MEMORANDUM OF UNDERSTANDING

BETWEEN

THE VIRGINIA DEPARTMENT OF HEALTH

AND

THE VIRGINIA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

RELATING TO FOOD VENDOR OPERATIONS AT FARMERS MARKETS
AND OTHER GATHERINGS

PURPOSE

The purpose of this agreement between the Virginia Department of Health (VDH) and the Virginia Department of Agriculture and Consumer Services (VDACS) (collectively, the Departments) is to clarify VDH permitting and inspection procedures for food products manufactured in VDACS inspected facilities, foods processed at plants subject to other jurisdictional agency inspection, or otherwise exempted food products offered directly to consumers for their personal use, and that are offered to the public at local events, gatherings, and other similar venues held throughout Virginia. This interagency agreement is intended to promote the highest level of public health and safety protection, while ensuring efficient use of state resources. The Departments also seek to avoid overly burdensome regulatory oversight of farmers and manufacturers (collectively, "vendors") offering for sale and/or sample qualifying products at local gatherings commonly understood to be a farmers market or other similar venue. This agreement abrogates neither agency’s authority to inspect and/or permit any food service facility otherwise subject to regulation.

STATUTORY AUTHORITY

Code of Virginia § 3.2-5100 gives VDACS responsibility for inspecting all establishments which manufacture, sell, expose, or offer food and drink products for sale. Code of Virginia §§ 35.1-1 and 35.1-5 give VDH responsibility for inspecting restaurants, including any place where food is served to the public, whether on or off premises, and any place where food is prepared. The inspection authority of VDACS and VDH may overlap with respect to food products offered at farms, farmers markets, and other similar venues.

GENERAL AGREEMENT

VDH and VDACS agree that vendors that are offering (1) products for sale or sample already subject to VDACS’s inspection authority pursuant to Code of Virginia § 3.2-5100; (2) products for sale or sample already subject to any other jurisdictional agency
inspection authority, including the United States Department of Agriculture; or (3) products for sale or sample otherwise exempted from either VDACS or VDH inspection and permitting authority pursuant to Code of Virginia §§ 3.2-5130, 35.1-1, and 35.1-14, will not be required to comply with additional application, inspection, and permitting that is otherwise required by VDH for food establishments.

Vendors offering for sale packaged food products or samples of such products exempted from inspection and permitting by this agreement that expand food service beyond that which qualifies under the Procedural Agreement below may be classified as restaurants subject to inspection and permitting by VDH.

**PROCEDURAL AGREEMENT**

Vendors offering for sale primarily packaged food products or samples of such products not subject to VDH inspection and permitting procedures otherwise required include:

- Vendors offering food produced using a method or facility already inspected and approved by VDACS pursuant to Code of Virginia § 3.2-5100. Examples include vendors selling packaged foods or providing samples of food products produced in home processing facilities and commercial kitchens; such as baked goods, acidified foods, nuts, candies, vinegars, jams, and jellies.

- Vendors offering food produced at a manufacturing plant subject to jurisdictional agency inspection including the United States Department of Agriculture. Examples include vendors selling packaged food products or providing samples of those products to include meat, poultry, fluid milk and milk products, juice, game animals, and eggs, acidified foods, nuts, seeds, fruits, jams, jellies and processed vegetables.

- Vendors offering food produced at, provided for, or distributed by an entity exempted from VDACS inspection pursuant to Code of Virginia § 3.2-5130 A. 3 through 5 (Inspections required to operate a food establishment).
  
  o Subsection A. 3. exempts from VDACS inspection the following products to be produced in a private home: candies, jams, and jellies not considered to be low-acid or acidified low-acid food products, dried fruits, dry herbs, dry seasonings, dry mixtures, coated and uncoated nuts, vinegars and flavored vinegars, popcorn, popcorn balls, cotton candy, dried pasta, dry baking mixes, roasted coffee, dried tea, cereals, trail mixes, granola, and baked goods that do not require time or temperature control after preparation.

  o Subsection A. 4 exempts from VDACS inspection the following products to be produced in a private home under specific circumstances: pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower.
Subsection A. 5 exempts from VDACS inspection under certain circumstances a resident in a private home producing honey.

- Vendors offering food produced at, provided for, or distributed by an entity exempt from the Commonwealth of Virginia Board of Health Regulations (12VAC5-421) pursuant to Code of Virginia §35.1-14, (Selling their own farm-produced products directly to consumers for their personal use). Examples include farmers providing sliced fruits and vegetables; cooked fruits and vegetables, cooked and prepared meat, poultry, eggs, fish, and game animals.

When there is a question at the VDACS regional level as to whether a vendor’s food service operation exceeds the standards set out in the Procedural Agreement, the VDACS Food Safety Specialist (FSS) or FS Regional Manager will confer with the local VDH Environmental Health Specialist (EHS) or the appropriate local EH Manager to determine whether a food establishment permit from VDH is needed. If an agreement cannot be reached between the VDACS FSS or FSS Regional Manager and the VDH EHS or local EHS Manager as to whether a VDH food establishment permit is needed, the VDH Office of Environmental Health Services will make a final determination, in consultation with the VDACS Office of Dairy and Foods Program and subsequent to an informal fact-finding conference held by the local health district, with due notice provided to the food product vendor. Such determination shall be an agency case decision pursuant to Code of Virginia §§ 2.2-4001 and 2.2-4019. Any vendor subject to an agency case decision may appeal the decision in accordance with Code of Virginia § 2.2-4000 et seq. Normally, VDH staff will not issue a Notice of Alleged Violation until a case decision has been rendered as contemplated by this agreement.

This Memorandum of Understanding shall be considered an addendum to the VDACS & VDH general Memorandum of Understanding, dated March 1989.

**AGREEMENT AND CONSENT**

VDACS and VDH do hereby agree this agreement shall be effective upon signature by the State Commissioner of Agriculture and Consumer Services and the State Commissioner of Health, and shall delegate, to the extent legally possible, those responsibilities for carrying out the terms of this agreement.

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Marissa J. Levine, MD, MPH, FAAFP
Commissioner
Virginia Department of Health

Sandra J. Adams
Commissioner
Virginia Department of Agriculture and Consumer Services

1/3/17
Date

01/19/2017
Date