



Economic Impact Analysis Virginia Department of Planning and Budget

2 VAC 5-585 – Retail Food Establishment Regulations
Department of Agriculture and Consumer Services
April 5, 2009

Summary of the Proposed Amendments to Regulation

The current Retail Food Establishment Regulations are based on the federal Food and Drug Administration's (FDA) 2001 Food Code and the 2003 Food Code Supplement. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes several changes to these regulations for consistency with the current 2005 FDA Food Code, as well as the 2007 Food Code Supplement.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The U.S. Centers for Disease Control and Prevention estimate that food borne diseases cause approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year.¹ These comprehensive regulations establish minimum sanitary standards for retail food establishments such as supermarkets, grocery stores, and convenience stores. These standards address such topics as the safe and sanitary maintenance, storage, operation, and use of equipment, the safe preparation, handling, protection, and preservation of food including necessary refrigeration or heating methods, procedures for vector and pest control, requirements for toilet and hand washing facilities for employees, requirements for appropriate lighting and ventilation, requirements for an approved water supply and sewage disposal system, personal hygiene standards for employees, and the appropriate use of precautions to prevent the transmission of communicable diseases.

¹ Source: Virginia Department of Agriculture and Consumer Services

VDACS proposes to add sprouted beans or seeds to the list of products that require a HACCP plan if the products are sprouted at the retail establishment. The regulations define HACCP plan as a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods. The FDA has found that there are significant health risks due to the ingestion of products such as bean sprouts if correct procedures are not followed. The FDA and VDACS believe that the development of the HACCP plan by retail establishments which sprout such products will significantly reduce the health risk. Less than five of the approximately 4,804 of retail food stores in Virginia sprout beans or seeds. VDACS estimates that it would cost less than \$100 for each establishment to pay for an outside entity to prepare an HACCP, or less than one day of research and writing for establishments to produce their own HACCP. Since it is likely that the benefits of producing the HACCP plan are relatively significant and the costs are relatively small, the proposal to require the HACCP plan likely produces a net benefit.

Advances in scientific research have enabled the FDA to determine that certain reductions in restrictions can be made without significant health risks. This includes exempting deli salads prepared and packaged in a food processing plant as well as cultured dairy products and certain types of hard and semi-soft cheeses from the date-marking requirements. Also, VDACS proposes per the FDA Food Code to allow additional options for freezing to control parasites as well as exemptions for certain fish that are aqua cultured. These reductions in restrictions will lower costs for retailers while to the best of our knowledge will not significantly add to health risks. Thus, these proposed amendments will also likely be net beneficial for the public.

VDACS also proposes additional labeling requirements for food products packaged in a food establishment. Under the proposed regulations labels on foods packaged in a food establishment will include the name of each major food allergen contained in the food, unless it is already part of the common name or ingredients. This may involve a small initial time cost for retailers, but will likely reduce the incidence of individuals accidentally consuming foods for which they know they are allergic. Food allergies can induce anaphylactic shock, which is potentially fatal. Given the potentially large benefit of preventing seriously adverse health

results for some members of the public and fairly small time costs in adding information to labels, this proposed change produces a net benefit.

Businesses and Entities Affected

The proposed amendments affect the 8,932 retail food stores in the Commonwealth and their customers. Approximately 4,804 of the retail food stores are small businesses.²

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

None of the proposed amendments are likely to significantly affect employment.

Effects on the Use and Value of Private Property

Some of the proposed changes such as exempting deli salads prepared and packaged in a food processing plant as well as cultured dairy products and certain types of hard and semi-soft cheeses from the date-marking requirements and allowing additional options for freezing to control parasites will allow retailers to change some of their procedures, resulting in moderate cost savings and a commensurate moderate increase in value. Other proposed amendments such as requiring more extensive allergen labeling will modestly increase costs. None of the proposed changes are expected to produce large changes in the value of private property.

Small Businesses: Costs and Other Effects

Some of the proposed changes such as exempting deli salads prepared and packaged in a food processing plant as well as cultured dairy products and certain types of hard and semi-soft cheeses from the date-marking requirements and allowing additional options for freezing to control parasites will allow small retailers to change some of their procedures, resulting in moderate cost savings. Other proposed amendments such as requiring more extensive allergen labeling will modestly increase costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Most of the proposed amendments are either beneficial or neutral to small businesses. The few changes that moderately increase costs, such as requiring more extensive allergen

² Data source: Virginia Department of Agriculture and Consumer Services

labeling or requiring a HACCP plan for retailers who sprout beans or seeds at their establishment, produce significant benefit for the public. There is no apparent alternative method that would produce this benefit at a lower cost.

Real Estate Development Costs

The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.