egg Administrative Penalty and Sanction Matrix and Egg Law Enforcement Guidelines

The Texas Legislature, under Chapter 132 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate eggs in Texas. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces grading, sizing and temperature standards set by the USDA, and labeling requirements set by rule, or other requirements through routine and risk-based inspections.

Department enforcement occurs through administrative actions, including stop sales and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 132 can be as high as \$500 per violation. Referral for civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative or direct enforcement action.

The department's authority to assess administrative penalties for the enforcement of Chapter 132 and associated rules is found in [12.020](#) of the Code. Such penalties can range up to a statutorily imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each document involved in a transaction also may be considered a separate violation. Given the wide variety of possible egg industry transactions, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Egg Law Enforcement Guidelines, including the Egg Law Penalty and Sanction Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 132 of the Code and rules adopted under that chapter, as found in 4 TAC, Chapter 15. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under [12.020\(d\)](#) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the

<p>The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. <etb>The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.<et>

<p>The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 132 and associated rules are as follows:

<p>1. The standards, prohibitions, duties, or other requirements of Chapter 132 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 132 provision or applicable rule.

<p>2. The prescribed penalties in the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 132 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for any violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

<p>3. The penalties in the matrix, for all offenses, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

<p>4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

<p>5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct <etb>may<et> be presumed to have acted with intent when committing subsequent violations of the same or a similar

provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

<p>6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For many violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

<p>7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

<p>If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

<p>8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation. A violation is a prior violation only if an alleged violation resulted in an order finding that a violation in fact occurred or if an entity has agreed, in a no-contest plea regarding a prior alleged violation, that the prior alleged violation would operate in the future as a prior violation for purposes of department penalty determinations.

<p>9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

<p>Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

<p>Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

<p>10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

<p>These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication.

<p>This matrix is effective immediately upon publication in the <eti>Texas Register<et> and supersedes the Egg Administrative Penalty Matrix as published in the October 21, 2005 issue of the <eti>Texas Register<et> (30 TexReg 6945) for those violations committed on or after the date of its publication.

<p>For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

<p>Figure: 176 - 2012 Egg Administrative Penalty and Sanction Matrix

<p>Filed with the Office of the Secretary of State on January 25, 2012.

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture*n