



Virginia Department of Planning and Budget **Economic Impact Analysis**

2 VAC 5-585 – Retail Food Establishment Regulations
Department of Agriculture and Consumer Services
August 28, 2014

Summary of the Proposed Amendments to Regulation

The proposed changes will update the food establishment regulations to be consistent with the Food and Drug Administration's (FDA's) most recent, 2013, Food Code.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

This regulation establishes minimum sanitary standards for retail food establishments such as supermarkets, grocery stores, and convenience stores. The current regulation is based on the FDA's 2005 Food Code and the 2007 Food Code Supplement. The existing regulation is being amended to be consistent with the most recent, 2013, FDA Food Code.

The proposed changes include 1) the addition of cut leafy greens to the list of foods that retail food establishments need to refrigerate in order to ensure that the product is safe to consume; 2) food establishments must have employees who are fully informed regarding food allergens and their dangers; 3) retail food establishment employees must be aware of their responsibility to inform management of any health or illness issues that might affect the safety of food products; 4) the firm must have procedures in place for addressing vomitus or fecal matter discharge on surfaces in the food establishment; 5) wild mushrooms cannot be sold unless the establishment has been approved to do so by the regulatory authority; 6) bare hand contact with ready-to-eat food ingredients is allowed in certain instances; 7) game animals that are sold must be raised, slaughtered, and processed under a voluntary inspection program that is conducted by the United States Department of Agriculture or the state agency that has jurisdiction over animal

health; 8) the food establishment must discontinue operations and notify the Virginia Department of Agriculture and Consumer Services (VDACS) if an imminent health hazard exists at the establishment; 9) the firm must immediately contact the agency to report the illness of a food employee if the illness is of a nature that can be transmitted through food; 10) the firm must correct all Priority Item violations within 72 hours and all Priority Foundation Item violations within 10 days; and 11) the food establishment must have at least one supervisor who is a Certified Food Protection Manager.¹

Many of the proposed changes simply refine and provide further clarity to existing regulations and are not expected to create a significant economic impact. The change that will have some economic impact is the requirement to have at least one supervisor who is a certified food protection manager.² The proposed language specifies that certification must be obtained through one of the programs approved by the Conference for Food Protection. The certification classes are offered online as well as at physical locations and take about a few days to complete. Once all the classes are taken, the candidate takes the certification exam in a physical location. VDACS estimates the cost of the certification to be around \$100. In addition, there would be time and travel costs involved to take the classes and the certification exam. It is also estimated that 40% of the affected industry already meet this requirement. Thus, this proposed change will require additional time, expense and effort from some of the regulated grocery stores, supermarkets, and convenience stores.

On the other hand, this change will help ensure that an individual is in place at the establishment who fully understands food safety risk factors, practices, and principles. As a result, a reduction in food borne illnesses and a greater degree of public confidence in the safety of the food supply may be expected. According to VDACS, food borne disease in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The U.S. Centers for Disease Control and Prevention estimates that food borne diseases cause

¹ These changes are also being proposed concurrently with the Virginia Department of Health's (VDH) adoption of the current 2013 FDA Food Code. Pursuant to § 3.2-5121(C) of the Code of Virginia, this action is exempt from portions of the Administrative Process Act, provided VDH adopts the same version and both agencies' regulations have the same effective date.

² Food establishments that pose minimal risk to contributing to food borne illness, such as a convenience store selling only prepackaged potato chips, may be exempt from this requirement.

approximately 48 million people to become ill, 128,000 hospitalizations, and 3,000 deaths in the United States each year.

Businesses and Entities Affected

The proposed amendments apply to retail food establishments such as grocery stores, supermarkets, convenience stores, etc. VDACS estimates that there are 9,578 retail food stores in Virginia, of which approximately 4,789 may be considered as small businesses.

Localities Particularly Affected

The regulations apply throughout the Commonwealth.

Projected Impact on Employment

The proposed changes will require food store managers to take food safety classes and obtain certification from approved providers. Thus, an increase in the demand for services of food safety instructors may be expected. In addition, the food stores may have to schedule additional hours for other supervisors to fill in when the food safety supervisor is working toward the certification.

Effects on the Use and Value of Private Property

Food safety certification will impose costs on food stores. Consequently, their asset values may be negatively affected by a very small amount.

Small Businesses: Costs and Other Effects

Of the 9,578 retail food stores, 4,789 are estimated to be small businesses. The costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There is no known alternative that minimizes the adverse impact on small businesses while accomplishing the same goals.

Real Estate Development Costs

No impact on real estate development costs is expected.

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive

Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed 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.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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