

**Minnesota Department of Agriculture
Food and Feed Safety Division**

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Title: Intent for Civil Penalties SOP	

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1. PURPOSE

The purpose of this procedure is to establish a uniform system for calculating civil penalties and notifying regulated entities of the Minnesota Department of Agriculture's (MDA) Manufactured and Retail Food Programs intent to take civil action for violations of Minnesota statutes, rules, and federal laws and regulations referenced by Minnesota statute.

2. SCOPE

This procedure applies to Compliance Unit staff for the assessment of civil penalties and civil actions under the authority in Minn. Stat. 34A.09.

3. BACKGROUND

Civil penalties are a civil action taken against a person(s) in 34A.09. A person(s) who violates the law is subject to a civil penalty of up to \$7,500 per day per violation as determined by the court. A civil penalty is calculated by using *Table 1-Penalty Assessment Table*. The fine amount is determined by specific violation, occurrence of the violation (1st, 2nd, or 3rd occurrence), and **severity** of violation (critical, non-critical). The commissioner may consider; willfulness of the violation, gravity of the violation, person's history of past violations, number of violations, and the economic benefit from the violation when determining the civil penalty. The commissioner may also consider; similarity between the violations, time elapsed since the last violation, and the person's response to the most recent violation.

When civil actions are filed with the district court, MDA identifies a specific fine to be assessed. The district court will determine the fines to be paid by the person(s). An appeal of court issued fines will result in a court hearing with the district court.

4. RESPONSIBILITY

Division Director – The Division Director will approve all civil penalty assessments.

Food Program Manager – The Food Program Manager will provide information as requested by the Compliance Officer and participate in any meetings required.

Compliance Supervisor – The Compliance Supervisor will review the civil penalty and submit to Division Director for approval.

Compliance Officer – The Compliance Officer will review violations for assessment, prepare the civil penalty assessment, draft and issue the Notice of Intent letter.

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Compliance Case Administrator –The Compliance Case Administrator will send correspondence and maintain compliance case files.

Food Inspection Supervisor - The Food Inspection Supervisor will provide information and feedback as requested by the Compliance Officer and participate in meetings.

5. DEFINITIONS

Acute Violation: An Acute Violation is a violation of significant public health or regulatory impact as identified in the Acute Violation List.

Agreement (or Stipulated Agreement): A letter of stipulated agreement is typically when a firm and MDA agrees on terms or conditions of enforcement and wish to settle the compliance issue outside of the court or Office of Administrative Hearings process. These agreements may include certain consequences if violations are not resolved or continue to occur in the future. They may also include stayed fees or penalties for adherence to the agreement.

Chronic Violation (Repeat Violation): A chronic violation is a specific violation observed and documented during at least two (2) inspections in a row, also known as a repeat violation.

Civil Penalty: A monetary penalty sought through a district court against a person due to violations of regulatory requirements. Final penalty is determined by the district court.

Critical Violation: A Critical Violation is a Major Violation as defined by Minn. Stat. § 28A.03 Subd.9 or a Critical Item as defined by MR 4626.0030 Subd.2 and includes violations of Minn. Stat. §§ 31.121, 31.123, 31.161, 31.165, 31.02, 34A.04 Subd.1, 34A.05, and 34A.11 Subd.1.

Non-Critical Violation: A Non-Critical Violation is a violation of Minnesota Statute or Rule that does not meet the definition of CRITICAL VIOLATION.

Preponderance of Evidence: Superiority in weight of an evidence that is more convincing (even if minimally) than the evidence presented by the other party.

Prohibited Act: An act as identified in Minnesota Statute Section 31.02 or the causing of such act(s) within Minnesota.

6. PROCEDURES

6.1 Review Violation(s) for Assessment – Compliance Officer

6.1.1 Select the violation(s) that support civil penalty assessment.

- a.** For inclusion in the penalty assessment, the observation must fully and completely support the orders being issued with a PREPONDERANCE OF EVIDENCE.
- b.** Any observations that are ambiguous, unclear or do not meet the level of preponderance should not be included for penalty assessment.

6.1.2 Identify if a PROHIBITED ACT has occurred using the following decision guidance:

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- a. Assess all the violations noted by orders, observations and supporting evidence for the willfulness of the violation, the person's history of violations and the number of violations.
- b. Additionally, for a CHRONIC VIOLATION, the following must also be considered: (1) similarity between the violations; (2) time elapsed since the last violation; and (3) the person's response to the most recent violation.
- c. Determine if any single order(s) with observation and supporting evidence clearly demonstrates that a PROHIBITED ACT was occurring. Include each single order that independently supports a Prohibited Act violation and charge separately in the *Penalty Assessment Worksheet* for penalty assessment. For example, if an allergen containing product is produced before a non-allergen containing product on the same production line without sufficient sanitation occurring, this would support a Prohibited Act violation as food adulteration. During the same inspection, a leaking roof has allowed water to drip onto a raw ingredient that will not receive a kill-step during processing. This failure to properly protect the ingredient would be charged as a separate Prohibited Act as food adulteration and in this example two (2) separate charges Prohibited Acts of food adulteration would be charged in the *Penalty Assessment Worksheet*.
- d. Determine if multiple orders and observations in combination demonstrate that a PROHIBITED ACT is occurring. For each instance when a combination of orders will demonstrate a PROHIBITED ACT has occurred, include that PROHIBITED ACT in the *Penalty Assessment Worksheet* for penalty assessment. For example, the lack of adequate hand washing coupled with direct bare hand contact with ready to eat foods are two separate observations that together support a Prohibited Act violation of food adulteration. This example would be charged as one Prohibited Act in the *Penalty Assessment Worksheet* supported by two observations.

6.1.3 For orders or combination of orders that do not demonstrate a PROHIBITED ACT is occurring, add each chronic issue to the *Penalty Assessment Worksheet* as a CRITICAL or NON-CRITICAL VIOLATION (as identified in USAFS) for penalty assessment.

6.2 Determine Administrative Assessment Occurrence – Compliance Officer

- 6.2.1** Review the firm's enforcement history in the electronic inspection system, Compliance Unit records, and other Division records and identify the administrative assessment occurrence.
- a. A penalty assessment has occurred if a CIVIL PENALTY has been previously issued to the person regarding the same violation of statute or rule.
 - b. If no previous assessments have occurred, consider this the first (1st) assessment.

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- c. If one (1) previous assessment has occurred, consider this the second (2nd) assessment.
- d. If two (2) previous assessments have occurred, consider this the third (3rd) assessment.
- e. If three (3) previous assessments have occurred, discuss with supervisor to determine appropriate enforcement action and next steps.

6.3 Complete Penalty Assessment Worksheet – Compliance Officer

- 6.3.1 Use *Table 1 - Penalty Assessment Table* and the information from Section 6.1 to identify the penalty for each violation in the *Penalty Assessment Worksheet*.
- 6.3.2 Add justifications for violations and penalties and complete the *Penalty Assessment Worksheet*.
- 6.3.3 Add the *Penalty Assessment Worksheet* to the SP enforcement file.

6.4 Draft Notice of Intent - Civil Action – Compliance Officer

- 6.4.1 Using the case information, the *Penalty Assessment Worksheet* and the *Notice of Intent – Civil Action Template* prepare the civil action case filing documentation.

6.5 Draft Civil Action Cover Letter – Compliance Officer

- 6.5.1 Draft a cover letter for the *Notice of Intent – Civil Action Template*.
- 6.5.2 Include the penalty calculation from the completed *Penalty Assessment Worksheet* as an enclosure in the letter.
- 6.5.3 Add drafted letter to SP enforcement file.
- 6.5.4 Notify the Compliance Unit Supervisor of completed *Notice of Intent – Civil Action, Civil Action Cover Letter, and Penalty Assessment Worksheet*.

6.6 Review and Approval of Intent for Civil Penalty letter and Penalty Assessment Worksheet – Compliance Unit Supervisor

- 6.6.1 Review the Notice of Intent letter and Penalty Assessment worksheet. Send necessary edits to the Compliance Officer.
- 6.6.2 Present the Notice of Intent letter and Penalty Assessment Worksheet to the Division Director for approval. Commissioner approval is required for penalties greater than \$5000.

6.7 Issue Notice of Intent - Civil Action – Compliance Case Administrator

- 6.7.1 After receiving necessary approvals prepare and send final *Civil Action Cover Letter* including all enclosures: *Notice of Intent – Civil Action, Penalty Assessment Worksheet, civil penalty statutes, and copies of inspection report(s)*.
- 6.7.2 Print the letter and enclosures to be mailed. Scan the letter and enclosures and attach to the SharePoint enforcement file and the assigned Enforcement ID in USAFS.
- 6.7.3 Send correspondence to firm or individual using certified mail and via first class mail.

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6.7.4 Send electronic copies to individuals identified on the cover letter.

6.8 Maintain Documentation – All Compliance Staff

6.8.1 Maintain all documentation related to the assessment of the civil penalty and Notice of Intent – Civil Action in the electronic compliance files.

7. RELATED DOCUMENTS (includes References, Attachments)

Minnesota Statutes 34A

Notice of Intent – Civil Action Template

Notice of Intent – Cover Letter Template

Penalty Assessment Worksheet

Table 1 - Penalty Assessment Table

8. EQUIPMENT/MATERIALS NEEDED

N/A

9. SAFETY

N/A

10. CIRCULATION

This policy will be circulated to the following groups: Compliance Officers, Compliance Case Manager, Compliance Unit Supervisor, Food Program Management, Division Director, and Food Standards Coordinator. The current version will be stored electronically on the FFSD document control site.

11. APPROVAL/DOCUMENT HISTORY

Document History		
Version #	Status (I, R)	Change History
1	I	Initial Policy Drafting.
2	R	Updates made to the SOP to include specific responsibilities; removal of “continuous” and “reoccurring” definitions; addition of updated chronic violation and critical violation definitions.
 <small>DocuSigned by: [Name]</small> <small>61BD2569BF5444D...</small>		12/28/2016
Approved By:		Date
Approved By:		Date

I = Initial document; R = Revised document