

Virginia's Home Kitchen Food Processing Exemptions

Food establishments, including private homes, that manufacture, process, pack or hold food for introduction into commerce (sale) are subject to the Virginia Food Laws as well as all applicable regulations. These laws and regulations are administered by the Virginia Department of Agriculture and Consumer Services (VDACS) and enforcement of these requirements includes regular periodic inspections of food establishments (including private homes). Additionally, establishments that are subject to periodic inspections are required to pay the agency an annual fee of \$40.00.

Section § 3.2-5130 of the Code of Virginia allows certain low risk foods, acidified vegetables, and honey to be made from a private home without VDACS inspection, with certain restrictions. This fact sheet addresses some frequently asked questions and requirements relating to the exemption. Please consult the Code of Virginia for specific requirements and if you have any questions contact the VDACS Food Safety Program by phone at 804-786-3520 or via email at foodsafety@vdacs.virginia.gov.

I. Low Risk Foods (§ 3.2-5130, Item C.3)

1. What types of home-processed low-risk food products are allowed under this exemption?

- Candies
- Jams and jellies not considered to be low-acid or acidified low-acid food products
- Dried fruits
- Dried herbs
- Dry seasonings
- Dry mixtures
- Coated and uncoated nuts
- Vinegars and flavored vinegars
- Popcorn and popcorn balls
- Cotton candy
- Dried pasta
- Dry baking mixes
- Roasted coffee
- Dried tea
- Cereals
- Trail mixes
- Granola
- Baked goods that do not require time or temperature control after preparation

2. Where can I make these low-risk food products?

- In your own private home

3. What are the labeling requirements for food products in the low-risk foods category?

- Uninspected products are required to be labeled with information as required by law:
 - A label displaying the name, physical address, and telephone number of the person preparing the food product,
 - The date the food product was processed, and
 - The statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the principal display panel.
- If the product sold is too small to have an easily read label, and/or is sold to be consumed on-site, a sign at the area where the product is sold shall be an acceptable alternative to a label.
- In addition, this exemption does not preclude the need for standard labeling information on the product label (name of product, net weight statement, name and address of the manufacturer, list of ingredients and subingredients and possibly nutritional information).

4. Where can I sell these products and to whom can I sell them?

- From the private home where the product was manufactured, to an individual for his/her own consumption.
- At a farmers' markets to an individual for his/her own consumption.

5. Where can I not sell these products?

- These products cannot be sold at any location other than the private home where they were manufactured or a farmers' market, as described above.
- As such, these products cannot be sold at locations including:
 - To other businesses (including retail establishments such as grocery stores, supermarkets, and restaurants)
 - For resale
 - On the internet
 - Across state lines

6. Can I advertise my products online?

- Yes. If using the home kitchen food processing exemption (Cottage Law), a business may advertise on the internet, but not "offer for sale" on the internet. The phrase "offered for sale" shall be interpreted by VDACS to mean the act of selling on the internet – see Question #7 below.
- An exempt business can, for example:
 - Maintain an online presence that provides lists, descriptions, photos, and video of their products; dates and locations of in-person sales opportunities; and price lists.
 - Offer a telephone number, email address, or other messaging service (such as Messenger) where potential customers can reach the business and make arrangements for an in-person transaction (sale).
 - During in-person transactions, accept electronic payment from customers, including via platforms such as PayPal, Venmo, Square, etc.

7. Can I sell my products online?

- No. If using the home kitchen food processing exemption (Cottage Law), a business cannot offer their products for sale online.
- An exempt business's online presence can not:
 - Contain an order form that can be filled out electronically.
 - Accept payment electronically.
 - Offer shipping information to ship product to anyone. Product may not be shipped from the business to a customer by mail or other parcel courier.

8. Am I required to pay the annual \$40.00 fee to the agency?

- No. Although you are still required to comply with all applicable laws and regulations, since you are exempt from the agency's periodic inspections, you will no longer be required to pay the annual fee. If you receive a bill from VDACS requesting that you pay the annual fee, please contact our agency at 804-786-3520 or foodsafety@vdacs.virginia.gov so that the matter can be resolved.

II. Acidified Foods (§ 3.2-5130, Item C.4)

1. What types of food products are allowed under this exemption?

- Pickles that have an equilibrium pH of 4.6 or lower.
- Acidified vegetables that have an equilibrium pH of 4.6 or lower.
- Acidified vegetable products include pickled products, salsa, chow-chow, relishes and similar vegetables.

2. Where can I make these acidified food products?

- In your own private home

3. What types of food products are not allowed under this exemption?

- Canned fermented foods
- Canned foods that require refrigeration for safety
- Canned acid foods
- Canned fruits
- Low-acid canned vegetables

4. How much acidified product can I sell?

- Producers of acidified foods must not exceed \$3,000 in total annual gross sales for all acidified products produced. Producers should carefully document the amount of product sales incurred on an ongoing basis so that the information will be available for examination by VDACS.

5. What special precautions do I need to take in making pickles and acidified vegetables under this exemption?

- To reduce the likelihood of foodborne illness, home-canned acidified food must have an equilibrium pH value of 4.6 or lower to inhibit the growth and formation of toxins from the bacteria that cause botulism. In order to ensure that your product achieves the proper pH, an electronic pH meter should be purchased so that you can test the product to make certain that it is at a pH of 4.6 or lower.
- The home food processor is responsible for determining whether the product is an acidified food. We strongly advise that you have your manufacturing process reviewed and validated by a competent process authority. Home processors are strongly encouraged to complete a recognized Better Process Control School course. Information can be found in the Helpful Links section below.

6. What are the labeling requirements for pickles and acidified vegetables?

- Product containers are required to be labeled with information as required by law:
 - A label displaying the name, physical address, and telephone number of the person preparing the food product,
 - The date the food product was processed, and
 - The statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the front of the product.
- In addition, this exemption does not preclude the need for standard labeling information on the product label (name of product, net weight statement, name and address of the manufacturer, list of ingredients and subingredients and possibly nutritional information).

7. Where can I sell these products and to whom can I sell them?

- From the private home where the product was manufactured, to an individual for his/her own consumption.
- At a farmers' markets to an individual for his/her own consumption.

8. Where can I not sell these products?

- These products cannot be sold at any location other than the private home where they were manufactured or a farmers' market, as described above.
- As such, these products cannot be sold at locations including:
 - To other businesses (including retail establishments such as grocery stores or supermarkets)
 - For resale
 - On the internet
 - Across state lines

9. Can I advertise my products online?

- Yes. If using the home kitchen food processing exemption (Cottage Law), a business may advertise on the internet, but not "offer for sale" on the internet. The phrase "offered for sale" shall be interpreted by VDACS to mean the act of selling on the internet – see Question #10 below.
- An exempt business can, for example:
 - Maintain an online presence that provides lists, descriptions, photos, and video of their products; dates and locations of in-person sales opportunities; and price lists.
 - Offer a telephone number, email address, or other messaging service (such as Messenger) where potential customers can reach the business and make arrangements for an in in-person transaction (sale).
 - During in-person transactions, accept electronic payment from customers, including via platforms such as PayPal, Venmo, Square, etc.

10. Can I sell my products online?

- No. If using the home kitchen food processing exemption (Cottage Law), a business cannot offer their products for sale online.
- An exempt business's online presence can not:
 - Contain an order form that can be filled out electronically.
 - Accept payment electronically.
 - Offer shipping information to ship product to anyone. Product may not be shipped from the business to a customer by mail or other parcel courier.

11. Am I required to pay the annual \$40.00 fee to the agency?

- No. Although you are still required to comply with all applicable laws and regulations, since you are exempt from the agency's periodic inspections, you will no longer be required to pay the annual fee. If you receive a bill from VDACS requesting that you pay the annual fee, please contact our agency at 804-786-3520 or foodsafety@vdacs.virginia.gov so that the matter can be resolved.

Additional Information Regarding pH

What is pH?

- pH is a measurement of acidity or alkalinity using a numerical scale between 1 and 14. A pH value of 1 is most acidic, a pH value of 7 is neutral and values above 7 are referred to as basic or alkaline.

How is pH measured?

- Electronic pH meters are very accurate and pocket-sized units are available for around \$100.
- Paper strips are NOT accurate enough to measure acidity of home-canned and home-processed foods.

What is equilibrium pH?

- The pH of a food product after the food acid (e.g., vinegar) is distributed equally throughout the product.
- For example, the initial pH of the pickled cucumber that has been recently canned, will not be the same hours or days later. It takes time for the vinegar (which is acid) to penetrate and distribute into the cucumbers. Therefore, testing the pH of only the brine (liquid) portion of a recently canned and processed product is not accurate.

How do you determine a product's equilibrium pH?

- For foods canned and processed less than 2 months: Food sample need to be finely ground in a blender prior to pH testing.
- For foods with a process date greater than 2 months: pH may be taken of the brine only since all contents of the canned product should be in equilibrium.

Who can test for pH?

- The person that processed the food as long as they are capable of performing an accurate pH test.
- When testing, follow the same recipe and procedures for each batch of food to be tested.
- A separate pH test is required for each different product offered for sale under this exemption
- Private laboratories
- Universities

Examples of pH for different foods

- Dill pickles (pH 2.6-3.8)
- Tomatoes (pH 3.7-4.9)
- Distilled water (pH 7)
- Garlic (pH 5.3-6.3)

III. Honey Processing (§ 3.2-5130, Item C.5)

1. What are the criteria for the exemption?

- Private homes where the resident processes and prepares pure honey produced by his own hives
- The resident sells less than 250 gallons of honey annually.
- The resident does not process and sell other food products in addition to the honey, except as allowed above (low risk foods and acidified foods).

2. Where can I process honey?

- In your own private home

3. What types of home-processed honey products are NOT allowed?

- Infused honey products would not fall under the exemption as they are considered value-added honey products, not pure honey.

4. What are the labeling requirements for home-processed honey?

- The product is labeled "PROCESSED AND PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One Year Old."
- In addition, this exemption does not preclude the need for standard labeling information on the product label (name of product, net weight statement, name and address of the manufacturer, list of ingredients and subingredients and possibly nutritional information).

5. Where can I sell these products and to whom can I sell them?

- Currently there are not restrictions regarding where the products can be sold and who they may be sold to.

IV. Helpful Links

Assistance with locating a processing authority

- Complete list of process authorities: <https://www.afdo.org/directories/fpa/>
- Virginia Tech: <https://www.fst.vt.edu/extension/foodbiz.html>

Links for information regarding Better Process School

- University of Tennessee: <https://foodscience.tennessee.edu/better-process-control-school-course>
- Grocery Manufacturers Association: <https://consumerbrandsassociation.org/about-us/programs-initiatives/%20better-process-control-school/>

Home Canning Information

- USDA Complete Guide to Home Canning: https://nchfp.uga.edu/publications/publications_usda.html

Questions? Please contact the VDACS Food Safety Program
By phone: 804-786-3520 or by email: foodsafety@vdacs.virginia.gov