

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

Document FOOD.60.05	Page 1 of 4
Version #: 1.1	Effective Date: 12/28/2016
Title: <b>Criminal Prosecution</b>	

**Table of Contents**

1. PURPOSE
2. SCOPE
3. BACKGROUND
4. RESPONSIBILITY
5. DEFINITIONS
6. PROCEDURES
7. RELATED DOCUMENTS (includes References, Attachments)
8. EQUIPMENT/MATERIALS NEEDED
9. SAFETY
10. CIRCULATION
11. APPROVAL/DOCUMENT HISTORY

**1. PURPOSE**

The purpose of this procedure is to document a uniform process for pursuing criminal prosecutions to address regulatory violations when the burden of proof and nature of the violation(s) supports this action.

**2. SCOPE**

This policy applies to Manufactured Food and Retail Food Program violations when criminal prosecutions are approved. This procedure is not used for civil or administrative authority based actions.

**3. BACKGROUND**

Minn. Stat. 34A.04 Subd. 5 allows for criminal prosecution of Food Law violations. Approval for criminal prosecution as an enforcement action comes from the Commissioner of Agriculture. Criminal prosecution is a major undertaking and is only used in extreme or severe instances of regulatory violation. It requires the highest burden of proof and has serious considerations as an enforcement tool in the Progressive Enforcement Continuum. A large amount of planning and evidence collection is required to proceed with a criminal action against a legal entity or individual.

Criminal cases for the prosecution of food law violations are prepared by the Minnesota Department of Agriculture (MDA) and submitted to the prosecuting attorney in the applicable venue. A prosecuting attorney may choose to accept or decline the case submitted by the Department. When the county or city attorney refuses to prosecute, the Attorney General, on request of the commissioner, may prosecute in a criminal action.

**4. RESPONSIBILITY**

**Division Director** – The Director will provide guidance as needed through the criminal prosecution process.

**Food Program Manager** – The Food Program Manager will provide information as requested by the Compliance Officer and participate in hearings or trials as requested.

**Compliance Supervisor** – The Supervisor will provide assistance as needed through the criminal prosecution process.

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

Document FOOD.60.05	Page 2 of 4
Version #: 1.1	Effective Date: 12/28/2016
Title: <b>Criminal Prosecution</b>	

**Compliance Officer** – The Compliance Officer will prepare the Report of Investigation, maintain the Case Summary documentation of the criminal prosecution and coordinate the MDA staff actions to support the Prosecuting Attorney during the criminal court action.

**Food Inspector** - The Food Inspector will provide information as requested by the Compliance Officer and participate in the hearings and trails as needed.

**Food Inspection Supervisor** - The Food Inspection Supervisor will provide information as requested by the Compliance Officer and participate in the hearings and trials as needed.

## 5. DEFINITIONS

**Criminal Action:** An action pursued by instituting appropriate proceedings in the proper courts and prosecuting the person in the manner required by law.

**Criminal Complaint:** A filed court document that accuses or charges a suspect with committing a crime. Criminal complaints are filed by the prosecutor in cooperation MDA compliance unit and the Department Counsel.

**Prosecuting Attorney:** The public officer who is appointed in each judicial district, circuit, or county, to conduct criminal prosecutions on behalf of the state or people.

**Venue:** The geographical area within which a court has jurisdiction. It relates only to a place or territory within which either party may require a case to be tried.

**Department Counsel:** The attorney of the Minnesota Department of Agriculture advising the Commissioner concerning the case.

## 6. PROCEDURES

- 6.1 Coordinate with Compliance Unit Supervisor and Division Director to obtain MDA Commissioner's approval for pursuing criminal prosecution.
- 6.2 Meet with DEPARTMENT COUNSEL and provide details of case including specific evidence to support violations.
- 6.3 In coordination with DEPARTMENT COUNSEL, contact Attorney General's office to determine appropriate VENUE:
  - 6.3.1. For cases with interstate jurisdiction which are being referred to the US Attorney's Office, the VENUE is a Federal District.
  - 6.3.2. For cases which are being referred to State court, the VENUE is the City or County in which the violation occurred.
- 6.4 After receiving approval to pursue criminal prosecution, use *Report of Investigation (ROI) Template* (Appendix 13.0A) to document following components of the investigation:
  - a. Predication for the investigation
  - b. Objective
  - c. Summary
  - d. Background
  - e. Findings
  - f. Compliance History

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

Document FOOD.60.05	Page 3 of 4
Version #: 1.1	Effective Date: 12/28/2016
Title: <b>Criminal Prosecution</b>	

- g. Evidence/Exhibit List
  - h. Witness List
  - i. For any case being referred to the US Attorney's Office, occurrence of a meeting as required by FD&C Act Section 305 (MDA - Administrative Meeting). If a meeting has not occurred to meet the Section 305 requirements, reassess the case for enforcement action or alternate Venue.
- 6.5 Contact the appropriate PROSECUTING ATTORNEY'S office to schedule a meeting which includes the Compliance Unit Supervisor and DEPARTMENT COUNSEL for the purpose of reviewing the case information.
- 6.6 Attend the meeting with the PROSECUTING ATTORNEY. During the meeting:
- 6.6.1. Identify the specific charges that MDA considers relevant;
  - 6.6.2. Identify the evidence that has been developed and the case documents that have been generated;
  - 6.6.3. Discuss the merits of the complaint;
  - 6.6.4. Discuss any additional documentation needed by the Prosecuting Attorney; and
  - 6.6.5. Determine the process specific to the Prosecuting Attorney and venue for finalizing and submitting the criminal complaint.
- 6.7 Update the Case Summary on SharePoint immediately following the meeting to ensure MDA management is informed of the details of the meeting.
- 6.8 Confirm whether or not the PROSECUTING ATTORNEY will be accept or decline the case.
- 6.9 For declined cases, notify FFSD management immediately.
- 6.9.1. Within one (1) business day, draft a letter which requests documentation of the Prosecuting Attorney's decision to decline including the rationale.
  - 6.9.2. Within one (1) business day, schedule a meeting with DEPARTMENT COUNSEL and FFSD Management regarding contacting the Attorney General's for prosecution of the criminal case.
  - 6.9.3. Proceed with the next actions identified by DEPARTMENT COUNSEL and FFSD Management from the meeting.
- 6.10 For accepted cases, request the dates scheduled for applicable hearings from the Prosecuting Attorney. When scheduled hearing dates are known, inform appropriate inspection, supervisory, or other MDA personnel of the need to appear as a witness, attend meetings, and/or provide affidavits as applicable.
- 6.11 Prepare, coordinate the preparation of, or edit all additional case documents required by the PROSECUTING ATTORNEY for filing the criminal complaint.
- 6.11.1. Submit completed criminal case documents to Compliance Supervisor for review a minimum of two (2) business days prior to submission date set by the Prosecuting Attorney.
  - 6.11.2. Make any changes requested by the Supervisor.

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

Document FOOD.60.05	Page 4 of 4
Version #: 1.1	Effective Date: 12/28/2016
Title: <b>Criminal Prosecution</b>	

- 6.12 Submit final criminal case documents to the PROSECUTING ATTORNEY based on the submission date set by the PROSECUTING ATTORNEY.
- 6.13 Update the Case Summary in SharePoint and report the details to FFSD Management and other involved staff as criminal case progresses.
- 6.14 Attend any meetings with the PROSECUTING ATTORNEY as requested and coordinate the participation of other FFSD staff as needed.
- 6.15 Sign the official CRIMINAL COMPLAINT when prepared by the attorney.
- 6.16 Attend the hearings and trial to act as the State's witness when necessary and coordinate the participation of other FFSD staff as needed.
- 6.17 Prepare a summary of the court outcome when completed and add to the Case Summary.
- 6.18 Maintain all documentation related to the assessment of the criminal penalty in the electronic compliance files.

**7. RELATED DOCUMENTS (includes References, Attachments)**

13.0A Report of Investigation (ROI) Template

**8. EQUIPMENT/MATERIALS NEEDED**

N/A

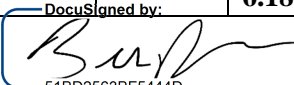
**9. SAFETY**

N/A

**10. CIRCULATION**

This policy will be circulated to the following groups: Compliance Officers, Compliance Case Administrator, Compliance Supervisor, Division Director, Food Program Managers, Food Program Supervisors, and Food Inspectors. 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.
1.1	R	Updated responsibilities to be procedure specific; technical correction to line 6.18 to state criminal penalty rather than civil penalty.
DocuSigned by:  <small>618D2662BF6444D...</small>		12/28/2016
<b>Approved By:</b>		<b>Date</b>
<b>Approved By:</b>		<b>Date</b>

I = Initial document; R = Revised document