



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

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### **3 VAC 5-40 Requirements for Product Approval Virginia Alcoholic Beverage Control Authority Town Hall Action/Stage: 6206 / 10231 February 29, 2024**

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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 (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

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

The Virginia Alcoholic Beverage Control Board (Board) proposes to 1) add that the Virginia Alcoholic Beverage Control Authority (ABC) may withhold approval of any wine or beer label that is an imitation of a spirits product or is a complete facsimile of a spirits product (excluding low alcohol beverage coolers); 2) add that ABC may withhold approval of any wine or beer label that is not clearly distinguishable from a non-alcoholic product, or which minimizes, fails to identify, or disguises the product’s alcoholic contents; 3) remove current language that states that the agency may withhold approval of any wine or beer label “Which implies or indicates that the product is government (federal, state, or local) endorsed;” 4) amend the current language which states that ABC may withhold approval of labels designed to induce “minors” to drink to labels designed to induce “underage persons” to drink; 5) amend text to reflect current nomenclature, repeal text that the Board states is duplicative of the Code, and add clarifying language.

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

## Background

This action is part of a periodic review of the regulation.<sup>2</sup>

## Estimated Benefits and Costs

According to ABC, there have been instances where beer and wine product labels imitate spirits products, and this has led to market confusion and complaints to the agency. The proposal to add that ABC may withhold approval of any label that is an imitation of a spirits product or is a complete facsimile of a spirits product (excluding low alcohol beverage coolers) would be beneficial in that members of the public may become less likely to be misled concerning the nature of some beverages they consume.

Similarly, the agency has stated that there has been a nationwide issue where beer or wine labels are not clearly distinguishable from a non-alcoholic product, or which minimizes, fails to identify, or disguises the product's alcoholic contents. These occurrences have led to consumer confusion and underage consumption.<sup>3</sup> Thus, the proposal to add that ABC may withhold approval of any label that is not clearly distinguishable from a non-alcoholic product, or which minimizes, fails to identify, or disguises the product's alcoholic contents would be beneficial in that it may decrease the likelihood of unintentional underage consumption and unintentional consumption of alcohol by adults as well.

ABC also proposes to eliminate text that states that the agency may withhold approval of any wine or beer label that implies or indicates that the product is government endorsed. The agency reports that stakeholders have advocated for this change as more manufacturers were producing brands with labels that had state college or university logos or Virginia landmarks, and that these labels were being rejected because of this prohibition. Manufacturers would still have to get permission from the colleges and universities (or other relevant entities) to get to use their logos or images. Most of the landmarks on labels have been buildings associated with colleges or universities, and the manufacturer has to have permission here as well.<sup>4</sup> Since under the proposed language the manufacturers would have to receive consent from the entities whose image or logo is represented, there appears to be no cost associated with this proposed change.

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<sup>2</sup> Pursuant to the Administrative Process Act, agencies are required to review regulations every four years. See Code § 2.2-4007.1 (<https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4007.1/>) and Code § 2.2-4017 (<https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4017/>).

<sup>3</sup> Source: ABC

<sup>4</sup> Ibid

Since it newly allows manufacturers to use labels that they appear to wish to use to sell their product, these firms would be better off. Because public colleges and universities could be compensated for their permission, these institutions may benefit as well.

As stated earlier, the current regulation entitles ABC to withhold approval of labels designed to induce minors to drink. Because minors are under 18 years old, and the legal drinking age is 21 years old, the current text does not specifically allow the agency to withhold approval of labels designed to induce individuals who are 18 or over, but under 21 to drink. Amending “minors” to “underage persons” would conform the prohibition to the legal drinking age. This could be beneficial in that it could potentially reduce the encouragement of drinking by those who are 18 or over, but not yet legally permitted to consume alcohol.

### **Businesses and Other Entities Affected**

The proposed amendments potentially affect ABC’s approximate 20,892 licensees<sup>5</sup> who manufacture, distribute, or sell and serve alcoholic beverages in Virginia, public colleges and universities in the Commonwealth, and other interested members of the public.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>7</sup> The proposed amendments appear to neither increase cost nor reduce benefit. Thus, an adverse impact is not indicated.

### **Small Businesses<sup>8</sup> Affected:<sup>9</sup>**

The proposed amendments do not appear to adversely affect small businesses.

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<sup>5</sup> Data Source: ABC

<sup>6</sup> Pursuant to Code § 2.2-4007.04(D): 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.

<sup>7</sup> Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>8</sup> 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.”

<sup>9</sup> 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

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### **Localities<sup>10</sup> Affected<sup>11</sup>**

The proposed amendments neither disproportionately affect any particular localities, nor directly affect costs for local governments.

### **Projected Impact on Employment**

The proposed amendments do not appear to substantively affect total employment.

### **Effects on the Use and Value of Private Property**

Proposed amendments would affect which beer and wine labels may be used. Manufacturers that wish to use labels with state college logos or Virginia landmarks, and distributors and direct sellers of beer or wine who believe their sales would increase with such labels may have some increase in value. The proposed amendments do not affect real estate development costs.

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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.

<sup>10</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>11</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.