

**TITLE 21      AGRICULTURE AND RANCHING**  
**CHAPTER 34    DAIRY AND EGG PRODUCERS**  
**PART 14       APPLYING ADMINISTRATIVE PENALTIES: DAIRY ACT**

**21.34.14.1      ISSUING AGENCY:** New Mexico State University, New Mexico Department of Agriculture  
[21.34.14.1 NMAC - N, 3/14/2008; A, 5/29/09]  
[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007]

**21.34.14.2      SCOPE:** All parties regulated under the Dairy Act.  
[21.34.14.2 NMAC - N, 3/14/2008]

**21.34.14.3      STATUTORY AUTHORITY:** Granted to the board of regents of New Mexico state university under the Dairy Act, Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978 Compilation.  
[21.34.14.3 NMAC - N, 3/14/2008]

**21.34.14.4      DURATION:** Permanent  
[21.34.14.4 NMAC - N, 3/14/2008]

**21.34.14.5      EFFECTIVE DATE:** March 14, 2008, unless a later date is cited at the end of a section.  
[21.34.14.5 NMAC - N, 3/14/2008]

**21.34.14.6      OBJECTIVE:** This part provides for assessment of administrative penalties for violations of the Dairy Act or rules adopted under the act and specifies the appeal process.  
[21.34.14.6 NMAC - N, 3/14/2008]

**21.34.14.7      DEFINITIONS:**

- A.      “Department” means the New Mexico department of agriculture.
  - B.      “Director” means the director/secretary of the New Mexico department of agriculture.
  - C.      “Division director” means the director of the division of standards and consumer services and/or the director of the dairy division within the New Mexico department of agriculture.
  - D.      “Inspector” means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Dairy Act and associated rules.
  - E.      “Violation /offense” means disregard of field enforcement actions or the law.
  - F.      “Routine inspection” means inspections conducted within the prescribed guidelines for frequency.
  - G.      “Testing and inspection procedures” means procedures adopted from various handbooks, rules and reference materials which include, but are not limited, to the following: *NIST handbook 133, checking the net contents of packaged goods.*
- [21.34.14.7 NMAC - N, 3/14/2008]

**21.34.14.8      [RESERVED]**

**21.34.14.9      ASSESSING PENALTIES:** The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action, or when Stop Sale orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A.      The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part. [21.34.14.9 NMAC - N, 3/14/2008]

**21.34.14.10 GRAVITY OF VIOLATION:**

- A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.
    - (1) Potential monetary consequences.
    - (2) Degree of inconvenience or deception to a buyer or prospective buyer.
    - (3) Degree of disregard for the law.
  - B. COLUMN A: Minimal gravity -- When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.
  - C. COLUMN B: Moderate gravity -- When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.
  - D. COLUMN C: Great gravity -- When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.
- [21.34.14.10 NMAC - N, 3/14/2008]

**21.34.14.11 FREQUENCY OF VIOLATION:** The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

- A. When a person commits the same violation three (3) or more times in a twelve (12) month period, double the penalty for the third violation shall be assessed.
  - B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.
  - C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.
- [21.34.14.11 NMAC - N, 3/14/2008]

**21.34.14.12 APPEALS:**

- A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.
  - B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.
  - C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.
- [21.34.14.12 NMAC - N, 3/14/2008]

**21.34.14.13 PAYMENT OF PENALTY:** If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.34.14.13 NMAC - N, 3/14/2008]

**21.34.14.14 PENALTY TABLE:**

TABLE I

	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
Gravity	A	B	C	A	B	C	A	B	C

\$250. \$1000. \$1500. \$2000. \$2500. \$3000. \$3500. \$4000. \$5000.  
[21.34.14.14 NMAC - N, 3/14/2008]

**HISTORY OF 21.34.14 NMAC:** [RESERVED]