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Food Protection Guideline for Food Premises Operating Permits and Fees

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Introduction

This Guideline has been developed to assist Health Authorities in interpreting legislation and policy regarding the application of fees to operation of premises, in accordance with the *Health Act Fees Regulation*. Where legislation or policy is silent on specifics, the Health Authorities, in conjunction with the Ministry of Health and BC Centre for Disease Control, have come to consensus on the appropriate interpretation. One goal of this process is to help ensure consistent application of the Regulation.

Background

This document was originally developed as part of the Public Health Protection Policy Manual. It has been revised and updated to match changes in policy and practice that have occurred since the original version was developed.

Guideline

Definitions

In this guideline,

“building site” means a site where there is more than one restaurant with the same owner, each of which is located either in, or adjacent to a single building or is located on a site that has a hotel;

“decals” means an adhesive label that is issued and affixed to an operating permit at the time fees under the Schedule of the Health Act Fees Regulation are paid or remitted;

“Database System” means Health Protection database system;

“Environmental Health Officer” means an environmental health officer designated under section 78 [designation of environmental health officers], under the *PH Act*;

“Financial Services” means financial services as defined by the individual Health Authorities;

“fiscal year” means: the 12 month period commencing April 1 of a year and ending March 31 of the following year;

“food handler” individual working with unpackaged food, food equipment, utensils or food contact surfaces;

“food premises” means any place where food intended for public consumption is sold, offered for sale, supplied, handled, prepared, packaged, displayed, served, processed, stored, transported or dispensed;

“food service establishment” means food premises in which food is

- (a) processed,
- (b) served or dispensed to the public, and
- (c) intended for immediate consumption, but does not include food premises in which
- (d) only pre-packaged food that is not potentially hazardous food is served or dispensed to the public, or
- (e) unpackaged food that is not potentially hazardous food is served or dispensed to the public if the service or dispensing does not result in the risk of a health hazard occurring;

“mobile food service unit” means a food service establishment that is a cart, stand, kiosk, coffee truck or similar conveyance that is self-contained, movable from place to place and equipped to store and prepare food that is to be served or sold to the public;

“operating permit” means an operating permit issued under Section 8(3) of B.C. Reg. 210/99, the *Food Premises Regulations*, and is represented by the Health Authority documents which say “Permit to Operate”;

“operator” means operator as defined in section 1(1) of the *Food Premises Regulations*;

“restaurant” means a food service establishment;

“seasonal decal” means a decal (defined above) which says “Seasonal” and is issued to those premises open for less than 12 months per year;

“size category” means the size of premises which warrant different fees as per Section 1 of the Schedule to the *Health Act Fees Regulation*;

“valid operating permit” means a Permit to Operate with a current dated decal placed in the appropriate location;

In this guideline section, references refer to the Health Act Fees Regulation unless otherwise stated.

Application

This guideline is not intended to change discretionary decisions currently made by Environmental Health Officers (EHOs) regarding premises requiring operating permits.

The *Health Act Fees Regulation* states in Section 2(1) that an operating permit that is in force on March 31 of a year will expire on March 31 of that year.

Section 2(2) states that despite section 2(1), an operating permit issued for a period of less than 12 months expires on the date specified on the approved application.

Where a common kitchen exists for separate dining areas, (e.g. a restaurant and a coffee shop) a separate operating permit is not required for each dining area. However, if a service area remains open when a kitchen is closed (e.g. a lounge serving alcohol), separate operating permits are required.

Fee for Operating Permit

The *Health Act Fees Regulation* states in Section 3(1) that a fee must be paid to the Health Authority for the issuance or renewal of an operating permit. Annual fees are acknowledged by decals which are affixed to operating permits.

Fee Clarifications

Food Service Establishments

a) Permits and Fees

The *Food Premises Regulations* require that a permit be issued to all food service establishments. Further, the *Health Act Fees Regulation* requires that a designated fee be charged to food service establishments which have been issued a permit (certain exemptions are specified).

The determining factor whether to issue a permit and charge a fee is whether the food served or sold by the food service establishment is a *potentially hazardous food* that is processed, served or dispensed to the public and can be consumed immediately without further processing. The table in Appendix A provides a guide as to which food establishments should/should not be issued a permit and, as a result charged a fee.

Having stated the determining factor for the permit requirement, the regulations also provide *discretionary powers* to the Environmental Health Officers whether or not to issue a permit to food premises. Further discussion regarding discretion is included in Appendix B.

A Decision Tree has also been added in Appendix C to guide EHOs regarding food premises categories and the appropriate application of fees.

The *Food Premises Regulation* specifically exempts food banks and bed & breakfasts. Therefore, they do not require an operating permit, nor pay a fee.

b) Referrals

Food service establishments which are not identified in the table, and which are not easily categorized into one of the major groups, should be referred to the Regional Director or Regional Manager for Health Protection for guidance.

c) Take Outs and Food Fairs

Those food service establishments that have no seating (e.g. take-out, mall food fairs or catering services) shall be charged the operating permit fee for establishments with 50 seats or less.

d) Mobiles

A mobile food service unit has two options for payment. They may pay an annual flat fee for a mobile service unit (cannot be prorated or refunded) OR they may pay the annual fee for a restaurant with 50 seats or less (can be prorated and/or refunded). As outlined in the Mobile Food Vending Cart Guideline, mobile food service units must be approved by all health units in which they operate in. A permit is only required to be issued, and hence a fee charged by the originating health authority. The permit will be honoured by other BC Health Authorities. If the mobile is out of province, then the approval should be sought by the operator in the Health Authority in which the operator intends to do business

e) Theatres

Any theatre that is **required** to have an operating permit for selling food in a concession stand, shall be charged the operating permit fee for establishments with 50 seats or less, regardless of the theatre's seating capacity.

Hospitals, Residential and Daycare Facilities

a) Care Facility

Under the *Community Care Assisted Living Act*, facilities with 8 persons or less in daycare, and 6 persons or less in residential care, do not have to comply with the *Food Premises Regulations*, and therefore, do not require a permit to operate. Facilities with more than 8 persons in a daycare, and with more than 6 persons in a residential care, who also operate a food service establishment for food preparation, do require a permit and shall be charged the operating permit fee for establishments with 50 seats or less.

b) Hospital

If a hospital/care facility does not have a dining room/cafeteria, but prepares and serves food, they shall be charged the lesser operating permit fee, regardless of how many beds there are in the facility.

Building Sites

A person who owns (or leases) an establishment which falls into the "building site" definition, with two or more operating permits for restaurants, must pay for the most expensive operating permit, and for each additional permit, \$75. The \$75 multiple permit fee cannot be prorated or refunded.

If the primary premises of a building site has an annual fee of \$150 and a new larger premises (\$250) opens during the year, Financial Services will invoice the new larger premises \$75.00. The following year, the new premises will become the primary premises with an annual fee of \$250, and the second premises will be charged \$75.

Issuance of Operating Permits

Operating permits are issued by the EHO in the Health Authority having jurisdiction.

Operating permits shall be issued only once unless the premises undergoes a change.

New operating permits are issued for reasons shown in Table 1.

Table 1: Reasons for Issuing New Permits

REASON	CHARGE
Name of premises changed	No
Address of premises changed	Yes
Operator changed	Yes
Capacity of premises changed	If >50, or <50 seats
New premises	Yes

Issuing a new operating permit will require:

- cancellation of the existing operating permit, and a prorated refund, if requested by the operator;
- issuance of a new valid operating permit, the fee for which shall be prorated based on the calculation as stated in Section 3 of the Schedule to the *Health Act Fees Regulation* (see Section 9 of this Guideline);
- If the original Permit to Operate is damaged or lost, a replacement permit can be reissued for a fee of \$30, as established by the Health Authorities.

Display of Operating Permit

All food service establishments must display operating permits in a conspicuous location.

Decal

The *Health Act Fees Regulation* provides that a Permit to Operate is valid only if it bears an unexpired decal (Section 4(2)). Upon receipt of appropriate fees, the Health Authority having jurisdiction issues the decals. The Operators must affix the decal to the Permit to Operate in the designated location. This creates a valid operating permit.

New decals, for subsequent fiscal years, shall be affixed to the Permit to Operate covering the previously expired decals. Seasonal decals will be issued to seasonal establishments. Although the expiry date on the seasonal decal is March 31 of the fiscal year, seasonal operating permits expire on the date specified on the approved application.

Operating Permit Declaration for Reduction of Fees

The purpose of the declaration form is to identify operators who are eligible for a fee exemption, a fee reduction to reflect seasonal premises or to identify food service establishments who have two or more permits and who may qualify for a reduction of fees.

For new premises which open during the fiscal year, a declaration form should be included in the application package. The operator should send completed declaration forms to the Health Authority.

The signed declaration will be valid indefinitely unless the status of the premises changes, at which time it will be the responsibility of the operator to notify the Health Authority of any changes.

Prorated Fee for an Operating Permit

Premises which make application for Permit to Operate subsequent to the beginning of a fiscal year shall be charged a fee based on a prorated amount. Section 3 of the Schedule to the *Health Act Fees Regulation* states that the fee shall be calculated using the following formula:

$$fee = \frac{n \times z}{12}$$

where:

“n” is the number of months, or portions thereof, of the fiscal year in which the permit will apply, and

“z” is the applicable fee under section 1 or 2 of the Schedule to the *Health Act Fees Regulation*.

Remission (Refund) of a Fee for an Operating Permit

Remissions for paid fees due to the closure, change of address, change of operator or change of capacity category prior to the end of a fiscal year will be available. Section 3(4)(a) and (4)(b) of the *Health Act Fees Regulation* states that approval is given for the remission of a fee if the operator applies for the remission, and if the fee is for a month of the fiscal year for which the operator was not required to have the operating permit to which the fee applies.

Section 3(4) does not apply to multiple permit fee holder or a mobile food service unit which has paid the flat fee of \$75.

Exemptions for Decals

The *Health Act Fees Regulation* provides that premises operating for a total of 14 days or less during one fiscal year are not required to obtain a decal for their Permit to Operate in order for it to be valid (Section 6).

Fee Waived

The *Health Act Fees Regulation* (Section 7) provides that food service establishments, operated by a charitable organization, whose purpose is the relief of poverty, shall not be required to pay a fee for a decal. For the purposes of this program, an organization can apply to have the fee waived if they are a charitable organization or non-profit organization whose mandate includes the relief of poverty by providing food to the poor/hungry. However, both an operating permit and decal are still required.

Payment of Fees

Fees are to be paid according to the procedures set out by each Health Authority.

Seasonal premises may pay for only those months, or portions thereof, in which they will be in operation. The operator should calculate the number of months they will be in operation and pay that proportion of the fee.

Examples for clarification:

A concession stand is open from July 15 to October 15 (4 months). The annual fee of \$150 is prorated to reflect the concession stand being open for 4 months. The fee would be \$50.

A restaurant with more than 50 seats at a ski resort is open from October to April, then again for June, July and August. The annual fee of \$250 is prorated to reflect a 6 month winter operating season and 3 month summer season (9 months in total). The fee would be \$187.50.

Premises with valid FOODSAFE EXCELLENCE status shall retain their 50% reduction in fees.

Effective April 2010, no further FOODSAFE EXCELLENCE certifications will be issued.

Discretion/Compliance

Each Health Authority may develop written procedures on collection of fees and exercise enforcement of appropriate legislation for the collection of the fees.

APPENDIX A – Food Service Table

The following table outlines whether the premises described would be categorized as a 'food service establishment' as per the Regulation, thus requiring a Permit. It should be noted that many of the premises listed as not requiring a Permit may still require an approval under the Regulation, Part 2 – Construction of Food Premises.

Type of Premises	Permit Required	Fee Required
Vending Machines		
♦ Vending machines with food processing, serving or dispensing involving potentially hazardous foods	Yes	Yes
♦ Vending machines with pre-packaged foods which may be potentially hazardous or non potentially hazardous	No	No
Bakeries		
♦ Processing, serving or dispensing of PHFs which can be consumed immediately without further processing	Yes	Yes
♦ Processing, preparation and serving of non PHFs, provided that the dispensing or serving does not result in the risk of a health hazard. See Appendix B.	No	No
♦ Bakeries without retail outlets	No	No
Delicatessens		
♦ Processing, serving or dispensing of PHFs intended for immediate consumption without further processing (note: if a deli is only slicing and wrapping products for take away, this is <u>not</u> a FSE; if preparing sandwiches or soup for immediate consumption, this <u>is</u> a FSE)	Yes	Yes
♦ Premises only dispensing bulk sales of PHFs that are not processed on-site and not intended for immediate consumption.	No	No
Snack bars		
♦ Processing, service or dispensing of PHFs that can be consumed immediately without further processing	Yes	Yes
♦ Processing, preparation and serving of non PHFs, provided that the dispensing or serving does not result in the risk of a health hazard. See Appendix B.	No	No
Mobile Food Service Units		
♦ Processing, service or dispensing of PHFs which can be consumed immediately without further processing	Yes	Yes
♦ Processing, preparation and serving of non PHFs, provided that the dispensing or serving does not result in the risk of a health hazard. See Appendix B.	No	No
Grocery Store		
♦ Processing, food service or dispensing of PHFs	Yes	Yes
♦ Grocery store with no food preparation and food sales are limited to prepackaged foods and/or unpackaged non PHFs, where handling does not result in the risk of a health hazard.	No	No
Commissaries		
♦ No retail trade. Shipment to alternate site only.	No	No

Type of Premises	Permit Required	Fee Required
Temporary Markets		
♦ Vendor selling pre-packaged non-PHF's	No	No
♦ Vendor selling pre-packaged PHF's	Letter of Confirmation	No
Food Sampling at Retail		
♦ Non-PHF's where handling does <u>not</u> result in risk of health hazard	No	No
♦ Non-PHF's where handling may result in risk of health hazard	No	No
♦ All potentially hazardous foods	No	No
Butcher Shops		
♦ Sale of raw meats and seafood or RTE foods not intended for immediate consumption	No	No
Food Processing Plants		
♦ Sale of potentially hazardous foods without the retail outlets	No	No
♦ Sale of potentially hazardous foods with retail outlets selling foods for immediate consumption without further processing (Only the retail portion is permitted)	Yes	Yes
Bars\Pubs\Cabarets, U Brews and Alcohol Tasting		
♦ U Brews only	No	No
♦ Alcohol Tasting Rooms: no food service AND using only single service glassware	No	No
♦ Alcohol Tasting Rooms: with food service AND/OR using reusable glassware	Yes	Yes
♦ Bars and pubs (licensed drinking establishments)	Yes	Yes
Restaurant:		
♦ Eat in, for delivery or take out	Yes	Yes
Caterers		
♦ Operating more than 14 days (A permit and a fee are required whether or not a caterer has their own approved kitchen).	Yes	Yes
♦ Caterers operating less than 14 days	Temp Permit	No
Note: Permits are issued and fees (if applicable) paid by caterers who actually cater public events. Fees are not paid by hall owners.		
Catering Trucks		
♦ Selling PHF unwrapped, heated (i.e. some preparation)	Yes	Yes
♦ Selling only prepackaged food, plain tea and coffee	No	No
Movie Theatres		
♦ Food preparation and service of PHF's	Yes	Yes
♦ No food preparation, only prepackaged foods sold; and/or processing, serving or dispensing of non PHF's provided that the dispensing or serving does not result in the risk of a health hazard. See Appendix B.	No	No
Coffee\Espresso Bars		
♦ Food preparation, potentially hazardous foods, specialty coffee	Yes	Yes
♦ Limited to plain coffee or tea, prepackaged PHF's and/or non PHF's . Limited food processing serving or dispensing of non PHF's provided that the dispensing or serving does not result in the risk of a health hazard.	No	No

Type of Premises	Permit Required	Fee Required
Ice Cream Parlors/Stores		
♦ Processing, serving or dispensing of hard or soft ice cream.	Yes	Yes
♦ Selling only prepackaged ice cream	No	No
Community Care Facilities		
♦ 8 or less children in care in child day care facility and 6 or less residents in a residential care facility	No	No
♦ 9 or more children in care in child day care facility and 7 or more residents in care in a residential facility	Yes	Yes
Institutions		
♦ Hospital kitchens (Private or Public)	Yes	Yes
♦ Prison kitchen operated by provincial corrections	Yes	Yes
Rooming Houses		
♦ Central kitchen with meal service provided to clients	Yes	Yes
♦ Central kitchen with clients preparing own meals	No	No
School Programs		
♦ Strong start program (snacks prepared at home or at school by members of their program)	No	No
♦ Brown Bag Program (Lunches provided by approved caterers)	No	No
♦ Home Economics class (food labs)	No	No
♦ PAC groups or student fund raisers (open only to current school students, staff, and families)	No	No
♦ Farm to School salad bar program – foods prepared on site by school staff and volunteers for service to their school students/staff	No	No
♦ School meal programs (catered by permitted caterer, no further processing on school site and served to the school children, and or prepared by school staff/volunteers)	No	No
♦ Store, concession or canteen in school (processing only non PHFs, where handling does not create a health hazard)	No	No
♦ School cafeteria – meets FSE definition	Yes	Yes
♦ Sports day concession stands open to public where processing, serving or dispensing of PHFs	Yes (Temp Permit)	No
♦ Concession stands open to public where serving or dispensing of non PHFs	No	No

APPENDIX B – Discretion

Discretion can be defined as “the liberty of deciding as one thinks fit” or “as the power to make a decision that cannot be determined to be right or wrong in any objective way”. The legislature may grant discretionary powers to individuals and agencies which must make decisions in circumstances when (1) it is difficult to create a single rule applicable in all cases, (2) it is difficult to identify all the factors to be applied to a particular case, and (3) when the issue that is being addressed is complex. All three of these conditions apply to decision-making regarding determination of the application of the definition of a ‘food service establishment’. The *Food Premises Regulation* under the *Public Health Act* reflects this and allows the Environmental Health Officer discretion.

Discretion is granted by the law-makers in order that unique situations may be dealt with according to their specific circumstances. In other words, discretion should be applied differently in different situations. At the same time, it must be exercised in a way that is, and appears to be, fairly and consistently applied. This may be achieved through the structuring of the discretionary power.

The task facing those who have been given discretionary powers is to apply a consistent and reasonable set of principles to the decision-making process on a case-by-case basis. The challenge comes in discovering the balance between fettering discretion and structuring it.

Discretion is fettered when the rules are so consistently and rigidly applied that a decision-maker no longer considers the individual events of the case and thus loses the ability to accommodate changing circumstances. In interpreting the definition, individual differences must be considered.

APPENDIX C – Food Premises Category and Fees Decision Tree

