

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

Document FOOD.POLICY.60.01	Page 1 of 5
Version #: 1.1	Effective Date: 12/29/2016
Title: Progressive Enforcement Policy	

Table of Contents

1. PURPOSE
2. SCOPE
3. POLICY
4. RESPONSIBILITY
5. RELATED DOCUMENTS (includes References, Attachments)
6. CIRCULATION
7. APPROVAL/DOCUMENT HISTORY

1. PURPOSE

This policy describes the progressive enforcement strategies used by the Retail and Manufactured Food Inspection programs in the Food and Feed Safety Division (FFSD).

2. SCOPE

This policy applies to a continuum of progressive enforcement actions taken by retail and manufactured food inspection staff, including outreach, compliance, licensing, and division management staff. Statutory authority for this policy is derived from Minnesota Statutes 28A, 31, and 34A.

3. POLICY

The agency expects anyone selling food in Minnesota to be knowledgeable of, and voluntarily comply with, applicable State and Federal regulations. However, enforcement actions by the agency are required in many instances. A successful and effective progressive enforcement continuum begins with providing education/information and progresses through inspections, administrative, civil, and criminal actions. When applied consistently, the progressive enforcement continuum promotes fair and objective regulation of the sale of food in Minnesota. Progressive enforcement inherently acknowledges that persons regulated under State and Federal law have a constitutional right to equal protection and due process.

Outreach and Education

Progressive enforcement begins with outreach and education to persons selling food to inform them of regulatory requirements. Outreach activities may be passive such as posting timely and accurate material on the MDA website or active such as presenting to industry associations or publishing summary findings related to commonly observed violations. Outreach also includes the public rule making process as State rules are adopted or updated. Industry education is especially critical following the passage of new laws, rules or regulations where the affected parties may be unaware of changes in regulatory requirements.

Field Inspections

Field inspections are performed to assess compliance with all applicable laws, statutes, rules and regulations. When non-conformance is observed, inspection orders are issued with compliance dates in an inspection report, and may include an order to cease and desist specific actions or all activities. These orders are considered administrative actions under Minnesota Statute § 34A.06.

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

Document FOOD.POLICY.60.01	Page 2 of 5
Version #: 1.1	Effective Date: 12/29/2016
Title: Progressive Enforcement Policy	

When non-conformances that directly threaten public health are observed during an inspection, immediate and appropriate corrective action is requested of the firm.

Based on the severity and risk of the inspection orders, the agency may conduct a reinspection or a follow-up inspection to monitor compliance with inspection orders. Reinspections and follow-up inspections are considered part of the progressive enforcement continuum and considered a valuable field compliance tool. A reinspection fee may be assessed to the firm under Minnesota Statute § 28A.085. A reinspection fee is not considered a penalty but exists as a cost-recovery tool for the Department. Additional follow-up activities may include long-term control options such as risk control plans.

The agency may also determine the need for a directed investigation based on known or suspected violations occurring at the firm. A directed investigation is considered an inspection conducted for any other reason other than routine and can include reinspection, follow-up inspection, foodborne illness investigation, complaint investigation, etc. The need for the directed investigation may be identified by the Food Inspection Programs or other supporting units such as the Rapid Response Team (RRT) and the Compliance Unit. The Program or Unit that identifies the need for the directed investigation references the applicable processes and procedures as is appropriate to the situation.

Additional Field Inspection Compliance and Enforcement Authority

Additional enforcement authorities for field inspection staff are described under Minnesota Statute § 34A.11 including embargo, seizure and condemnation. A firm may also voluntarily destroy product, in lieu of an embargo, seizure and/or condemnation order issued by MDA, if it's determined to be adulterated based on inspection violations and observations.

The inspection program may also issue Letters of Information and Warning Letters under the authority provided in Minn. Stat § 34A.06 in order to communicate a regulatory requirement or inform a firm of a previously documented violation that is of significant public health significance that remains uncorrected.

Transfer of Enforcement Actions

When the inspection program tools fail to gain compliance, a case is forwarded to the Compliance Unit in the division for review. This review can occur based on predefined triggers including acute, egregious, or chronic critical and non-critical violations as well as direct referral from the inspection programs.

Upon receipt, the Compliance Unit will review the supporting evidence and use a quantitative scoring methodology to recommend additional enforcement action. This recommendation may also include no action based on the evidence provided.

Compliance Unit Actions

Based on the Compliance Unit review, administrative, civil or criminal actions or penalties may be recommended with these decisions approved by the Compliance Unit Supervisor and the Division Director.

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

Document FOOD.POLICY.60.01	Page 3 of 5
Version #: 1.1	Effective Date: 12/29/2016
Title: Progressive Enforcement Policy	

Compliance case review procedures are designed for selection of the most appropriate enforcement action. However, they also allow flexibility and do not dictate what specific action must occur; rather they provide choices for each level of enforcement based on the evidence and facts of each case.

The majority of initial enforcement actions address repeat or recurring violations early in the process and will typically result in a Letter of Information, Notice of Repeat Violation Letter, Warning Letter, or a Notice of Intent for Civil Penalty. The latter communication describes the evidence based on alleged violations and allows the person to pay the assessed penalties without going to civil court.

If the prior listed action(s) fails to gain compliance, or if higher public health severity warrants, additional administrative penalties may be used including the limitation or revocation of the firm's Food Handler License. All administrative actions can be appealed within 20 days of the action which may trigger a contested case hearing as required under Minn. Stat. § 34A.07 and Minn. Stat. 14.

The final phase of the progressive enforcement continuum includes assessing Criminal Penalties against a person that has repeatedly failed to comply with orders documenting critical violations that may lead to the adulteration of food. Criminal penalties must be approved by the Division Director, Commissioner's Office and the Attorney's General office.

Information developed from data collected during field inspections and compliance cases can be used to develop outreach and educational materials for similar segments of the food industry and should be done on at least an annual basis to ensure that the public and industry benefits from the Department's progressive enforcement policy.

4. RESPONSIBILITY

Division Director – The Division Director review all policies and procedures and issue final approval of all food program policies and procedures.

Food Program Manager – The Food Program Manager will provide information as requested by the Compliance Officer and ensure full coordination of work with inspection staff.

Division Outreach and Education Staff – Division Outreach and Education Staff will identify outreach and education needs from various industry sectors, develop and distribute educational materials, work with inspection and compliance programs to identify frequent and significant violations for targeted outreach.

Retail and Manufactured Food Inspection Program Staff– Retail and Manufactured Food Inspection Program Staff will document violations with adequate observations, conduct follow-up and reinspections, communicate repeat violations in writing to firms, use field enforcement tools such as cease-and-desist, embargo, seizure and condemnation appropriately as described by policy and procedure.

Compliance Unit Staff – Compliance Unit Staff will review and recommend progressive administrative, civil and criminal enforcement penalties, issue administrative orders based on

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

Document FOOD.POLICY.60.01	Page 4 of 5
Version #: 1.1	Effective Date: 12/29/2016
Title: Progressive Enforcement Policy	

investigatory work, and develop enforcement case files and documentation for administrative, civil and criminal penalties recommended and approved by division management.

Compliance Unit Supervisor – The Compliance Unit Supervisor will ensure all assigned compliance staff follow the procedures described in the SOP's.

Business and Quality Management Unit Staff: Business and Quality Management Unit staff will manage the procedure and policy documents associated with agency enforcement.

Division Management –Division Management will ensure that this policy is followed regarding progressive enforcement and provide adequate funding and staffing, use the progressive enforcement continuum on issues related to outreach, inspections, compliance recommendations and case development, and advocate for necessary enforcement action with the commissioner's office and the Attorney's General office.

Training Coordinator – The Training Coordinator will ensure all responsible entities receive training in responsibilities and procedures.

5. RELATED DOCUMENTS (includes References, Attachments)

Progressive Enforcement Continuum

FOOD.30.01 – Inspection Protocol – Manufacturing

FOOD.30.02 – Reinspection and Follow-up Inspection

FOOD.30.05 – Inspection Report SOP

FOOD.30.08 – Manufacturer and Distributor Risk Category

FOOD.30.16 – Retail Risk Category

FOOD.30.20 – Inspection Protocol – Retail Food

FOOD.30.27 - Field Compliance Actions

FOOD.60.01 - Assessing Administrative Penalties

FOOD.60.02 - Enforcement Case Review

FOOD.60.03 - Civil Penalty Procedures

FOOD.60.05 - Criminal Prosecution Procedures

FOOD.60.06 - Notice of Warning Letters

FOOD.60.07 - Informational Letters

FOOD.60.08 - Administrative Meetings

FOOD.60.10 - Enforcement Trigger and Assessment

RESP.50.01 – Investigation Procedures – Food or Environmental Contamination

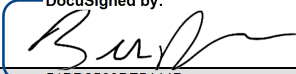
**Minnesota Department of Agriculture
Food and Feed Safety Division**

Document FOOD.POLICY.60.01	Page 5 of 5
Version #: 1.1	Effective Date: 12/29/2016
Title: Progressive Enforcement Policy	

6. CIRCULATION

This policy will be circulated to all Retail and Manufactured Food Program Staff, Compliance Unit Staff, Response, Training, and Outreach Unit Staff, Business and Quality Management Unit Staff (Food Only), Assistant Division Director, and Division Director. The current version will be stored electronically on the FFSD document control site.

7. APPROVAL/DOCUMENT HISTORY

Document History		
Version #	Status (I, R)	Change History
1	I	Initial Policy Drafting.
1.1	R	Addition of correction on-site, long-term control options, and directed investigation language to the Field Inspections section. Updated policy name to FOOD.POLICY.60.01.
DocuSigned by: 		12/29/2016
Approved By:		Date
Approved By:		Date

I = Initial document; R = Revised document