

Memorandum of Understanding
Between
The Virginia Department of Health
And
The Virginia Department of Agriculture and Consumer Services

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 and establish permitting and inspection responsibilities for establishments offering food to the public. The Departments share authority to administer and enforce regulations to ensure the safe manufacture, sale, and consumption of food products; therefore, they seek to ensure uniform application of shared regulatory authority while reducing duplication of services by ensuring efficient use of state resources. Additionally, several types of food establishments are exempt by statute (Code of Virginia § 35.1-25) from VDH jurisdiction. This Agreement allows the Departments to provide and maintain the highest level of public health protection and ensure efficient use of state resources, while avoiding unduly burdensome and duplicative regulatory oversight. This Agreement abrogates neither agency's authority to inspect and/or permit any food establishment otherwise subject to regulation.

Statutory Authority

Section 3.2-5100 of the Code of Virginia (Code) delegates authority to VDACS to inspect all establishments that manufacture, sell, expose, or offer food and drink products for sale in the Commonwealth. Sections 35.1-1 and 35.1-5 of the Code of Virginia delegate authority to the Commissioner of Health, or the Commissioner's designee, to inspect food establishments, including any place where food is prepared for service, on or off premises, and any place where food is served.

General Agreement

The Departments agree when statutory inspection responsibilities overlap, they shall be divided as follows based on the type of operation:

Convenience Stores

Section 35.1-25(6) of the Code, as amended, exempts from VDH's jurisdiction "convenience stores" or gas stations subject to the Retail Food Establishment Regulations (2 VAC5-585 et seq.) or any regulations subsequently adopted *and* that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station *and* (ii) are not associated with a national or regional *restaurant chain*." (Emphasis added.)

Convenience stores or gas stations that have 15 seats or fewer, at which food is served to the public on the premises of the convenience store or gas station not associated with a national or regional restaurant chain, shall be subject to the authority of VDACS.

Convenience stores or gas stations at which food is served to the public on the premises of the convenience store or gas station that have 16 or more seats *or* are associated with a national or regional restaurant chain that is otherwise inspected by VDH, shall be subject to the authority of VDH. For the purpose of this MOU, a national or regional restaurant chain is one that operates as a restaurant (vs. manufacturer's branding) in at least two states. Branded materials from national or regional food manufacturers do not meet the criteria for a national or regional *restaurant chain* for the purposes of determining jurisdiction at a *convenience store*.

With the exception of the below scenario, the agency inspecting food preparation and/or service at a convenience store or gas station shall have responsibility to inspect the entire convenience store or gas station.

Establishments co-located on the premises of a convenience store that are under separate ownership are not subject to the criteria outlined in this section and should be evaluated for VDH or VDACS regulation separately.

Grocery Stores

Section 35.1-25(4) of the Code, *in part*, exempts grocery stores and places that manufacture or sell packaged or canned foods from VDH's jurisdiction. This also includes the delicatessen portion that is a part of a grocery store selling exclusively for off-premises consumption.

Restaurants/food service co-located on the premises of a grocery store or restaurants/food service located within a grocery store shall be subject to inspection by VDACS, with the following exceptions:

1. National or regional restaurant brands (including those operated by the grocery store) shall be inspected by VDH.
2. Food establishments co-located on the premises of a grocery store where the food establishment is under separate ownership from the grocery store (including when under a subsidiary) shall be inspected by VDH.
3. When grocery and restaurant establishments co-located on the same premises under the same

ownership, and represent roughly equal portions of the overall business, and when mutually agreed upon by the VDACS Food Safety Managers or designees and VDH District Environmental Health Manager or designee, both agencies will have jurisdiction. In cases where the division of business is not roughly equal, either VDACS or VDH shall inspect the entire establishment as dictated by their primary business operation.

4. VDACS-permitted entities in a grocery store require a VDH permit to provide catering (when the store prepares food for service to the client's guests or customers at a service location different from the permitted food establishment).

Regardless of ownership, packaged sushi operations in grocery stores and mobile grocery stores selling only produce and packaged items (including meat) will continue to be inspected by VDACS.

Bakery Operations

Businesses where bakery products are regularly prepared, processed, or manufactured, for sale only to the end consumer, where the primary business model is providing food service (i.e., onsite consumption) to the public *and* there is no wholesale distribution (e.g., coffee and baked goods without wholesale), shall be subject to the authority of VDH. Mobile Food Unit and Temporary Food Establishment “bakeries” shall be subject to the authority of VDH.

Businesses where bakery products are prepared, processed, or manufactured for wholesale distribution, *or* whose primary business model is the preparation and sale of conventional baked goods (e.g., cakes, cookies, donuts etc.) for offsite consumption, shall be subject to the authority of VDACS.

In certain exceptions where full-service restaurants are wholesaling bakery products, when determined by the VDH Division Director of Food and General Environmental Services in consultation with a VDACS Food Safety Manager, both agencies will have jurisdiction.

Frozen Dessert Shops

Brick and mortar food establishments where frozen desserts, including ice cream, frozen yogurt, popsicles, shaved ice, and milkshakes, are frozen, partially frozen, or dispensed for sale shall be subject to the authority of VDACS. These retail stores may include coffee on their menu, but the primary business model must be frozen desserts.

Brick and mortar food establishments selling additional non-prepackaged food items beyond frozen desserts, coffee, and beverages, shall be subject to the authority of VDH. Any establishment for which the primary business model is a beverage or other item-focused (e.g., an espresso or juice bar) that also sells frozen desserts shall be subject to the authority of VDH.

Mobile Food Units selling packaged frozen desserts (but no unpackaged frozen desserts) shall be

subject to the authority of VDACS. Mobile Food Units selling unpackaged frozen desserts shall be subject to the authority of VDH. All Temporary Food Establishments shall be subject to the authority of VDH.

Seafood Markets

Businesses where seafood products are offered for sale and the primary business model is onsite consumption or prepared food take out *and* there is no wholesale distribution, shall be subject to the authority of VDH.

Businesses where seafood products are offered for wholesale distribution, *or* whose primary business model is not onsite consumption or prepared food takeout to the public shall be subject to the authority of VDACS.

In certain exceptions as determined by the VDH Division Director of Food and General Environmental Services in consultation with a VDACS Food Safety Manager, where full-service restaurants are wholesaling seafood products, both agencies will have jurisdiction.

Regulation of shucking, repacking, or other shellfish activities governed under 12VAC5-150, 12VAC5-160, and 12VAC5-165 are not under the scope of this Agreement, and the VDH Division of Shellfish Safety will regulate those activities under that chapter.

Meal Preparation & Meal Subscription

Meal preparation and/or subscription services that provide food service to the public (in a traditional restaurant model) and are therefore already under regulation by VDH, that provide “meal prep” services where meals are regularly prepared and packaged for sale *to the end consumer*, via retail on site, or direct to the consumer via shipping, shall be subject to the authority of VDH. Any wholesale operations (i.e. sales not to the end consumer) at VDH food establishments shall be subject to the authority of VDACS; in these cases, both agencies will have jurisdiction and presence at the establishment.

Meal preparation and /or subscription services at firms not otherwise permitted under the traditional scope of VDH that provide packaged meals or ingredient supply services shall be subject to the authority of VDACS.

Food Service Operation Inspections of Wineries (Including Cideries and Meaderies), Distilleries, and Breweries

The following section applies to the food preparation and service aspects of:

1. Winery establishments (including cideries and meaderies) with food service operations holding only a winery license or farm winery license, as defined by Code of Virginia § 4.1-206.1,

2. Distillery establishments with food service operations holding licenses under Code of Virginia § 4.1-206.1, and
3. Brewery establishments with food service operations holding licenses under Code of Virginia § 4.1-206.1.

Wineries (including cideries and meaderies), distilleries, and breweries without food service will be inspected by VDACS.

Food service operations within, attached to, or contiguous to winery (including cideries and meaderies), brewery and distillery establishments, holding only retail off-premises licenses (gourmet licenses, convenience stores, grocery stores, etc.) for beer or wine under 3VAC5-50-100 (definitions and qualifications for off premises type licenses), will be inspected by VDACS so long as the food service qualifies for inspection by VDACS under the criteria below.

Wineries (including cideries and meaderies), distilleries, and breweries expanding food service beyond that which qualifies for inspection by VDACS under the criteria outlined below are classified as food establishments and shall be subject to the authority of VDH.

Determination of Agency Jurisdiction Based on Criteria of Food Service

Qualifying wineries (including cideries and meaderies), breweries and distilleries as described above will fall under the jurisdiction of VDACS, provided food preparation is limited to as described in the table below.

Classification	Description
<u>Inspection Under VDACS:</u> e.g. Vegetable trays, single serving size packaged snacks, hot dogs not from raw links, sandwich assembly and sandwich grilling, commercially prepared soup, salads, pizzas with commercially pre-cooked crust and meat toppings	Establishments preparing for same day service only, and not handling raw animal protein or other products that cannot be served raw, including: Serving or selling prepackaged food. Food Preparation with no cook step (except raw proteins) (Store-Prepare-Serve). Receive-store-hold commercially processed/packaged food in its original package and/or heat only commercially processed foods, for immediate service and/or hot holding (Store-Heat-Hold-Serve).

<u>Inspection Under VDH:</u> e.g. Hamburgers, pizzas with raw dough, fried chicken, homemade chili, homemade barbecue, raw oysters or caviar/roe	Handling of raw animal protein, including those that can be served raw (oysters, sushi, caviar/roe, etc.) or other products that cannot be served raw. Complex preparation involving cooking, cooling, and reheating involving TCS foods. Establishment conducts specialized processes (e.g. smoking and curing, reduced oxygen packaged for extended shelf life).
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Farmers Markets and Temporary Events (<14 days)

Except under the criteria for food service or sampling provided in the table below, the following groups do not require a VDH permit:

1. Vendors selling farm-produced agricultural commodities from approved sources that comply with applicable law, such as manufacturers inspected by VDACS,
2. Vendors selling food items prepared under the private home kitchen food exemption as outlined in Code of Virginia § 3.2-5130C (3-5),
3. Vendors selling food items produced under VDACS permit, and
4. Vendors selling packaged food items produced by a manufacturer under the authority of an equivalent agency in another state.

Food establishments with a valid permit from VDH may offer their items for sale at the farmers market without obtaining an additional VDH permit and are subject to potential inspection by VDH at the Farmers Market.

Vendors not under the authority of VDACS or an equivalent agency in another state, fall under the jurisdiction of VDH (and may require a temporary food establishment permit).

Reminder: Mobile Food Unit and Temporary Food Establishment bakeries shall be subject to the authority of VDH. Mobile Food Units selling only packaged frozen desserts shall be subject to the authority of VDACS. Mobile Food Units selling unpackaged frozen desserts shall be subject to the authority of VDH. All Temporary Food Establishments shall be subject to the authority of VDH.

Sampling at Farmers Markets and Temporary Events

Any vendor listed above in items 1-4 who also wishes to provide samples of their product may require a VDH Temporary Food Establishment permit according to the standards described in the table below.

Classification	Description
No VDH Permit required	• Cutting up farm-produced produce for raw consumption; • Sampling of a product produced under items 1-4 above where the sample is provided without modification other than cutting/slicing/portioning ○ e.g., exempt baked goods, commercially manufactured snack items; • Heating/cooking a farm-produced sausage, other meat or non-molluscan shellfish seafood product, or produce that is not typically eaten raw with limited modification (limited seasoning is acceptable, but product may not be made into a dish); AND/OR • Mixing of dips or providing samples of salsas with chips or pretzels
VDH TFE Permit required:	• Assembling a dish made with ingredients (e.g., pizza, stir-fry, casserole, salad); OR • Receiving compensation, alone or as part of any package deal, for any food item provided for immediate consumption; ○ i.e., samples of hot cooked sausage may be provided as a free sample but the vendor may not charge for a hot cooked sausage; a cooked sausage cannot be provided as a 'free gift' with the purchase of another item

Questions Regarding Inspection Responsibility and Transfers of Jurisdiction

When a question arises regarding jurisdictional oversight, the VDACS Regional Manager or designee and VDH District Environmental Health Manager, or designee, will discuss to determine jurisdiction. If no mutual agreement regarding the inspectional jurisdiction for the food establishment can be reached, a final determination will be made by the VDH Division Director of Food and General Environmental Services in consultation with a VDACS Food Safety Manager.

Once the agencies reach an agreement, if the establishment is already under regulation (i.e. is already in business), the current agency will contact the establishment's owner and conduct an inspection/investigation to document the deviations from the establishment application as originally permitted or established, and to note any retail food regulatory violations. At this time the inspecting agency shall provide due notice to the facility owner and follow all applicable provisions of Code of Virginia § 2.2-4000 et seq.

When transfer of jurisdiction is appropriate, it should occur after giving the operator sufficient time to make application to the new agency and prepare for any new regulatory requirements or revert operations to remain within the current agency's jurisdiction. The amount of time may vary but operators should be provided at least six months in cases where physical modifications to the facility (e.g. sewage disposal system enhancements) are necessary to comply with regulatory requirements. If a permit/license expires during the transition period, the agency with

current jurisdiction will retain regulatory responsibility for a period agreed upon by the VDACS Regional Manager and local health department district Environmental Health Manager.

Prior to final transfer of jurisdiction, the agency determined to be the appropriate regulatory authority shall provide due notice to the facility owner and follow all applicable provisions of Code of Virginia § 2.2-4000 *et seq.*

Areas of Collaboration

Information Exchange

To keep both Departments apprised of the conditions in food establishments throughout the Commonwealth, VDH and VDACS will, upon request, exchange information pertaining to establishments where formal or informal hearings are held or where permit withdrawals or legal actions are instituted. In situations where both Departments are involved with the inspection of the same facility, each agency will notify the other with respect to enforcement actions taken.

Both VDH, through its local health departments, and VDACS shall maintain current listings of establishments under their respective inspection programs and make such listings available to the other upon request. In addition, the contact information of VDACS and VDH personnel at regional and local levels will be made available to each agency.

Commissaries and Shared Facilities

Both agencies' inspectors shall make reasonable effort to inform the other agency's inspectors or regional/district staff when conducting inspections of commissaries or other facilities with shared jurisdiction and include their counterpart in a shared inspection whenever possible or practical. Examples may include VDH inspections of a mobile unit commissary at a VDACS permitted establishment, or a VDACS manufacturer at a VDH permitted food establishment. When joint inspections are not possible or practical, any findings pertinent to the operation of the other agency's establishment shall be shared with relevant parties of the other agency. Examples of observations that should be shared include shared equipment failures, water and sewer issues, infestations or other sanitary issues, or employee health issues.

Water and Sewage System Evaluations

VDACS shall notify VDH when an evaluation of a sewage disposal system is necessary due to a new establishment, change of use, an expansion of the menu, addition of seating, etc. Private sector evaluations of the new or proposed water and/or sewage disposal system for the intended use shall be submitted for approval via the local health department's application process and will be reviewed by VDH staff. Local Health Departments will copy VDACS on all correspondence related to a water or sewage disposal system serving a facility which they have regulatory oversight.

Prior to approval of a food establishment application, VDACS shall consult with the appropriate regional VDH Office of Drinking Water to determine whether the water system is or should be classified as a public non-community water supply.

Prior to instituting enforcement action regarding a private well, sewage system, or waterworks used by a food establishment under VDACS permit, VDH shall notify the appropriate VDACS Regional Manager or Program Supervisor.

Agreement and Consent

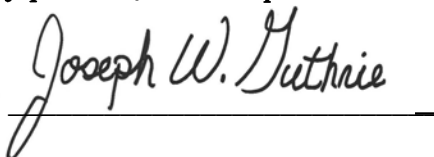
This memorandum of understanding supersedes: the prior edition of this Memorandum of Understanding entered into on January 13, 2022; the Memorandum of Understanding entered into on or about March 8, 1989, and incorporates any subsequent adopted/ratified/signed addendums; the Memorandum of Understanding entered into on or about June 25, 2015, for Food Service Operation Inspections of Wineries and Meaderies; the Memorandum of Understanding entered into on or about October 6, 2015, for Food Service Operation Inspections of Breweries and Distilleries; and the Memorandum of Understanding entered into on or about January 19, 2017, for Food Vendor Operations at Farmers Markets and Other Gatherings.

The Departments do hereby agree this agreement shall be effective upon signature by the State Commissioner of the 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.



Karen Shelton, MD
State Health Commissioner
Virginia Department of Health

8/26/2025
Date



Joseph Guthrie,
Commissioner
Virginia Department of Agriculture and Consumer Services

9/16/25
Date