



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

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**12 VAC 5-421 –Food Regulations**  
**Virginia Department of Health**  
June 9, 2009

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### **Summary of the Proposed Amendments to Regulation**

The current Food Regulations are based on the federal Food and Drug Administration's (FDA) 2001 Food Code and the 2003 Food Code Supplement. The State Board of Health (Board) 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.<sup>1</sup> These comprehensive regulations establish minimum sanitary standards for restaurants operating in the Commonwealth. 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.

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<sup>1</sup> Source: Virginia Department of Agriculture and Consumer Services

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. Additionally, the Board 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 restaurants while to the best of our knowledge will not significantly add to health risks. Thus, these proposed amendments will likely be net beneficial for the public.

The Board 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 restaurants, 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.

Under both the current and proposed regulations, the person in charge must “demonstrate to the regulatory authority knowledge of foodborne disease prevention, and the requirements of these regulations.” Under both the current and proposed regulations, the person in charge may “demonstrate this knowledge by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, or by responding correctly to the environmental health specialist's questions as they relate to the specific food operation.” The Board proposes to also allow “having no violations of critical items during the current inspection” as a method by which the person in charge demonstrates the applicable knowledge. This will make compliance somewhat easier for some restaurants, and the Virginia Department of Health does not believe that it puts the public at additional risk since the restaurants are in compliance. Thus, this proposed change likely produces a net benefit.

## **Businesses and Entities Affected**

The proposed amendments affect the approximate 27,000<sup>2</sup> restaurants in the Commonwealth and their patrons. The Virginia Department of Health believes that at least 95 percent of these establishments are small businesses.

## **Localities Particularly Affected**

The proposed amendments do not disproportionately affect particular localities.

## **Projected Impact on Employment**

The proposed amendments are unlikely 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 restaurants 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 restaurants 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

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<sup>2</sup> Source: Virginia Department of Health

labeling, 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.