MDARD Model Guidance for Multiple Temporary Food Establishment Licenses

March 11, 2013

Food Law §289.4103(6) The Director, pursuant to uniformly applied department guidance, may decline to issue multiple Temporary Food Establishment (TFE) licenses for the same establishment within a given calendar year.

Food Law §289.4105(2) Notwithstanding subsection (1)(a), a person operating as or conducting activities the director considers to be a food establishment must be licensed in the appropriate category under this act.

With the focus on good public health and food safety, the Food Law states that the Director may decline to issue multiple TFE licenses for the same establishment within a given calendar year. For statewide consistency, MDARD has been asked to issue a guidance policy to uniformly apply a process that a Director may use to determine how these establishments could be licensed to assure that the appropriate license is obtained. This guidance is not applicable if a department chooses to not limit multiple TFEs.

The department may decline to issue multiple temporary food establishment licenses if one or more of the following factors apply:

- Multiple TFE license applications are received annually for the same geographic location.
- Multiple TFE license applications are received annually from the same entity.
- There is a documented history of non-compliance (Food Law/Food Code violations) by the applicant at previous inspections.
- It has been documented that the applicant did not have a knowledgeable Person in Charge (food safety knowledge) at the TFE during previous inspections.
- The applicant does not demonstrate, through the application process, that they have the equipment, experience, or knowledge to operate the TFE in compliance with the Food Law. For example, some high risk food trails with complex food processes are beyond the scope of this license category.
- The TFE applicant is in the process of obtaining another license from a more appropriate license category, such as a Fixed, Mobile, or STFU license. [Food Law 289.4105(2)]
- The TFE applicant is proposing a TFE that the department determines should be licensed in a more appropriate license category, such as a Fixed, Mobile, or STFU license. [Food Law 289.4105(2)]
- The TFE applicant intends to operate in a fixed facility that can be licensed as a Fixed Food Establishment. [Food Law 289.4105 (2)]

One Year Exemption: An operator who has lost his STFU license (due to not meeting the requirements of his/her STFU license the previous year) may obtain multiple TFE licenses for the year they are prohibited from having an STFU license.

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Options for licensing these establishments if the decision has been made to decline to issue multiple temporary food licenses for the same establishment within a given calendar year:
Fixed Food Establishment License: If an applicant uses the same fixed site for preparation and service at each event, the director might consider using the "Procedures and Documentation Required for Issuing an Annual License for a Pre-Existing Food Service Establishment" memo from April 28, 2003. You can locate this memo on the MDARD website at:

www.michigan.gov/foodsafety
Resources for Food and Dairy Regulators
Food Service Correspondence Searchable Data
Search for correspondence
Start year: 2003
keyword- existing
OR click on the following link:
http://www.mda.state.mi.us/fscs/MemoSearch.aspx
Start year: 2003
keyword- existing

If you look on page 2 of this memo, under "Policy Guidance," there is a discussion about licensing a TFE operation that operates out of a kitchen that already exists. As an example, following this guidance may allow a director to issue a fixed or limited fixed license in a church kitchen that only operates a few times a year, if food safety can be maintained. MDARD encourages the use of this guidance.

- Limited Fixed Food Establishment License: If an applicant uses a fixed site for preparation and service at each event, but the site used does not meet all requirements of a fixed food establishment license.
    - A license may only be limited based on determinations listed in the Food Law §289.2121. An example of a license limitation may be the previously discussed church kitchen. Let's say that this church obtained a temporary license for years in order to have a Friday Fish Fry during Lent. The only ventilation is a domestic hood, but grease does not accumulate in the kitchen because the congregation members clean the entire kitchen Saturday after the each event. In a case like this, a director may have a discussion with the church that the facility could apply for a license if they request, in the application, that their operation will be limited to a certain number of operational times annually, and that their SOPs will include cleaning any accumulated grease after each operational period. Keep in mind, however, that approval from the appropriate regulatory agencies may be required.

- STFU License: If the applicant operates at many locations, either locally or statewide, for more than 14 days in a location, this may be an appropriate license.

- Mobile License: If an applicant operates at many locations (but requires a fixed site for preparation, cleaning, waste disposal, etc.) a mobile license may be appropriate.

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MDARD would like to include some clarification of the current evaluation process to issue a temporary food establishment license:

- The licensing period for a temporary food license should cover the entire period of operation of the facility. Food preparation prior to the event, and setting up the operation to Food Code and Food Law requirements, would be included in this licensing period.

  If a TFE facility is set up and ready to operate, and an inspector is fully able to evaluate food safety issues, an inspection may be done at that time, and the license issued. The inspector would need to adjust the application "operational dates" to reflect the actual operation period.

  As an example, if a church is serving Thanksgiving dinner on Thursday, they might list on the license application that their "operational dates" are for a one day event. In reality, they begin preparing the turkey, pies, etc. on Monday of that week. The license application should be revised to include Monday through Thursday, and the inspection done on Monday.

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