

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

12 VAC 5-421 Food Regulations
Virginia Department of Health
Town Hall Action/Stage: 4497/7417
January 27, 2016

Summary of the Proposed Amendments to Regulation

The Board of Health proposes to update the Food 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 restaurants or restaurant like food establishments such as convenience stores with 15 or more seats. 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 food establishment 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 Health (VDH) if an imminent health hazard exists at the establishment; 9) the food establishment 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; and 10) the food establishments with some exceptions depending on risk 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 regulation and are not expected to create a significant economic impact. The change that will have some economic impact is the requirement for certain food establishments to have at least one supervisor who is a certified food protection manager. 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 a few days to complete. Once all the classes are taken, the candidate takes the certification exam in a physical location. VDH estimates the cost of the certification ranges from \$100 to \$200 per individual every five years. In addition, there would be time and travel costs involved to take the classes and the certification exam. It is also estimated that a large majority of the affected industry already meet this requirement. Thus, this proposed change will require additional time, expense and effort from some of the food establishments.

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 VDH, food borne disease in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The

¹ These changes are also being proposed concurrently with the Virginia Department of Agriculture and Consumer Services (VDACS) 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 and VDACS adopts the same version and both agencies' regulations have the same effective date.

U.S. Centers for Disease Control and Prevention estimates that food borne diseases cause 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 approximately 36,000 restaurants or restaurant like food establishments. Approximately 12,000 establishments operate under local ordinances that already require a certified food manager. Of the remaining 24,000 establishments, a large majority are national or regional restaurant chains or franchises that already have a certified food manager on staff.

Localities Particularly Affected

The regulations apply throughout the Commonwealth.

Projected Impact on Employment

The proposed changes will require food establishment 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, food establishments 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 establishments. Consequently, their asset values may be negatively affected by a very small amount.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Of the 36,000 affected food establishments, 95 percent are estimated to be small businesses. The majority of affected entities are believed to already have a certified food manager on staff. The costs and other effects discussed above apply to those that do not already have a food manager on staff.

Alternative Method that Minimizes Adverse Impact

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

Adverse Impacts:

Businesses:

Of the 36,000 affected food establishments, five percent are estimated to be non-small businesses. The majority of affected entities are believed to already have a certified food manager on staff. The costs and other effects discussed above apply to those that do not already have a food manager on staff.

Localities:

No adverse impact on localities is expected.

Other Entities:

No adverse impact on other entities is expected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 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: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) 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, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 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 shall be notified.

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