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PIM #07-01

To: District Health Directors
District Environmental Health Managers
Office of Environmental Health Services Staff

Through: Robert Hicks 
Deputy Health Commissioner

Through: Allen Knapp, Director 
Office of Environmental Health Services

From: Julie Henderson, Director 
Division of Food and General Services

Subject: **Temporary Food Establishment Policy**

Purpose: To promote uniformity of food protection standards at fairs, festivals, and other events throughout the Commonwealth; provide guidance to temporary food event coordinators, operators, and support personnel regarding requirements of the Food Regulations and establish permit issuance, inspection, and enforcement procedures for temporary food establishments.

Authority: Virginia Department of Health Food Regulations (Food Regulations, 12VAC5-421-10 *et seq.*)

Applicability: This guidance document applies to Temporary Food Establishments (TFEs). These establishments are distinguished from other classes of food establishments in the Food Regulations such as mobile food units, caterers, and traditional restaurants. TFEs typically operate with limited capabilities and for a short duration and, unlike permanent facilities operate with equipment staged beneath a tent or similar open-air cover. They are often seasonal in nature and may operate at a fixed location such as a farmers market or at various locations, including but not limited to festivals, community fairs, sporting events, and other public gatherings. This guidance document applies only to establishments required to obtain a permit under the Food Regulations and does not apply to farmers market vendors who are exempt from the Food Regulations or are under the supervision of the Virginia Department of Agriculture and Consumer Services (VDACS), or frozen dessert mobile food units under the supervision of VDACS or other government agency responsible for regulating the production of food.¹

¹ See Memorandum of Agreement between VDH and VDACS Relating to Food Vendor Operations at Farmers Market and Other Gatherings.

ADMINISTRATIVE PROCEDURES

A. Permits

1. A person responsible for the operation of a TFE is required to obtain the applicable permit from the local health department prior to operating a TFE. (12VAC5-421-3680/8-302.12). A TFE permit is required for each individual TFE.
2. A TFE permit must be posted where it can be easily seen by the public. A TFE permit is valid only for the specified permit period and establishment type. (12VAC 5-421-3750/8-304.11 and 12VAC5-421-3760). TFE permits are not transferrable from person to person (12VAC5-421-3660 B/ 8-304.20).
3. A person who holds a valid VDH Food Establishment Permit, excluding a TFE permit, does not need an additional permit so long as all food is prepared in accordance with the Food Regulations and any other applicable regulations, statutes, and /or ordinances including approved plans and specifications. A copy of the VDH Food Establishment Permit, when used in lieu of a TFE permit, must be posted where it can be easily seen by the public. The permit holder who changes their food operation as specified under subdivision 3(b) of 12VAC-421-3700 of the Food Regulations shall notify the local health department prior to such change. (Example: A coffee shop that currently prepares only food that is not time/temperature control for safety (TCS) food and proposes to offer to sell or serve TCS food such as crab cakes at a local fair.)
4. TFE permits may be issued for any period of time up to 12 months (12VAC5-421-3660). A TFE permit is considered valid in any jurisdiction within the Commonwealth of Virginia so long as the TFE continues to meet the Food Regulations and any pertinent local ordinances. A food establishment that operates for more than 14 consecutive days in conjunction with a single event or celebration is not considered a TFE (12VAC5-421-10/ 1-201.10).

B. Application Process

1. An applicant seeking a TFE permit shall submit a completed application and permit fee, if a fee is required. The application shall be submitted to the local health department (LHD) who will conduct the pre-operational inspection and approve the TFE permit. The Food Regulations require all permit applications for a TFE be filed at least 10 calendar days prior to the anticipated opening date of a food establishment (12VAC5-421-3670).
2. A TFE permit holder who seeks an additional TFE permit is not required to pay an additional application fee so long as the applicant produces a receipt showing the fee was paid during the current calendar year. Organizations under §§35.1-25 and 35.1-26 of the Code of Virginia are exempt from temporary permit fees even if they are participating in a non-exempt temporary event. An individual who prepares and serves food in only one temporary event per year located within the locality in which they reside is exempt from an application fee (Appropriations Act, 295(C), 2016).

3. An environmental health specialist (EHS) shall review the application within two business days of receipt. The applicant's information must be entered into the applicable database within two business days of receipt.
4. If the TFE permit application is not approved, the applicant shall be notified in writing of the reasons for denial and appeal rights shall be provided (12VAC5-421-3730/8-303.30).

C. Inspections

1. The Food Regulations (12VAC5-421-3710/8-203.10) require a pre-operational inspection prior to the issuance of a permit for a new food establishment. A pre-operational inspection is required to determine compliance with the Food Regulations. TFE Inspection Report(s) are to be entered into the database and shall satisfy the requirement for an annual inspection. TFE inspection reports should be entered within two business days following the pre-operational inspection.
2. §35.1-22 of the Code of Virginia requires that all restaurants be inspected at least annually, with no more than 12 months elapsing between each such inspection. For TFEs, the frequency of inspections additional to the one required annually shall be based on risk with emphasis on those establishments, as outlined in the Addendum, that engage in significant preparation and holding of TCS foods onsite and/or those establishments whose performance history shows repeated non-conformance with the Food Regulations (12VAC5-421-3800/8-401.10; 12VAC5-421-3810/8-401.20).

D. Enforcement

If the EHS determines that impoundment procedures are warranted, the following procedures shall be followed as outlined below (12VAC5-421-3960):

1. After completing an inspection, an EHS who suspects a food product(s) in possession by a TFE is not in compliance with the Food Regulations shall inform the owner, permit holder, or person in charge (PIC) in writing of the intent to impound the suspected food product(s). The owner, permit holder, or PIC shall be afforded the opportunity to denature or destroy any food listed in the written inspection report provided.
2. In the event the owner, permit holder, or PIC elects to voluntarily denature or destroy the food products listed in the inspection report, the EHS shall document the date and time of the denaturing or destruction on the inspection report. The inspection report shall include the following:
 - a) List and description of food product(s) that is subject to the impoundment;
 - b) Container description;
 - c) Quantity and location of the food product(s);and
 - d) The applicable Food Regulation(s) which serves as the basis for the impoundment;

3. In the event the owner, permit holder, or PIC does not agree to denature or destroy the food product(s) listed in the inspection report, the EHS shall immediately notify the environmental health manager or supervisor of the conditions leading to the request to denature or destroy the food product(s) and the owner's, permit holder's, or PIC's refusal to take such action and request approval to initiate impoundment procedures. In addition to the items outlined in D.2 (a-d) of the Enforcement section, the inspection report shall include the following:
 - a) A statement that the food is not to be used, sold, given away, or destroyed without permission from the LHD; and
 - b) A statement informing the owner, permit holder, or PIC that requests for an informal fact-finding conference may be filed with the LHD within 10 days of notice, and that if no conference is requested, the suspected food shall be destroyed by the owner, permit holder, or PIC.
4. Upon receipt of approval to commence impoundment procedures, the EHS shall tag, label, or otherwise identify any food products subject to impoundment. The EHS shall mark the food or container with a tag or tape bearing the date of the impoundment and his or her signature. Note: If using tape, the EHS should write across the surface of the tape with a permanent marker to detect any removal and resealing of the tape.
5. If, due to the temporary nature of the event, the suspected food presents an imminent health threat and removal from the premise of the TFE offers the safest resolution, such removal shall be performed by the owner, permit holder, or PIC. Such removal shall occur at the direction of the local health director or their designee.

If the LHD determines a permit suspension is warranted, based on evidence indicating the operation of the TFE constitutes a substantial and imminent threat to the public health, after consulting with and receiving concurrence from the Commissioner, the district director shall follow suspension procedures per the Food Regulations. The TFE shall immediately cease food service operations upon suspension. Operations shall not resume until all corrections have been implemented and the director has authorized lifting the suspension, or until the decision to suspend is resolved via an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia. (12VAC 5-421-3910/8-404.11; 12VAC5-421-3920/8-404.12, 3770).

Note: Priority and priority foundation violations shall be corrected at the time of inspection or in a time-frame established by the LHD not to exceed 24 hours. If additional inspections during the operating period reveal continuing violations the permit holder shall be advised that such violations are grounds for suspension of the permit (12VAC5-421-3870/8-403.20; 12VAC5-421-3930/8-405.11, 12VAC5-421-3770/8-904.10).

Addendum

This chart outlines the method to utilize when classifying a temporary food establishment into types and the frequency with which LHDs shall complete risk-based inspections.

Food Service Classification	Classification Guidelines	Minimal Risked Based Inspections
Type 1	<ul style="list-style-type: none"> • Consist of food preparation of unpackaged non-TCS foods • Consist of commercially packaged TCS foods that are received, stored and held and served in the manufacture's original package (Receive-Store-Hold-Serve) <p><i>Examples:</i> Pre-packaged ice cream, shaved ice, kettle corn, cotton candy</p>	Additional inspection beyond the preoperational inspection is not required; inspect during the permit period as necessary.
Type 2	<ul style="list-style-type: none"> • Consist of food preparation with no cook step (Receive-Store-Prepare-Hold-Serve). • Consist of commercially packaged TCS foods for which Time as a Public Health Control is used onsite. • Consist of reheating of a commercially processed food item (Receive-Store-Reheat-Hold-Serve) for immediate same-day service. <p><i>Examples:</i> Tuna salad, coleslaw, hotdogs, BBQ sandwiches, pre-cooked hamburgers, pre-cooked Italian sausage with cooked green peppers and onions, pre-wrapped sandwiches or pizza.</p>	One additional inspection during the calendar year beyond the pre-operational inspection
Type 3	<ul style="list-style-type: none"> • Consist of preparation for same day service with no greater than one trip through temperature danger zone (Receive-Store-Prepare-Cook-Hold-Serve). • Consist of complex food preparation involving greater than one trip through the temperature danger zone (Receive-Store-Prepare-Cook-Cool-Reheat-Hot Hold-Serve). • Consist of food prepared in bulk quantities of several gallons or pounds. <p><i>Example:</i> Complex menu operations².</p>	Two additional inspections during the calendar year beyond the pre-operational inspection.

The above evaluation frequency schedules reflect minimum program requirements

² **Complex Menu Operations:** Include but are not limited to: handling of raw ingredients; cooking, cooling, and reheating for hot holding many TCS foods; processes requiring hot and cold holding; service of raw or partially cooked food for immediate consumption; complex manufacturing processes (acidification, dehydration, aseptic, etc.); and establishments with a mandatory HACCP.