

**Minnesota Department of Agriculture  
Dairy and Food Inspection Division**

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Title: <b>Licensing Policy SOP</b>	

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**1.0 PURPOSE**

The purpose of this policy is to provide uniform procedures for licensing requirements of every person who processes, packages, labels, handles, distributes, sells, stores or vends food in Minnesota.

**2.0 SCOPE**

This document outlines procedures for all Food inspection staff for determining legal ownership, place of business, classification, and type of license required. This SOP does not cover facilities licensed by the Meat, Dairy, or Feed inspection staff. This SOP also does not cover establishments under the jurisdiction of the Minnesota Department of Health or Local Public Health.

**3.0 BACKGROUND**

The Dairy and Food Inspection Division (DFID) will issue food licenses under the provisions of Minnesota Statute 28A. The Food licenses issued have varied renewal periods throughout the year as follows:

1. Wholesale Food Processor, Manufacturer, January 1 through December 31  
Food Brokers  
(includes canneries, cold storage and salvage)
2. Mobile Food Sales (Retail) April 1 through March 31  
(includes special events)
3. Retail and Wholesale Food Handlers July 1 through June 30

The legal ownership, place of business, classification and licensing determination affect the type of license issued; however additional evaluation of each facility may result in the application of multiple food safety regulations depending on the types of processes conducted and mode of sale.

Only one license will be issued by the DFID per legal entity per place of business, and locations licensed by MDH will not also be required to obtain an MDA license even if they do more than food service. The DFID also has the authority to delegate licensure of retail food establishments to local city and county health agencies as stated in statute 28A.075 and 28A.0752.

**4.0 RESPONSIBILITY**

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**Regulatory, Educational and Outreach Program Coordinator** – The Regulatory, Educational and Outreach Program Coordinator will ensure that all staff are trained in carrying out the responsibilities of this SOP.

**Supervisor** – The Supervisor will ensure that all assigned staff in their respective program area receive the appropriate training and follow the procedures described.

**Inspector** – The Inspector will follow the procedures described as applicable to their position and notify their supervisor when the procedures cannot be followed, and provide appropriate information to regulated entities.

**Food Program Manager** - The Food Program Manager will review all policies and procedures and will issue final approval of all food program policies and procedures.

**Compliance Responsibility** – Provide appropriate information to regulated entities based on the information contained in this SOP.

## **5.0 DEFINITIONS**

**Charitable Organization:** Any person (individual, organization, group, firm, copartnership, association, partnership, corporation, company, trust or joint stock association, church, religious sect, religious denomination, society, or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.) who engages in or purports to engage in solicitation for a charitable purpose (any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported.) and includes a chapter, branch, area office or similar affiliate or any person soliciting contributions within the state for a parent charitable organization, but does not include an organization whose primary purpose is supporting or opposing any candidate for elective office, or influencing the nomination for election or the election of any candidate for elective office.

**Food:** Means every ingredient used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for humans or other animals, whether simple, mixed, or compound; and articles used as components of these ingredients (34A.01 Subd 4).

**Food Broker:** A person who buys and sells food and who negotiates between a buyer and a seller of food, but who at no time has custody of the food being bought and sold. (28A.05d).

**Place of Business:** A place of business means every location where food or food items are manufactured, processed, sold, stored, or handled, including building, locations, permanent or portable structures, carnivals, circuses, fairs, or any other permanent or temporary location. Any vehicle or similar mobile unit from which food is sold shall be considered a place of business for purposes of this section if the food therefrom has been manufactured, packaged or dispensed from bulk, or processed in any manner thereon (28A.03 Subd. 4).

**Prepare:** Processing food by heating, cooking, canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling, packaging, or any other treatment or preservation process. (MR 4626.2000 Subp. 11).

**Retail Food Handler:** Persons who sell or process and sell food directly to the ultimate consumer or who custom process meat or poultry. The term includes a person who sells food directly to the ultimate consumer through the use of vending machines, and a person who sells food for consumption on site or off site if the sale is conducted on the premises that are part of a grocery or convenience store operation. (28A.05a)

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**Seasonal Permanent Food Stand:** A food and beverage service establishment which is a permanent food service stand or building, but which operates no more than 21 days annually. (157.15 Subd. 12A)

**Special Event:** means a food and beverage service establishment which is used in conjunction with celebrations and special events, and which operates no more than three times annually for no more than ten total days (157.15 Subd.14).

**Storage:** The storing or keeping of articles of food for a time period of 24 hours or longer.

**Retail Mobile Food Handler:** Persons who sell or process and sell food directly to the ultimate consumer from a mobile food unit, seasonal temporary food stand, seasonal permanent food stand, retail food vehicle, structure, or cart, food cart, or from a special event food stand.

**Seasonal Temporary:** A food and beverage service establishment that is a food stand that is disassembled and moved from location to location, but which operates no more than 21 days annually at any one location except as provided below:

A seasonal temporary food stand may operate for more than 21 days annually at any one place with the approval of the regulatory authority, as defined in Minnesota Rules, part 4626.0020, subpart 70, that has jurisdiction over the seasonal temporary food stand. (157.15 Subd. 13)

**Retail Food Vehicle, Portable Structure or Cart:** A food establishment licensed under Minnesota Statutes, sections 28A.06 and 28A.07, that is a motor vehicle, portable structure, or non-motorized cart where food and food products are:

- A. offered to the consumer;
- B. intended for off-premises consumption; and
- C. not subject to on-site preparation. (4626.0020 Subp. 73.)

**Mobile Food Unit:** A food and beverage service establishment that is a vehicle mounted unit, either:

- (1) Motorized or trailered, operating no more than 21 days annually at any one place, or operating more than 21 days annually at any one place with the approval of the regulatory authority as defined in Minnesota Rules, part 4626.0020, subpart 70; or
- (2) Operated in conjunction with a permanent business licensed under this chapter or chapter 28A at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location. (157.15 Subd. 9)

**Food Cart:** A food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator. (157.15 Subd. 6)

**Sell; Sale:** Keeping, offering, or exposing for sale, use, transporting, transferring, negotiating, soliciting, or exchanging food; having in possession with intent to sell, use, transport, negotiate, solicit, or exchange food; storing, manufacturing, producing, processing, packing, and holding of food for sale; dispensing or giving food; or supplying or applying food in the conduct of any food operation or carrying food in aid of traffic in food whether done or permitted in person or through others. (34A.01 Subd. 12.)

**Wholesale Food Handler:** Persons who sell to others for resale. A person who handles food in job lots (jobbers) is included in this classification. (28A.05b)

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**Wholesale Manufacturer/Processor:** Persons who process or manufacture raw materials and other food ingredients into food items, or who reprocess food items, or who package food for sale to others for resale, or who commercially slaughter animals or poultry. Included herein are persons who can, extract, ferment, distill, pickle, bake, freeze, dry, smoke, grind, mix, stuff, pack, bottle, recondition, or otherwise treat or preserve food for sale to others for resale, cold storage warehouse operators as defined in section 28.01, subdivision 3, salvage food processors as defined in section 31.495, subdivision 1, dairy plants as defined in section 32.01, subdivision 6, and nonresident manufacturers of frozen foods as described in section 32.59. (28A.05c)

## **6.0 PROCEDURE**

### **6.1 Determine if a SALE of Food is Occurring**

- 6.1.1** Proceed to Determine Legal Ownership if a sale of food is occurring. Food includes all items in the definition above, including alcoholic beverages and dietary supplements.
- 6.1.2** If the sale of food is not occurring, do not issue a food license. The following sections of this SOP do not apply. For example:
  - 6.1.2.1** Follow up on a complaint regarding someone selling without a license demonstrates that the person in question is actually only giving gifts to family and friends and is not advertising.

### **6.2 Determine Legal Ownership**

- 6.2.1** Determine the legal ownership of the operation by identifying who is legally responsible for the SALE of food occurring.
  - 6.2.1.1** If necessary, go to the Secretary of State Business Online Filing, Renewals, and Searches webpage to identify the specific legal entity. The same owner may in fact have multiple legal entities registered with the Secretary of State.
  - 6.2.1.2** Identify if the “Doing Business As” name for the legal entity is registered with the secretary of state, if applicable.
  - 6.2.1.3** Consider that each independent contractor is a separate legal entity and must be separately licensed. For example:
    - 6.2.1.3.1** Drivers for a meat delivery company that are not paid directly by the company are considered independent contractors and must be individually licensed.

### **6.3 Review Licensing Exclusions**

- 6.3.1** When a sale of food is occurring, determine whether the activity meets the criteria for a licensing exclusion under MS 28A.15 and MN Cont. Art. 13 Sec 7.
- 6.3.2** Do not license if an exclusion is met. Specific guidance on the most common exclusions is listed in the table in Appendix A.

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**6.4 Place of Business**

**6.4.1** Determine whether or not the facility/temporary establishment/vehicle meets the definition of place of business.

**6.4.2** Proceed to the Principle Mode of Business section to evaluate the legal entity at each established Place of Business.

**6.4.3** If a place of business has not been established, do not issue a separate license.

**6.4.4** Consider the following special circumstances when determining place of business:

**6.4.4.1** A legal entity has Multiple Facilities or Buildings.

**6.4.4.1.1** A separate place of business **HAS** been established when a legal entity operates two or more facilities separated by property owned by another party or located in different location. For example, two separate suites owned and operated by the same company in a strip mall or two separate kiosks located in the same mall.

**6.4.4.1.2** A separate place of business **HAS NOT** been established: For example, when a legal entity operates multiple buildings with the same address and no separation by roads, the buildings would not be considered separate places of business.

**6.4.4.2** A legal entity with physically separate production, storage and/or sales operations.

**6.4.4.2.1** A separate place of business **HAS** been established when a legal entity has physically separate locations for processing, storage and/or sales. For example, a commercial kitchen used to bake and package, a warehouse used to store finished product and a food stand used to sell product are considered 3 separate places of business.

A separate place of business **HAS NOT** been established when a legal entity licensed at a specific physical location also sells out of an identified delivery vehicle. Food delivery is defined as the transport of food from a licensed food establishment to the purchaser, with the food establishment releasing control of the food.

**6.4.4.2.2** A separate place of business **HAS NOT** been established when a legal entity operates as a vehicle-only based WFH

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and adds an additional vehicle to the operation. Vehicles are considered part of the equipment a firm uses to operate.

**6.4.4.3** Product is transferred but no storage has occurred for longer than 24 hours (Cross-Docking). For example:

**6.4.4.3.1** A separate place of business **HAS NOT** been established if a beverage or bakery distributor has a truck terminal where semi-trucks unload food into smaller trucks and do no storage of food (cross-docking only).

**6.4.4.3.2** A separate place of business **HAS** been established when a legal entity temporarily stores food in the terminal or transfer location for longer than 24 hours.

**6.4.4.4** Multiple legal entities are operating within the same physical location.

**6.4.4.4.1** A separate legal entity operating at the same physical location will require a separate license review.

**6.4.4.4.2** A separate place of business **HAS** been established when any room in a storage warehouse (ambient, refrigerated, frozen) is leased, controlled, and operated by a separate legal entity apart from the general storage business of such warehouse and to which the general public has no access for storage purposes.

**6.4.4.4.3** A separate place of business **HAS** been established when a firm stores product in a storage warehouse and has no other food storage, manufacturing, or retail locations. The firm takes possession of and distributes product directly from the storage warehouse.

**6.4.4.5** A legal entity operates out of a Temporary Food Establishment that moves locations.

**6.4.4.5.1** A separate place of business **HAS NOT** been established when the specific legal entity moves the temporary establishment from one location to another.

**6.4.4.5.2** A separate place of business **HAS NOT** been established when the specific legal entity moves the temporary establishment from MDA jurisdiction to a delegate agency's jurisdiction.

## **6.5 Principle Mode of Business**

**6.5.1** Determine the principle mode of business for the legal entity at the specific place of business based on the following classifications in MS 28A.03: Retail Food

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Handler, Wholesale Food Handler, Wholesale Food Processor/Manufacturer, Wholesale Food Handler, Food Broker.

**6.5.1.1** Ask questions to fully understand the proposed or actual sales for the legal entity based on food handling activities and customers.

**6.5.1.2** When the legal entity conducts more than one type of operation at a specific physical location, the principle mode of business is the one which represents the majority of sales.

**6.5.2** Consider the following special circumstances when determining principle mode of business:

**6.5.2.1** Custom meat or poultry processing operations are Retail Food Handler operations. Calculate associated sales for determining primary mode of business as the fees charged to customers.

**6.5.2.2** Food processing operations that distribute solely to one or more retail establishments, retail mobile food handlers, or vending machines owned by the same legal entity (commissaries) are Wholesale Food Processor/Manufacturer operations. Calculate associated sales for determining primary mode of business as the value of the food distributed from the commissary location.

**6.5.2.3** A cold storage warehouse that does not own any of the food in the warehouse but stores the food for others is a Wholesale Food Processor/Manufacturer. Calculate associated sales as the amount of revenue generated by the storage of food.

**6.5.3** For Retail Food Handler Classifications, determine the applicable operation type using Table 1 below by considering the structure, planned food handling activities, schedule of operations and locations for operation.

**6.5.3.1** Do not license retail establishments that have majority sales from food service. Refer to the *Memorandum of Understanding* with the Minnesota Department of Health regarding retail jurisdiction.

**6.5.3.2** Do not license, permit or inspect retail establishments operating solely in an area or areas under the jurisdiction of agencies with a signed delegation agreement with MDA. This includes licensing and inspection of food vending machines. Refer to the current Delegation Agreement and any existing amendments.

**6.5.3.2.1** License retail firms operating in delegated areas that do some wholesale of foods produced through a specialized process (Seafood HACCP, Juice HACCP, Acidified Foods, Low Acid Canned Foods, Bottled Water, or Dairy Plants).

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**Table 1 - Retail Food Handler Classifications**

Type	Operation	Structure	License
Retail Food Handler	Does not meet one of the operation types below.	Permanent	Retail Food Handler
Seasonal Permanent Food Stand	Operates no more than 21 days annually.	Permanent	Retail Food Handler
Mobile Food Unit	Fully enclosed unit operating no more than 21 days in any one location unless approved	Temporary	Retail Mobile Food Handler
Seasonal Temporary Food Stand	Disassembled stand operating no more than 21 days in any one location unless approved	Temporary	Retail Mobile Food Handler
Special Event Food Stand	Operating no more than 3 times annually in conjunction with celebrations and special events for no more than 10 days total.	Temporary	Retail Mobile Food Handler
Retail Food Vehicle/Portable Structure or Cart	A motor vehicle, portable structure, or non-motorized cart where food and food products are: offered to the consumer; intended for off-premises consumption; and not subject to on-site preparation.	Temporary	Retail Mobile Food Handler

**6.5.4** For Wholesale Food Handler Classifications, license as a Wholesale Food Handler.

**6.5.5** For Wholesale Food Processor/Manufacturer Classifications, determine if the firm processes USDA amenable food items. The license fee would account for all food sales from the company, even if the food inspection program only inspects retail sales.

**6.5.5.1** For an operation limited to USDA site inspected processing only, license as a Wholesale Food Processor/Manufacturer - USDA.

**6.5.5.2** For an operation that that is NOT limited to USDA site inspected processing, ie also has a retail store, license as a Wholesale Food Processor/Manufacturer if the USDA inspected portion is the primary mode of business.

**6.5.6** For Food Broker Classifications, license as a Food Broker.

**6.6 Evaluate Fitness to Do Business**



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**6.6.1** Based on the operations and license type identified, evaluate fitness to do business prior to licensing.

**6.6.2** Refer to *FOOD.WI.30.15 – Licensing Procedure WI* and other applicable Work Instructions for all operations types occurring.

**7.0 RELATED DOCUMENTS (includes References, Attachments)**

Memorandum of Understanding with the Minnesota Department of Health

Licensing Flow Chart

Delegation Agreement with amendment

FOOD.WI.30.15 - Licensing Procedure Work Instruction

Licensing Exclusions Document for Farmers Markets

**8.0 EQUIPMENT/MATERIALS NEEDED**

**8.1** Current license applications for Retail Food Handler, Retail Mobile Food Handler, Wholesale Food Handler, and Wholesale Manufacturer/Processor

**8.2** Receipt Book

**9.0 SAFETY**

N/A

**10.0 CIRCULATION**

This document is circulated to the following: food inspection staff, food inspection supervisors, compliance officers, compliance supervisor, and food program manager. An electronic version of this procedure is stored in the SOP library.

**11.0 APPROVAL/DOCUMENT HISTORY**

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<b>Document History</b>		
<b>Version #</b>	<b>Status (I, R)</b>	<b>Change History</b>
<b>1</b>	<b>I</b>	<b>Initial Policy Drafting.</b>
<b>Approved By:</b>		<b>Date</b>
<b>Approved By:</b>		<b>Date</b>

I = Initial document; R = Revised document

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**Appendix A: License Exclusions in Statute MN 28A**

<b>MN Statute</b>	<b>Description of License Exemption</b>
28A.15 Subd 9 Non-potentially hazardous foods	Sales are limited to non-potentially hazardous foods at a farmer’s market or community event
28A.15 Subd. 10 Pickle bill	Sales are limited to home-processed and home-canned food products having an equilibrium pH value of 4.6 or lower (e.g. pickles, fruits and vegetables, jams and jellies, etc.), for sale at a community event, farmers market, or social gathering in Minnesota
28A.151 Subd. 2 Sampling and demonstration	Food sampling or food demonstration is done for promotional purposes only, with no other food sales occurring at that stand at farmers markets or community events. No sales can occur with this exemption.
28A.15 Subd. 2 Product of the farm	Sales are limited to product of the farm or garden owned or leased by the seller. This can include retail or wholesale and may include processing and distribution. If it is a multi-ingredient product, all ingredients must be product of their farm or garden. This could apply to meat, fish, shellfish, produce or any other edible plant or fungus product. This includes non-traditional “farming” settings such as greenhouses, aquaculture, community gardens, mushrooms grown in semi-trailers, etc.
28A.15 Subd.2 Not regularly engaged in manufacturing and selling food	Sales are by farmers or others that are not regularly engaged in the business of manufacturing and selling food <i>and</i> who prepare food only on the order of and for sale directly to the ultimate consumer. This only applies to persons who are not publically advertising (business cards, online, social media, bulletin boards, etc.) and receive business through “word-of-mouth”.
28A.15 Subd. 2 Educational, charitable, or religious organizations	Sales are by educational, charitable or religious organizations that are not regularly engaged in the business of manufacturing, processing, or selling food, occurring at their established educational, charitable or religious institutions
28A.15 Subd. 7 Prepackaged ice, bottled soft drinks, prepackaged candy and nuts at retail	Sales are by persons whose principal business is not food handling and are limited to ice manufactured and prepackaged by another, bottled or canned soft drinks including water, prepackaged candy or nuts at retail.

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28A.15 Subd. 4 Warehouse operators	Sales are by warehouse operators (See definition of sale, sell), other than cold storage warehouse operators, offering storage or warehouse facilities for rent Chapter 221 permittees or warehouse operators. This includes General Merchandise Warehouses.
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