

Food Safety Annual Fees--Frequently Asked Questions

1. Last year I received an invoice for \$100 for the annual food safety fee which was started in 2002; why am I receiving a bill for \$40 this year?

The Appropriations Act passed by the 2002 Virginia General Assembly reduced the food safety appropriations of the Virginia Department of Agriculture and Consumer Services (VDACS) while simultaneously authorizing the collection of an annual fee, not to exceed \$40. Beginning in July 2002, the agency began charging every establishment that is subject to inspection pursuant to Chapter 51 of Title 3.2 of the Code of Virginia, commonly referred to as the Virginia Food Laws, an annual \$40 inspection fee to try to replace the reduction in the agency's food safety appropriations. During the 2010 Virginia General Assembly, this annual fee was increased from \$40 to \$100. During the 2011 session of the Virginia General Assembly, this annual fee was decreased back to the initial \$40 amount.

2. I do not cook food in my store. Do I still have to pay the fee?

Not necessarily. The fee applies to any establishment that manufactures, produces, processes, packs, exposes, offers, possesses or holds articles of food for sale. This includes grocery stores and supermarkets, convenience stores, food manufacturers and processors, food/beverage warehouses, and other similar establishments. However, the 2004 General Assembly passed legislation that exempts from inspection and the annual food safety fee retail establishments that:

- (a) Do not prepare or serve food;*
- (b) Sell only food or beverages that are sealed in packaging by the manufacturer and have been officially inspected in the manufacturing process;*
- (c) Do not sell infant formulas;*
- (d) Do not sell salvaged foods; and,*
- (e) Certify to VDACS that they meet the foregoing provisions.*

3. I did not ask your agency to inspect my store. Why do I have to pay an annual fee?

It does not matter if you requested an inspection or not. Inspections of food establishments are required by the Virginia Food Laws. Section 3.2-5130 of the Code of Virginia states that no person shall operate a food manufacturing plant, food storage warehouse, or retail food store until it has been inspected by VDACS.

4. I have not been inspected by your agency in over a year. Why do I have to pay an "annual food safety fee" for an inspection I have not received?

Frequency of inspections of food establishments is based on risk. A high-risk establishment may be inspected several times during a year, while a low risk establishment may not be inspected every year. Therefore, your establishment may not receive an inspection every year. However, because your establishment is still subject to an inspection by VDACS, the annual fee would still apply.

5. My facility only stores wine and other alcoholic beverages. I do not feel this fee applies to me.

Section 3.2-5120 of the Code of Virginia defines “food” as all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof. Wine and other alcoholic beverages fall within the definition of food and therefore are subject to inspection under the Virginia Food Laws. Consequently, the annual food safety fee will apply to such establishments.

6. We only process and/or store soda. Does the fee still apply to me?

Yes. Once again, such a product falls within the definition of food, and the facility is subject to our inspection.

7. What are inspectors looking for when they inspect my facility? In other words, what are they inspecting?

The agency’s Food Safety Specialists, also known as inspectors, are ensuring that any food or beverages that are manufactured, produced, processed, packed, exposed, offered, possessed or held for sale in the facility are safe for human consumption, and in compliance with other provisions of the Virginia Food Laws and related regulations. These inspectors look for evidence of insanitary conditions, mislabeling of food products, and mishandling of food products that can lead to consumers being exposed to unsafe foods.

8. What if my establishment is no longer in business?

If your establishment is no longer in business, you may indicate this on your invoice and return the invoice to our agency. The annual fee does not apply to an out-of-business establishment, and your invoice will be voided.

9. I have a herb/vitamin/health food store. Why do I have to pay an annual fee?

Dietary supplements, vitamins, herbs, and health foods all fall within the definition of food and are therefore subject to inspection. However, if your establishment meets the exemption provisions identified in the response to question 2, you do

not have to pay the fee. Please see the response to question 2 to determine if you qualify for such an exemption.

10. What happens if I do not pay my bill?

If you do not pay your bill, you will receive two additional notices in the mail. If after these additional notices, you choose not to pay your bill, the matter will be handled based on policies established within the agency for nonpayment of fees and subsequent collection of outstanding fees. This may include the use of a collection agency or the State's debt set-off program.

11. I don't understand what time frame the annual food safety fee bill is covering. Is it for the previous year?

The annual fee covers a twelve-month period that coincides with the Commonwealth of Virginia's fiscal year, and runs from July 1 through June 30 of each year. Invoices mailed beginning July 1, 2011 cover the time period of July 1, 2011 through June 30, 2012.

12. I do not appreciate being charged for services that I am required to have by law. I am a small business who does not make a lot of money, and I do not appreciate being charged a \$40 fee all of a sudden. Who should I speak to about having this fee removed?

The implementation of the annual fee was authorized by the 2002 Appropriations Act, which was passed by the Virginia General Assembly. If you do not agree with the provisions of the 2002 Appropriations Act, you should voice your concerns to your state legislators.

13. My local health department inspects me. Why do I have to be inspected by the Virginia Department of Agriculture and Consumer Services?

Unless an establishment is specifically exempted, the Virginia Food Laws apply to any establishment where food is manufactured, produced, processed, packed, exposed, offered, possessed or held for sale. This includes grocery stores and supermarkets, convenience stores, food manufacturers and processors, food/beverage warehouses, and other similar establishments. The Virginia Food Laws are not applied to restaurants, where the State health code is applied under the jurisdiction of local health departments. If you are operating any food establishment that is subject to inspection pursuant to the Virginia Food Laws, you are under the jurisdiction of and inspected by VDACS as part of a statewide food safety program.

Some local health departments, through ordinances passed by local governments, also inspect retail food stores, or portions thereof, in addition to restaurants and other food service operations. If your establishment is paying a

local food safety inspection or permit fee, and the local health department is inspecting the entire retail establishment, you are only responsible to VDACS for the difference between the local fee and \$40. In other words, if your local food safety annual fee is \$25, you only owe VDACS \$15. You should indicate this information on your invoice and return this information with your remittance.

However, if you operate a retail food store that includes a food service establishment or a restaurant, and the local health department only permits and inspects the food service or restaurant portion of the store, VDACS still maintains responsibility for the rest of the retail food store operation, and you are responsible for remitting the entire \$40 annual fee to VDACS, regardless of the fee that you must pay to the locality for your food service operation.

14. The letter sent to me with the annual food safety fee bill says that if I pay certain other fees, then I am not required to pay the \$40 fee. I pay a fee for the fire marshal to inspect my exhaust hood, and I have to pay to have my water treated. Does this mean I don't have to pay the annual food safety fee?

Unless you qualify for an exemption, the only time the \$40 annual food safety fee would not apply is if your local health department inspects your entire facility and charges you a similar inspection or permit fee, as explained in the answer to question 13. Other fees that are not related to food safety inspections would not affect the VDACS \$40 inspection fee.

15. I am a non-profit organization. Do I still need to pay the fee?

The 2003 session of the General Assembly amended the Appropriations Act to provide an exemption from the annual fee for certain non-profit organizations. That amended language reads as follows: "Any food bank, second harvest certified food bank, food bank member charity, or other food related activity which is exempt from taxation under 26 U.S.C § 501 (c) (3), which maintains a food handling or storage facility, or any food-related program operated by any Community Services Board, as defined in Title 37.1, Chapter 10, Code of Virginia, shall be exempt from this annual food safety fee." Consequently, the food establishments identified by this language will continue to be subject to inspection, but are not required to pay the annual fee.

16. I have a home-based business. I only make and sell a small amount of cakes or cookies each year. Do I still need to pay the fee?

Yes. The size of your operation does not affect whether or not you need to pay the \$40 fee. All establishments, regardless of size, subject to inspection pursuant to the Virginia Food Laws, are subject to the annual food safety fee.

17. I am a vendor at a farmers' market. Do I have to pay for my operation to be inspected as well as my station at the farmers' market?

Vendors at farmers' markets are billed for their individual manufacturing or processing operation, whether that takes place in their home or at another place of business. It is not our intent to bill you twice, once for the market and once for your manufacturing or processing operation. The market manager of each farmer's market is billed separately for the market itself. If you receive an invoice for each location, please contact the Office of Food Safety so that we can resolve this situation.

18. I am a produce grower. Do I need to pay the fee?

If you are only growing produce (i.e. fresh fruits and vegetables, but not including sprouts), then you are not required to pay the annual food safety fee. You are probably on our inventory because our inspectors stop by your farm on occasion to collect samples for pesticide residue analysis. If you have received an invoice requesting payment of the annual fee, please return your invoice indicating that you are a produce grower and do not pay the fee. If, however, you grow sprouts for distribution to restaurants or retail stores, you are classified as a food manufacturer and you are required to be under inspection and therefore must pay the annual food safety fee.

19. I own several facilities in a localized area. Do I need to pay a separate fee for each facility?

Yes. The annual food safety fee applies to each facility location that is subject to inspection pursuant to the Virginia Food Laws.

20. I own a chain store and have many stores across the state of Virginia. I have only received a bill for two of my stores. Do I need to pay for the stores at other locations? Do I need to alert you of the stores that are not on your inventory and are therefore not receiving a bill?

It is our intent to bill chain operations with one invoice, to be sent to the corporate or home office, and the invoice amount to cover all of the establishments operated by that chain. In some instances, certain chain stores have been incorrectly identified within our database and individual locations have received invoices. If that situation occurs, please contact the Office of Dairy and Foods, and we will work with you to appropriately resolve the situation. You will need to pay for your stores at other locations, but we want to make certain that individual locations are not being billed twice.

If you believe that we have not billed you for all of your stores, you should notify the Office of Dairy and Foods, and you should supply information about the location of those stores that do not appear on our inventory.

21. My store sells hunting supplies, beach supplies, clothes, and many other non-food items. We only sell some packaged coffee, juice drinks, soda, and chips. Do I still need to pay the fee?

Not necessarily. If your establishment meets the exemption provisions identified in the response to question 2, you do not have to pay the fee. Please see the response to question 2 to determine if you qualify for such an exemption.