

## CHAPTER 28A

### LICENSING FOOD HANDLERS

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#### 28A.01 CITATION, MINNESOTA CONSOLIDATED FOOD LICENSING LAW.

Sections 28A.01 to 28A.16 shall be known as the "Minnesota Consolidated Food Licensing Law."

**History:** 1971 c 339 s 1

#### 28A.02 DECLARATION OF POLICY.

It is hereby declared to be the policy of the legislature, recognizing that food in its various forms is essential to the health and well-being of the people of this state and that its production, processing, packaging, labeling, handling, distribution and sale may create health hazards, misinform consumers, perpetuate frauds or otherwise jeopardize the public health and welfare and in order to effect an efficient and simple form of licensing, to require that every person who handles food in a manner described herein, shall obtain a license therefor from the commissioner and that all producers, processors, packagers, labelers, handlers, distributors and vendors of food, whether or not subject to licensing, shall be required to comply with all applicable rules adopted by the commissioner.

**History:** 1971 c 339 s 2; 1985 c 248 s 70

#### 28A.03 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 28A.01 to 28A.16.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of agriculture.

Subd. 3. **Person.** "Person" has the meaning given in section 34A.01, subdivision 10.

Subd. 4. **Place of business.** "Place of business" means every location where food or food items are manufactured, processed, sold, stored, or handled, including buildings, 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.

Subd. 5. **Food.** "Food," "nonperishable food," "frozen food," "perishable food," and "readily perishable food" have the meanings given in section 34A.01.

Subd. 6. **Sell; sale.** "Sell" and "sale" have the meanings given in section 34A.01, subdivision 12.

Subd. 7. **Principal mode of business.** "Principal mode of business" means that type of business described under paragraph (a), (b), (c) or (d) in section 28A.05 within which category the greatest amount of the applicant's food business lies.

Subd. 8. **Custom processor.** "Custom processor" means a person who conducts activities as defined in section 31A.02, subdivision 5.

Subd. 9. **Major violations.** "Major violation" includes conditions that cause food products to become adulterated, as defined in section 31.121, or fraudulently misbranded, as defined in section 31.123.

Subd. 10. **Vending machine.** "Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Subd. 11. **Regularly engaged.** "Regularly engaged" means any person who operates a food business over a period of time at uniform, consistent intervals.

**History:** 1971 c 339 s 3; 1975 c 412 s 9; 1977 c 160 s 1; 1978 c 502 s 1; 1983 c 300 s 3; 1986 c 444; 1995 c 220 s 42; 1996 c 407 s 17; 2008 c 297 art 1 s 10; 2012 c 244 art 2 s 4-6; 2017 c 88 art 2 s 51; 2020 c 89 art 4 s 20

## **28A.04 LICENSE REQUIRED; CUSTOM PROCESSING PERMIT APPLICATIONS; RENEWALS.**

Subdivision 1. **Application; date of issuance.** (a) No person shall engage in the business of manufacturing, processing, selling, handling, or storing food without having first obtained from the commissioner a license for doing such business. Applications for such license shall be made to the commissioner in such manner and time as required and upon such forms as provided by the commissioner and shall contain the name and address of the applicant, address or description of each place of business, and the nature of the business to be conducted at each place, and such other pertinent information as the commissioner may require.

(b) A retail or wholesale food handler license shall be issued for the period July 1 to June 30 following and shall be renewed thereafter by the licensee on or before July 1 each year, except that:

(1) licenses for all mobile food concession units and retail mobile units must be issued for the period April 1 to March 31, and must be renewed thereafter by the licensee on or before April 1 each year; and

(2) a license issued for a temporary food concession stand must have a license issuance and renewal date consistent with appropriate statutory provisions.

(c) A custom exempt food handler license shall be issued for the period July 1 to June 30 following and shall be renewed thereafter by the licensee on or before July 1 each year. The custom exempt food handler license is for businesses that only conduct custom exempt operations and mark all products as "Not For

Sale." Food handlers that conduct retail exempt operations or other operations other than custom exempt processing or slaughter are not eligible for this license.

(d) A license for a food broker or for a food processor or manufacturer shall be issued for the period January 1 to December 31 following and shall be renewed thereafter by the licensee on or before January 1 of each year, except that a license for a wholesale food processor or manufacturer operating only at the state fair shall be issued for the period July 1 to June 30 following and shall be renewed thereafter by the licensee on or before July 1 of each year. A penalty for a late renewal shall be assessed in accordance with section 28A.08.

(e) A person applying for a new license up to 14 calendar days before the effective date of the new license period under paragraph (b) must be issued a license for the 14 days and the next license year as a single license and pay a single license fee as if the 14 days were part of the upcoming license period.

**Subd. 2. Custom processing permit.** In addition to the license requirements set forth in subdivision 1, every custom processor shall obtain a custom processing permit. Application for a permit shall be made on forms provided by the commissioner. The commissioner shall cause the custom processor's place of business to be inspected and if the commissioner finds that the applicant's place of business complies with state standards relating to meat processing plants, a custom processing permit shall be issued to the applicant. No additional fee shall be charged for a custom processing permit.

**History:** 1971 c 339 s 4; 1975 c 412 s 10; 1977 c 160 s 2; 1996 c 407 s 18; 1999 c 59 s 1; 1Sp2001 c 2 s 43; 2007 c 45 art 1 s 36; 2019 c 38 s 9

## **28A.05 CLASSIFICATION.**

All persons required to have a license under section 28A.04 shall be classified into one of the following classes of food handlers, according to their principal mode of business.

(a) Retail food handlers are 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.

(b) Wholesale food handlers are persons who sell to others for resale. A person who handles food in job lots (jobbers) is included in this classification.

(c) Wholesale food processors or manufacturers are 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, and dairy plants as defined in section 32D.01, subdivision 6.

(d) Custom exempt food handlers are persons who only conduct custom exempt processing as defined in section 31A.02, subdivision 5. A retail or wholesale transaction may not take place in a facility operated by a person with a custom exempt food handler license.

(e) A food broker is 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.

**History:** 1971 c 339 s 5; 1974 c 2 s 1; 1975 c 412 s 11; 1986 c 375 s 1; 1986 c 444; 1991 c 52 s 1; 2008 c 297 art 1 s 11; 2014 c 181 s 5; 2017 c 88 art 3 s 4; 2019 c 38 s 10

#### **28A.06 EXTENT OF LICENSE.**

No person, except as described in sections 27.03 and 27.04, shall be required to hold more than one license in order to engage in any aspect of food handling described in section 28A.05 provided, that each issued license shall be valid for no more than one place of business, except that a license for a mobile unit or a retail food vehicle, portable structure, or cart is valid statewide and is required to be issued only once each year unless the licensee fails to display the license as required by section 28A.07 or it is a seasonal permanent food stand, seasonal temporary food stand, food cart, or special event food stand as defined in section 157.15, in which case the duration of the license is restricted by the limitations found in the definitions in section 157.15.

**History:** 1971 c 339 s 6; 2007 c 45 art 1 s 37

#### **28A.065 LICENSE REQUIREMENTS FOR A CARNIVAL, CIRCUS, OR FAIR.**

No person whose place of business is a carnival, circus, or fair and who holds a license pursuant to this chapter or chapter 157 shall be required to obtain any additional license or permit pursuant to the provisions of an ordinance or rule of a political subdivision in order to engage in any aspect of food handling or to operate a restaurant.

This section does not exempt the person from compliance with the provisions of chapters 37 and 38, any sanitation, public health or zoning ordinance, privilege license requirements or other rule of the fair or political subdivision having jurisdiction over the area in which the carnival, circus, or fair is conducted.

**History:** 1982 c 625 s 1; 1985 c 248 s 70

#### **28A.07 ISSUANCE OF LICENSE.**

Prior to the issuance or renewal of any license herein, the commissioner may cause appropriate inspections to be made to determine under applicable statutory and promulgated rule requirements, the applicant's fitness to engage in the mode(s) of business described in that person's license application. A valid and properly displayed license shall be sufficient to allow the licensee to engage in the manner of food handling so described in the licensee's application, provided that the commissioner may withhold authorization to engage in any aspects of business for which the applicant is not deemed fit under this section. A licensee may, at any time, apply to change such application which shall then be considered by the commissioner in the same manner as a new or renewal application hereunder.

**History:** 1971 c 339 s 7

#### **28A.075 DELEGATION TO LOCAL COMMUNITY HEALTH BOARD.**

(a) At the request of a local community health board that licensed and inspected grocery and convenience stores on January 1, 1999, the commissioner must enter into agreements before January 1, 2001, with local community health boards to delegate to the appropriate local community health board the licensing and inspection duties of the commissioner pertaining to retail food handlers that are grocery or convenience stores. At the request of a local community health board that licensed and inspected part of any grocery or convenience store on January 1, 1999, the commissioner must enter into agreements before July 1, 2001,

with local community health boards to delegate to the appropriate local community health board the licensing and inspection duties of the commissioner pertaining to retail food handlers that are grocery or convenience stores. At any time thereafter, the commissioner may enter into an agreement with a local community health board that licensed and inspected all or part of any grocery or convenience store on January 1, 1999, to delegate to the appropriate local community health board the licensing and inspection duties of the commissioner pertaining to retail food handlers such as grocery or convenience stores. Retail food handlers inspected under the state meat inspection program of chapter 31A are exempt from delegation.

(b) A local community health board must adopt an ordinance consistent with the Minnesota Food Code, Minnesota Rules, chapter 4626, for all of its jurisdiction to regulate retail food handlers and the ordinance (Food Code) must not be in conflict with standards set in law or rule.

(c) A fee to recover the estimated costs of enforcement of this chapter must be established by ordinance and must be fair, reasonable, and proportionate to the actual cost of the licensing and inspection services. The fee must only be maintained and used for the estimated costs of enforcing this chapter.

**History:** 1991 c 52 s 2; 1999 c 231 s 50; 2000 c 477 s 26; 1Sp2001 c 2 s 44; 2019 c 38 s 11; 2020 c 83 art 1 s 4

#### **28A.0752 DELEGATION OF POWERS AND DUTIES.**

Subdivision 1. **Agreements to perform duties of commissioner.** (a) Agreements to delegate licensing and inspection duties pertaining to retail food handlers shall include licensing, inspection, reporting, and enforcement duties authorized under sections 17.04, 29.21, 29.23, 29.235, 29.236, 29.237, 29.24, 29.25, 29.26, 29.27, and 30.49, appropriate sections of the Minnesota Food Law, chapters 31 and 34A, and applicable Minnesota food rules.

(b) Agreements are subject to subdivision 3.

(c) This subdivision does not affect agreements entered into under section 28A.075 or current cooperative agreements which base inspections and licensing responsibility on the firm's most predominant mode of business.

Subd. 2. **Approval of agreements.** An agreement to delegate licensing and inspection of retail food handlers to a community health board must be approved by the commissioner and is subject to subdivision 3.

Subd. 3. **Terms of agreements.** (a) Agreements authorized under this section must be in writing and signed by the delegating authority and the designated agent.

(b) The agreement must list criteria the delegating authority will use to determine if the designated agent's performance meets appropriate standards and is sufficient to replace performance by the delegating authority.

(c) The agreement may specify minimum staff requirements and qualifications, set procedures for the assessment of costs, and provide for termination procedures if the delegating authority determines that the designated agent has failed to comply with the agreement.

(d) The delegating authority and the designated agent are required to perform inspections utilizing the Minnesota Food Code's minimum and maximum standards.

(e) A designated agent must not perform licensing, inspection, or enforcement duties under the agreement in territory outside its jurisdiction unless approved by the commissioner and governing body for that territory through a separate agreement.

(f) The scope of agreements established under this section is limited to duties and responsibilities agreed upon by the parties. The agreement may provide for automatic renewal and for notice of intent to terminate by either party.

(g) During the life of the agreement, the delegating authority shall not perform duties that the designated agent is required to perform under the agreement, except inspections necessary to determine compliance with the agreement and this section or as agreed to by the parties.

(h) The delegating authority shall consult with, advise, and assist a designated agent in the performance of its duties under the agreement.

(i) This section does not alter the responsibility of the delegating authority for the performance of duties specified by law and rule.

**History:** 1999 c 231 s 51; 1Sp2001 c 2 s 45; 2013 c 125 art 1 s 13; 2014 c 181 s 6; 2015 c 21 art 1 s 109; 2019 c 38 s 12,13

### **28A.0753 ENFORCEMENT OF LAWS BY COMMISSIONER.**

Subdivision 1. **Actions commenced; forfeiture of license; annulment of corporate existence.** The commissioner is authorized, if upon investigation the commissioner is satisfied that the laws of the state, relative to any laws placed within the commissioner's jurisdiction, have been violated, to cause to be instituted, in the commissioner's own name as commissioner or in the name of the state, actions in the proper court, to secure punishment of the guilty party; and, if the party complained against is a corporation, to secure the cancellation of its authority and the annulment of its corporate existence, if a domestic corporation; or, if a foreign corporation, the forfeiture of its license to do business in this state.

Subd. 2. **Reports to prosecuting officers.** If, after an investigation, it appears to the commissioner that the laws of this state have been violated in any respect, the commissioner shall present all available information bearing upon such apparent violation to the proper law enforcing or prosecuting officer of the state or of the United States.

Subd. 3. **Food manufacturer, processor, or distributor; licensing, preemption by state.** When a food manufacturer, processor, or distributor is licensed by the commissioner of agriculture, the food manufacturer, processor or distributor is exempt from the licensing requirements of any municipal corporation or subdivision of state government, except for licensing requirements which may be imposed by the municipal corporation or subdivision of state government in which the manufacturer, processor, or distributor locates a plant. All delivery equipment used by such a food manufacturer, processor or distributor is included within the meaning of this section, whether owned or operated, independently contracted, or contracted with a common carrier approved by the commissioner of agriculture. This delivery equipment is exempt from licensing by any municipal corporation or subdivision of state government except for those requirements which may be imposed by the municipal corporation or subdivision of state government in which the equipment is principally located. Delivery equipment approved by the commissioner of agriculture shall carry, at all times, a certificate of approval for the purposes for which the equipment is utilized. Nothing in

this section is intended to permit the enactment of an ordinance regulating an activity where the state has preempted the field.

**History:** (6025, 6244) 1919 c 444 s 3; Ex1919 c 47 s 4; 1921 c 78 s 3; 1923 c 261 s 3; 1967 c 756 s 1; 1986 c 444; 2014 c 181 s 13

### 28A.08 LICENSE FEES; PENALTIES.

Subdivision 1. **General.** License fees, penalties for late renewal of licenses, and penalties for not obtaining a license before conducting business in food handling that are set in this section apply to the sections named except as provided under section 28A.09. Except as specified herein, bonds and assessments based on number of units operated or volume handled or processed which are provided for in said laws shall not be affected, nor shall any penalties for late payment of said assessments, nor shall inspection fees, be affected by this chapter. The penalties may be waived by the commissioner. Fees for all new licenses must be based on the anticipated future gross annual food sales. If a firm is found to be operating for multiple years without paying license fees, the state may collect the appropriate fees and penalties for each year of operation.

Subd. 2. [Repealed, 1995 c 220 s 141]

Subd. 3. **Fees effective July 1, 2003.**

Type of food handler	License Fee Effective July 1, 2003	Penalties	
		Late Renewal	No License
1. Retail food handler or custom exempt food handler			
(a) Having gross sales of only prepackaged nonperishable food of less than \$15,000 for the immediately previous license or fiscal year and filing a statement with the commissioner	\$ 50	\$ 17	\$ 33
(b) Having under \$15,000 gross sales or service including food preparation or having \$15,000 to \$50,000 gross sales or service for the immediately previous license or fiscal year	\$ 77	\$ 25	\$ 51
(c) Having \$50,001 to \$250,000 gross sales or service for the immediately previous license or fiscal year	\$155	\$ 51	\$102
(d) Having \$250,001 to \$1,000,000 gross sales or service for the immediately previous license or fiscal year	\$276	\$ 91	\$182
(e) Having \$1,000,001 to \$5,000,000 gross sales or service for the immediately previous license or fiscal year	\$799	\$264	\$527

(f) Having \$5,000,001 to \$10,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,162	\$383	\$767
(g) Having \$10,000,001 to \$15,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,376	\$454	\$908
(h) Having \$15,000,001 to \$20,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,607	\$530	\$1,061
(i) Having \$20,000,001 to \$25,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,847	\$610	\$1,219
(j) Having over \$25,000,001 gross sales or service for the immediately previous license or fiscal year	\$2,001	\$660	\$1,321
2. Wholesale food handler			
(a) Having gross sales or service of less than \$25,000 for the immediately previous license or fiscal year	\$ 57	\$ 19	\$ 38
(b) Having \$25,001 to \$250,000 gross sales or service for the immediately previous license or fiscal year	\$284	\$ 94	\$187
(c) Having \$250,001 to \$1,000,000 gross sales or service from a mobile unit without a separate food facility for the immediately previous license or fiscal year	\$444	\$147	\$293
(d) Having \$250,001 to \$1,000,000 gross sales or service not covered under paragraph (c) for the immediately previous license or fiscal year	\$590	\$195	\$389
(e) Having \$1,000,001 to \$5,000,000 gross sales or service for the immediately previous license or fiscal year	\$769	\$254	\$508
(f) Having \$5,000,001 to \$10,000,000 gross sales or service for the immediately previous license or fiscal year	\$920	\$304	\$607
(g) Having \$10,000,001 to \$15,000,000 gross sales or service for the immediately previous license or fiscal year	\$990	\$327	\$653



(h) Having \$15,000,001 to \$20,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,156	\$381	\$763
(i) Having \$20,000,001 to \$25,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,329	\$439	\$877
(j) Having over \$25,000,001 or more gross sales or service for the immediately previous license or fiscal year	\$1,502	\$496	\$991
3. Food broker	\$150	\$ 50	\$ 99
4. Wholesale food processor or manufacturer			
(a) Having gross sales or service of less than \$125,000 for the immediately previous license or fiscal year	\$169	\$ 56	\$112
(b) Having \$125,001 to \$250,000 gross sales or service for the immediately previous license or fiscal year	\$392	\$129	\$259
(c) Having \$250,001 to \$1,000,000 gross sales or service for the immediately previous license or fiscal year	\$590	\$195	\$389
(d) Having \$1,000,001 to \$5,000,000 gross sales or service for the immediately previous license or fiscal year	\$769	\$254	\$508
(e) Having \$5,000,001 to \$10,000,000 gross sales or service for the immediately previous license or fiscal year	\$920	\$304	\$607
(f) Having \$10,000,001 to \$15,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,377	\$454	\$909
(g) Having \$15,000,001 to \$20,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,608	\$531	\$1,061
(h) Having \$20,000,001 to \$25,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,849	\$610	\$1,220
(i) Having \$25,000,001 to \$50,000,000 gross sales or service for the immediately previous license or fiscal year	\$2,090	\$690	\$1,379

(j) Having \$50,000,001 to \$100,000,000 gross sales or service for the immediately previous license or fiscal year	\$2,330	\$769	\$1,538
(k) Having \$100,000,000 or more gross sales or service for the immediately previous license or fiscal year	\$2,571	\$848	\$1,697
5. Wholesale food processor of meat or poultry products under supervision of the U.S. Department of Agriculture			
(a) Having gross sales or service of less than \$125,000 for the immediately previous license or fiscal year	\$112	\$ 37	\$ 74
(b) Having \$125,001 to \$250,000 gross sales or service for the immediately previous license or fiscal year	\$214	\$ 71	\$141
(c) Having \$250,001 to \$1,000,000 gross sales or service for the immediately previous license or fiscal year	\$333	\$110	\$220
(d) Having \$1,000,001 to \$5,000,000 gross sales or service for the immediately previous license or fiscal year	\$425	\$140	\$281
(e) Having \$5,000,001 to \$10,000,000 gross sales or service for the immediately previous license or fiscal year	\$521	\$172	\$344
(f) Having \$10,000,001 to \$15,000,000 gross sales or service for the immediately previous license or fiscal year	\$765	\$252	\$505
(g) Having \$15,000,001 to \$20,000,000 gross sales or service for the immediately previous license or fiscal year	\$893	\$295	\$589
(h) Having \$20,000,001 to \$25,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,027	\$339	\$678
(i) Having \$25,000,001 to \$50,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,161	\$383	\$766
(j) Having \$50,000,001 to \$100,000,000 gross sales or service for the immediately previous license or fiscal year	\$1,295	\$427	\$855

(k) Having \$100,000,001 or more gross sales or service for the immediately previous license or fiscal year	\$1,428	\$471	\$942
6. Wholesale food processor or manufacturer operating only at the State Fair	\$125	\$ 40	\$ 50
7. Wholesale food manufacturer having the permission of the commissioner to use the name Minnesota Farmstead cheese	\$ 30	\$ 10	\$ 15
8. Wholesale food manufacturer processing less than 700,000 pounds per year of raw milk	\$ 30	\$ 10	\$ 15
9. A milk marketing organization without facilities for processing or manufacturing that purchases milk from milk producers for delivery to a licensed wholesale food processor or manufacturer	\$ 50	\$ 15	\$ 25

**History:** 1971 c 339 s 8; 1975 c 412 s 12; 1977 c 114 s 2; 1981 c 356 s 266; 1983 c 293 s 53; 1987 c 396 art 11 s 4; 1991 c 254 art 3 s 15; 1992 c 513 art 2 s 17; 1995 c 220 s 43; 1996 c 407 s 19; 1997 c 216 s 53; 1999 c 59 s 2; 1999 c 231 s 52; 2003 c 128 art 3 s 28; 2008 c 297 art 1 s 12; 2014 c 181 s 7; 2019 c 38 s 14; 2019 c 50 art 1 s 13

## 28A.081 CERTIFICATE FEES.

Subdivision 1. **Fee.** A fee of \$125 for each certificate shall be charged to any person who requests a certificate issued by the Minnesota Department of Agriculture to facilitate the movement of Minnesota processed and manufactured foods destined for export from the state of Minnesota. Certificates include, but are not limited to, a certificate of free sale, certificate of export, certificate of sanitation, sanitary certificate, certificate of origin and/or free sale, certificate of health and/or free sale, sanitation, and purity, certificate of free trade, certificate of free sale, sanitation, purity, and origin, certificate of health, sanitation, purity, and free sale, and letter of plant certification.

The commissioner shall bill the requesting person within seven days after issuing a certificate to the person. The requesting person must submit payment for a certificate within ten days of the billing date. If a certificate fee payment is not received within 15 days of the billing date, the commissioner may not issue any future certificates to the requesting person until previous fees due are paid in full. Fees paid under this section must be deposited in the food certificate account established under subdivision 2 or another account in the agricultural fund if the expenses for the certificate will be paid from that other account.

Subd. 2. **Food certificate account; appropriation.** A food certificate account is established in the agricultural fund. Money in the account, including interest, is appropriated to the commissioner for expenses relating to certifying Minnesota processed and manufactured foods under chapters 28 to 34A or rules adopted under one of those chapters.

**History:** 1999 c 231 s 53; 2017 c 88 art 2 s 52

**28A.082 FOOD HANDLER PLAN REVIEW FEES.**

Subdivision 1. **Fees; application.** The fees for review of food handler facility floor plans under the Minnesota Food Code are based upon the square footage of the structure being newly constructed, remodeled, or converted. The fees for the review shall be:

square footage	review fee
0 - 4,999.....	\$ 200.00
5,000 - 24,999.....	\$ 275.00
25,000 plus.....	\$ 425.00

The applicant must submit the required fee, review application, plans, equipment specifications, materials lists, and other required information on forms supplied by the department at least 30 days prior to commencement of construction, remodeling, or conversion. The commissioner may waive this fee after determining that the facility's principal mode of business is not the sale of food and that the facility sells only prepackaged foods.

Subd. 2. **Food handler plan review account; appropriation.** A food handler plan review account is created in the agricultural fund. Fees paid under subdivision 1 must be deposited in the food handler plan review account. Money in the account, including interest accrued, is appropriated to the commissioner for the costs of the food handler plan review program.

Subd. 3. **Disaster areas.** If the governor declares a disaster in an area of the state, the commissioner of agriculture may waive the plan review fee and direct agency personnel to expedite the plan review process.

**History:** *1Sp2001 c 2 s 46; 2007 c 45 art 1 s 38; 2008 c 297 art 1 s 13; 2010 c 333 art 1 s 11*

**28A.085 REINSPECTION FEES.**

Subdivision 1. **Violations; prohibited acts.** The commissioner may charge a reinspection fee for each reinspection of a food handler that:

(1) is found with a major violation of requirements in chapter 28, 29, 30, 31, 31A, 32D, 33, or 34, or rules adopted under one of those chapters; or

(2) fails to correct equipment and facility deficiencies as required in rules adopted under chapter 28, 29, 30, 31, 31A, 32D, or 34.

The first reinspection of a firm with gross food sales under \$1,000,000 must be assessed at \$150. The fee for a firm with gross food sales over \$1,000,000 is \$200. The fee for a subsequent reinspection of a firm for the same violation is 50 percent of their current license fee or \$300, whichever is greater. The establishment must be issued written notice of violations with a reasonable date for compliance listed on the notice. An initial inspection relating to a complaint is not a reinspection.

Subd. 2. **Market withdrawal; food safety emergency.** A food handler that requires a reinspection due to adulteration or misbranded foods that result in a food being recalled from commerce may be assessed for reasonable and direct reinspection costs incurred by the commissioner, including personnel, travel, laboratory analysis, and attorney general costs. Reinspection related to floods, earthquakes, storms, accidental fires, and power outages are excluded. The commissioner, upon request of the food handler, shall provide, within a reasonable time, an estimate of the anticipated cost for resolving the food safety emergency.

Subd. 3. **Manner and timing of payment.** Unless an appeal is filed under subdivision 5, a food handler must pay all fees and assessments in the manner and timing requested by the commissioner. If a timely appeal is requested, the fees and assessments are stayed until a decision on the appeal is issued by the hearing officer. A license may not be renewed until all fees and penalties under this chapter are paid.

Subd. 4. **Food handler reinspection account; appropriation.** A food handler reinspection account is established in the agricultural fund. All reinspection fees and assessments collected must be deposited in the state treasury and are credited to the food handler reinspection account. Money in the account, including interest accrued, is appropriated to the commissioner to pay the expenses relating to reinspections conducted under the chapters listed in subdivision 1.

Subd. 5. **Appeals.** Food handlers may appeal reinspection fees and assessments to the department hearing officer within 30 days of receipt of the notice of fee assessment. The appeal must be submitted to the commissioner in writing.

**History:** 1995 c 220 s 44; 1Sp2001 c 2 s 47; 2003 c 128 art 3 s 29; 2009 c 94 art 1 s 77; 2013 c 125 art 1 s 14; 2016 c 184 s 4; 2017 c 88 art 3 s 5

## 28A.09 INSPECTION FEES FOR VENDING MACHINES.

Subdivision 1. **Annual fee; exceptions.** Every food vending machine is subject to an annual state inspection fee of \$25 for each nonexempt machine except nut vending machines which are subject to an annual state inspection fee of \$10 for each machine, provided that:

(1) Food vending machines may be inspected by either a home rule charter or statutory city, or a county, but not both, and if inspected by a home rule charter or statutory city, or a county they shall not be subject to the state inspection fee, but the home rule charter or statutory city, or the county may impose an inspection or license fee of no more than the state inspection fee. A home rule charter or statutory city or county that does not inspect food vending machines shall not impose a food vending machine inspection or license fee.

(2) Vending machines dispensing only gum balls, hard candy, unsorted candy, or ice manufactured and packaged by another, and water dispensing machines serviced by a cashier, are exempt from the state inspection fee, but may be inspected by the state. A home rule charter or statutory city may impose by ordinance an inspection or license fee of no more than the state inspection fee for nonexempt machines on the vending machines and water dispensing machines described in this paragraph. A county may impose by ordinance an inspection or license fee of no more than the state inspection fee for nonexempt machines on the vending machines and water dispensing machines described in this paragraph which are not located in a home rule charter or statutory city.

(3) Vending machines dispensing only bottled or canned soft drinks are exempt from the state, home rule charter or statutory city, and county inspection fees, but may be inspected by the commissioner or the commissioner's designee.

Subd. 2. **Identification; rules.** The commissioner may require that a vending machine must be identified in accordance with rules promulgated pursuant to chapter 14.

**History:** 1971 c 339 s 9; 1978 c 502 s 2; 1982 c 424 s 130; 1983 c 293 s 54; 1983 c 300 s 4; 1984 c 503 s 1; 1986 c 375 s 2; 1987 c 58 s 1; 1987 c 384 art 3 s 15; 1996 c 407 s 20; 2003 c 128 art 3 s 30; 2008 c 297 art 1 s 14

**28A.10 POSTING OF LICENSE; RULES.**

All such licenses shall be issued for a period of one year and shall be posted or displayed in a conspicuous place at the place of business so licensed. Except as provided in sections 29.22, subdivision 4 and 31.39, all such license fees and penalties collected by the commissioner shall be deposited into the state treasury and credited to the general fund. The commissioner may adopt such rules in conformity with law as the commissioner deems necessary to effectively and efficiently carry out the provisions of sections 28A.01 to 28A.16.

**History:** *1971 c 339 s 10; 1985 c 248 s 70; 1986 c 444*

**28A.11 ADJUSTMENTS.**

The commissioner shall make appropriate license fee adjustments for up to one year from July 1, 1971, for persons required to be licensed hereunder, who hold validly issued licenses as of the date of this act under the provisions of law amended or repealed herein. The commissioner may also make appropriate license fee adjustments for licensees changing their classification under section 28A.05 prior to the expiration date of their current license.

**History:** *1971 c 339 s 11*

**28A.12** [Repealed, 2012 c 244 art 2 s 36]

**28A.13** [Repealed, 2012 c 244 art 2 s 36]

**28A.14 TRANSFER OF BUSINESS.**

A transfer of a business or a discontinuance of its operation by the licensee at the address covered by the license voids the license and the license certificate shall be surrendered to the commissioner immediately by anyone in possession of the same.

**History:** *1971 c 339 s 14*

**28A.15 EXCLUSIONS.**

Subdivision 1. **Licensing provisions applicability.** The licensing provisions of sections 28A.01 to 28A.16 shall not apply to the following:

Subd. 2. **Sales by farmers; others not in food business.** Persons selling the products of the farm or garden occupied and cultivated by them, or to persons not regularly engaged in the business of manufacturing and selling food and who prepare food only on order of and for sale directly to the ultimate consumer, or to educational, charitable or religious organizations not regularly engaged in the business of manufacturing, processing, or selling food at their established educational, charitable or religious institutions.

Subd. 3. **Farmer slaughtering personal animals.** A farmer slaughtering personal animals, rabbits or poultry, on the farmer's own farm for: (a) personal use; or (b) the use of the farmer's immediate family.

Subd. 4. **Chapter 221 permittees; warehouse operators.** Trucks operating under a certificate or permit issued pursuant to chapter 221 or warehouse operators, other than cold storage warehouse operators, offering storage or warehouse facilities for compensation.

Subd. 5. **Section 157.16 or 327.15 licensees.** Persons whose principal mode of business is licensed under section 157.16 or 327.15; provided that the holding of any license pursuant to section 157.16 or 327.15 shall not exempt any person from the applicable requirements of the laws and rules administered by the

commissioner, as they relate to composition, standards of identity, adulteration, labeling or misbranding of food.

Subd. 6. [Repealed, 1978 c 502 s 3]

Subd. 7. **Ice; soft drinks; snacks.** Persons whose principal business is not food handling but who sell only ice manufactured and prepackaged by another, bottled or canned soft drinks, prepackaged candy or nuts at retail, or persons who for their own convenience or the convenience of their employees have available for rehydration and consumption on the premises such nonperishable items as dehydrated coffee, soup, hot chocolate or other dehydrated food or beverage.

Subd. 8. **Licensed pharmacy.** A licensed pharmacy selling only food additives, food supplements, canned or prepackaged infant formulae, ice manufactured and packaged by another, or bottled or canned soft drinks and prepackaged candy or nuts at retail.

Subd. 9. [Repealed, 1Sp2015 c 4 art 2 s 87]

Subd. 10. [Repealed, 1Sp2015 c 4 art 2 s 87]

**History:** 1971 c 339 s 15; 1974 c 2 s 2-4; 1975 c 412 s 13; 1980 c 509 s 17; 1985 c 237 s 1; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 2 s 7; 1992 c 602 s 1,2; 1996 c 407 s 21-23; 1996 c 451 art 4 s 70; 2002 c 383 s 1; 2004 c 254 s 5; 2006 c 265 s 2

## **28A.151 FARMERS' MARKET OR COMMUNITY EVENT; FOOD PRODUCT SAMPLING AND DEMONSTRATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Farmers' market" means an association of three or more persons who assemble at a defined location that is open to the public for the purpose of selling directly to the consumer the products of a farm or garden occupied and cultivated by the person selling the product.

(c) "Food product sampling" means distributing to individuals at a farmers' market or community event, for promotional or educational purposes, small portions of a food item that include as a main ingredient a product sold by the vendor at the farmers' market or community event. For purposes of this subdivision, "small portion" means a portion that is no more than three ounces of food or beverage.

(d) "Food product demonstration" means cooking or preparing food products to distribute to individuals at a farmers' market or community event for promotional or educational purposes.

Subd. 2. **Food sampling and demonstration.** The licensing provisions of sections 28A.01 to 28A.16 shall not apply to persons engaged in food product sampling or food product demonstrations.

Subd. 3. **Food required to be provided at no cost.** Food provided through food product sampling or food product demonstrations must be provided at no cost to the individual.

Subd. 4. **Regulatory authority oversight.** Any person conducting food product sampling or food product demonstrations shall provide to the regulatory authority upon request the following information related to the food product sampling or food product demonstration conducted by the person:

(1) the source of the food used in the sampling or demonstration and whether or not the food was produced at the person's farm or garden;

(2) the type and volume of food to be served, held, prepared, packaged, or otherwise provided for human consumption;

(3) the equipment used to serve, hold, prepare, package, or otherwise provide food for human consumption;

(4) the time period and location of the food product sampling or food product demonstration;

(5) the availability of facilities for hand washing by persons conducting the food product sampling or food product demonstrations;

(6) information on facilities available for ware washing of multiuse utensils and equipment;

(7) the available source of water; and

(8) methods of liquid and solid waste disposal.

Subd. 5. **Food safety and equipment standards.** Any person conducting food product sampling or food product demonstrations shall meet the same food safety and equipment standards that are required of a special event food stand in Minnesota Rules, parts 4626.1855, items B to O, Q, and R; and 4626.0330.

Subd. 6. **Definition exception.** The definition of farmers' market in subdivision 1, paragraph (b), does not prohibit a farmers' market association from establishing a definition of farmers' market that applies to its membership that is more restrictive than the definition in subdivision 1, paragraph (b).

**History:** 2014 c 163 s 1; 2018 c 182 art 1 s 4; 2019 c 50 art 1 s 14

#### **28A.152 COTTAGE FOODS EXEMPTION.**

Subdivision 1. **Licensing provisions applicability.** (a) The licensing provisions of sections 28A.01 to 28A.16 do not apply to the following:

(1) an individual who prepares and sells food that is not potentially hazardous food, as defined in Minnesota Rules, part 4626.0020, subpart 62, if the following requirements are met:

(i) the prepared food offered for sale under this clause is labeled to accurately reflect the name and the registration number or address of the individual preparing and selling the food, the date on which the food was prepared, the ingredients and any possible allergens, and the statement "These products are homemade and not subject to state inspection."; and

(ii) the individual displays at the point of sale a clearly legible sign or placard stating: "These products are homemade and not subject to state inspection."; and

(2) an individual who prepares and sells home-processed and home-canned food products if the following requirements are met:

(i) the products are pickles, vegetables, or fruits having an equilibrium pH value of 4.6 or lower or a water activity value of .85 or less;

(ii) the products are home-processed and home-canned in Minnesota;

(iii) the individual displays at the point of sale a clearly legible sign or placard stating: "These products are homemade and not subject to state inspection."; and



(iv) each container of the product sold or offered for sale under this clause is accurately labeled to provide the name and the registration number or address of the individual who processed and canned the goods, the date on which the goods were processed and canned, ingredients and any possible allergens, and the statement "These products are homemade and not subject to state inspection."

(b) An individual who qualifies for an exemption under paragraph (a), clause (2), is also exempt from the provisions of sections 31.31 and 31.392.

(c) An individual who qualifies for an exemption under paragraph (a) may organize the individual's cottage food business as a business entity recognized by state law.

**Subd. 2. Direct sales to consumers.** (a) An individual qualifying for an exemption under subdivision 1 may sell the exempt food:

(1) directly to the ultimate consumer at a community event or farmers' market;

(2) directly from the individual's home to the ultimate consumer, to the extent allowed by local ordinance;  
or

(3) through donation to a community event with the purpose of fund-raising for an individual, or fund-raising for an educational, charitable, or religious organization.

(b) If an exempt food product will be delivered to the ultimate consumer upon sale of the food product, the individual who prepared the food product must be the person who delivers the food product to the ultimate consumer.

(c) Food products exempt under subdivision 1, paragraph (a), clause (2), may not be sold outside of Minnesota.

(d) Food products exempt under subdivision 1 may be sold over the Internet but must be delivered directly to the ultimate consumer by the individual who prepared the food product. The statement "These products are homemade and not subject to state inspection." must be displayed on the website that offers the exempt foods for purchase.

**Subd. 3. Limitation on sales.** An individual selling exempt foods under this section is limited to total sales with gross receipts of \$78,000 or less in a calendar year.

**Subd. 4. Registration.** An individual who prepares and sells exempt food under subdivision 1 must register annually with the commissioner. The commissioner shall register an individual within 30 days of submitting a complete registration to the commissioner. A registration shall be deemed accepted after 30 days following an individual's complete registration to the commissioner. The annual registration fee is \$50. An individual with \$5,000 or less in annual gross receipts from the sale of exempt food under this section is not required to pay the registration fee. By January 1, 2022, the commissioner shall adjust the gross receipts amount of this fee exemption based on the consumer price index using 2002 as the index year for the \$5,000 gross receipts exemption.

**Subd. 5. Training.** (a) An individual who sells exempt food under this section and is required to pay the registration fee in subdivision 4 must complete a safe food handling training course that is approved by the commissioner before registering under subdivision 4. The training shall not exceed eight hours and must be completed every three years while the individual is registered under subdivision 4.

(b) An individual who sells exempt food under this section and is exempt from paying the registration fee in subdivision 4 must satisfactorily complete an online course and exam as approved by the commissioner

before registering under subdivision 4. The commissioner shall offer the online course and exam under this paragraph at no cost to the individual.

Subd. 6. **Local ordinances.** This section does not preempt the application of any business licensing requirement or sanitation, public health, or zoning ordinance of a political subdivision.

Subd. 7. **Account established.** A cottage foods account is created as a separate account in the agricultural fund in the state treasury for depositing money received by the commissioner under this section. Money in the account, including interest, is appropriated to the commissioner for purposes of this section.

**History:** *1Sp2015 c 4 art 2 s 53; 2017 c 88 art 2 s 53; 2021 c 28 s 7-10*

### **28A.153 WILD GAME PROCESSOR EXEMPTION.**

Subdivision 1. **Licensing provisions applicability.** The licensing provisions of sections 28A.01 to 28A.16 do not apply to an individual who processes wild game or fowl as described in section 31A.15, subdivision 1, clause (2), if the following requirements are met:

(1) the individual does not own an operation subject to the licensing provisions of sections 28A.01 to 28A.16;

(2) the individual's operation is limited to the handling of raw products, to include cutting, grinding, and packaging, and without further preparation of the wild game or fowl products;

(3) the individual does not add any additional ingredients to the wild game or fowl products;

(4) the wild game or fowl products are not donated or sold; and

(5) all wild game or fowl products are packaged and labeled as "Not for Sale."

Subd. 2. **Sales limitation.** An individual processing wild game or fowl under this section is limited to total services with gross receipts of \$20,000 or less in a calendar year or the processing of 200 deer in a calendar year, whichever is greater.

Subd. 3. **Registration.** Individuals processing wild game under this section are encouraged to register annually with the commissioner. The commissioner must not assess a registration fee.

Subd. 4. **Permit exemption.** An individual processing wild game under this section is not required to obtain a custom processing permit under section 28A.04, subdivision 2.

Subd. 5. **Chronic wasting disease.** If a white-tailed deer was harvested from a chronic wasting disease management area established by the commissioner of natural resources, an individual processing wild game under this section must dispose of the carcass through any disposal method approved for the management area in Department of Natural Resources hunting rules.

**History:** *2021 c 28 s 11*

### **28A.16 PERSONS SELLING LIQUOR.**

(a) The provisions of the Minnesota consolidated food licensing law, sections 28A.01 to 28A.16 and acts amendatory thereto, shall not apply to persons licensed to sell 3.2 percent malt liquor "on-sale" as provided in section 340A.403, or to persons licensed to sell intoxicating liquors "on-sale" or "off-sale" as provided in sections 340A.404 to 340A.407, provided that these persons sell only ice manufactured and packaged by another, or bottled or canned soft drinks and prepackaged candy at retail.

(b) When an exclusive liquor store is not exempt under paragraph (a), the commissioner must exclude all gross sales of off-sale alcoholic beverages when determining the applicable license fee under section 28A.08, subdivision 3. For purposes of this paragraph, "exclusive liquor store" and "alcoholic beverage" have the meanings given in section 340A.101.

**History:** 1971 c 339 s 16; 1974 c 2 s 5; 1985 c 305 art 12 s 5; 1Sp1985 c 16 art 2 s 26; 1991 c 249 s 31; 1996 c 407 s 24; 1Sp2019 c 1 art 2 s 12

#### **28A.17 LICENSE RENEWAL.**

Licenses for food processors or manufacturers or food brokers shall be renewed annually on January 1. Licenses for retail and wholesale food handlers shall be renewed annually on July 1. Licenses for mobile food concessions and for retail mobile units shall be renewed annually on April 1.

**History:** 1976 c 2 s 7; 1996 c 407 s 25

**28A.20** MS 2002 [Expired, 2001 c 161 s 10]

#### **28A.21 FOOD SAFETY AND DEFENSE TASK FORCE.**

Subdivision 1. **Establishment.** The Food Safety and Defense Task Force is established to advise the commissioner and the legislature on food issues and food safety.

Subd. 2. **Membership.** (a) The Food Safety and Defense Task Force consists of:

- (1) the commissioner of agriculture or the commissioner's designee;
- (2) the commissioner of health or the commissioner's designee;
- (3) a representative of the United States Food and Drug Administration;
- (4) a representative of the United States Department of Agriculture;
- (5) a representative of the Agricultural Utilization Research Institute;
- (6) one member of the Minnesota Grocers Association;
- (7) one member from the University of Minnesota knowledgeable in food and food safety issues; and
- (8) nine members appointed by the governor who are interested in food and food safety, of whom:
  - (i) two persons are health or food professionals;
  - (ii) one person represents a statewide general farm organization;
  - (iii) one person represents a local food inspection agency;
  - (iv) one person represents a food-oriented consumer group; and
  - (v) one person represents a Minnesota-based manufacturer of microbial detection equipment and remediation products.

(b) Members shall serve without compensation. Members appointed by the governor shall serve four-year terms.

Subd. 3. **Organization.** (a) The commissioner or the commissioner's designee shall convene the first meeting of the task force.

(b) The task force shall meet monthly or as determined by the chair.

(c) The members of the task force shall annually elect a chair and other officers as the members deem necessary.

Subd. 4. **Staff.** The commissioner shall provide support staff, office space, and administrative services for the task force.

Subd. 5. **Duties.** The task force shall:

(1) coordinate educational efforts regarding food safety and defense;

(2) provide advice and coordination to state agencies as requested by the agencies;

(3) serve as a source of information and referral for the public, news media, and others concerned with food safety and defense; and

(4) make recommendations to Congress, the legislative committees with jurisdiction over agriculture finance and policy, the legislature, and others about appropriate action to improve food safety and defense in the state.

Subd. 6. **Expiration.** This section expires June 30, 2027.

**History:** 2007 c 45 art 1 s 39; 2009 c 94 art 1 s 78; 2012 c 244 art 2 s 7; 2014 c 286 art 8 s 4; 2017 c 88 art 2 s 54