



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

---

## **3 VAC 5-11 Public Participation Guidelines Virginia Alcoholic Beverage Control Authority Town Hall Action/Stage: 6203 / 10228 February 20, 2024 [revised March 6, 2024]<sup>1</sup>**

---

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>2</sup>

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

The Virginia Alcoholic Beverage Control Board (Board) proposes to 1) repeal Sections 30, 40, 50, 60, 100, and 110 of the current regulation, and 2) rename and amend Section 10.

### **Background**

Chapters 321 and 525 (identical bills) of the 2008 *Acts of Assembly* required the development of model public participation guidelines (PPGs) to “standardize public participation guidelines for executive branch agencies.”<sup>3</sup> To the best of DPB’s knowledge, every agency that updated its PPGs pursuant to the 2008 legislation adopted the model PPGs, including the predecessor to the Board.

### *Sections of the Current Regulation*

The numbers and names of sections in the current regulation are as follows:

---

<sup>1</sup> After the initial publication of this report, some of the proposed amendments were removed. This revised version of the Economic Impact Analysis reflects those changes.

<sup>2</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.

<sup>3</sup>See <https://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0321>

- Section 10 Purpose;
- Section 20 Definitions;
- Section 30 Notification list;
- Section 40 Information to be sent to persons on the notification list;
- Section 50 Public comment;
- Section 60 Petition for rulemaking;
- Section 70 Appointment of regulatory advisory panel;
- Section 80 Appointment of negotiated rulemaking panel;
- Section 90 Meetings;
- Section 100 Public hearings on regulations; and
- Section 110 Periodic review of regulations.

### *Section 10*

The current Section 10 is in full:

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Alcoholic Beverage Control Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

The Board proposes to rename the section as “Purpose and procedure,” label the existing paragraph “A.,” and add the following:

- B. No less than once every four years the authority shall adopt and publish guidance for public participation.
- C. Any person may request to be placed on a notification list by registering as a public user on the Town Hall website, and will have the opportunity to submit data, views, and arguments, either orally or in writing, to the authority through a postal carrier, or electronically, as specified on the Town Hall.
- D. The failure of any person to receive any notice or copies of documents shall not affect the validity of any regulation or regulatory action.

### *Sections 30, 40, 50, 60, 100, and 110*

Some, but not all of Sections 30, 40, 50, 60, 100, and 110 appear to be duplicative of the Code, including cross-references between the regulation and associated statutory provisions.

---

However, based upon DPB's review of the current regulation, and the statutes identified by the Virginia Alcoholic Beverage Control Authority (ABC) as being duplicated by the regulation, some portions of these sections do not appear to be duplicative of the Code. Specifically, the following described items that the Board proposes to repeal do not appear to be duplicative of the Code:

- Section 30 Notification list. This section contains detail on requirements for maintaining notification lists, how the public can choose their method of notification, when someone can be taken off a notification list, etc. None of these requirements appear to be directly duplicative of Code. As described above in the proposed new text for Section 10, the Board does propose to specify that persons "may request to be placed on a notification list by registering as a public user on the Town Hall website, and will have the opportunity to submit data, views, and arguments, either orally or in writing, to the authority through a postal carrier, or electronically, as specified on the Town Hall."
- Section 40 Information to be sent to persons on the notification list. As the title indicates this section contains the items that are to be sent to people on the notification list.
- Section 50 Public comment. Although the majority of this section is duplicative of the Code, the statement that "To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received," is not. Additionally, the requirements that the agency accept public comments for a minimum of 60 calendar days following the publication of a proposed regulation, and for a minimum of 30 calendar days following the publication of a final adopted regulation, could perhaps be inferred from statute but are not clearly mentioned in the Code.
- Section 60 Petition for rulemaking. This section is partially duplicative of Code. Items in this section that are not in the Code include the requirement that the petition have "The petitioner's name and contact information" and that "The petition shall be posted on the Town Hall."
- Section 100 Public hearings on regulations. This section is largely duplicative of Code. The requirement that "Notice of any public hearing shall be posted on the Town Hall and

Commonwealth Calendar at least seven working days prior to the date of the hearing” is not.

- Section 110 Periodic review of regulations. This section is partially duplicative of Code. The statement that “A periodic review may be conducted separately or in conjunction with other regulatory actions” is not.

### **Estimated Benefits and Costs**

As described above, each state agency uses the same public participation guidelines. This consistency decreases the burden, and associated costs, upon the public by regulating agency behavior: namely, the manner in which agencies foster public participation. The use of a standardized process therefore makes it substantially easier for the public to participate in the formation and development of regulations. If agencies used different public participation policies, it would become more difficult for the public to understand the process used at each agency and thereby keep well informed on how to participate. Thus, the proposal to repeal large portions of this regulation and abandon standardization would likely produce some cost.

Section 40 informs the public on what information they will receive if they are put on the notification list. Removing this section would leave the public less well informed.

Section 50 in part lists the minimum number of days after the publication of a regulatory action that the agency must accept public comments, for seven different types of regulatory actions. The requirements are spread in different parts of the Code, and may not be easy to find for a layperson. It is convenient to have this information for seven different types of actions in one place. Repealing Section 50 would remove this convenience.

If Section 60 is eliminated, petitions for rulemaking would no longer be required to be posted to the Virginia Regulatory Town Hall. If petitions for rulemaking are not posted to Town Hall, the public would be less well informed.

Eliminating Section 100 would remove the requirements that public hearings on regulations be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The removal of these requirements could leave the public less well informed. Citizens may miss hearings that they may have wanted to attend.

## **Businesses and Other Entities Affected**

The proposed amendments potentially affect ABC's approximate 20,892 licensees<sup>4</sup> who manufacture, distribute, or sell and serve alcoholic beverages 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>5</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>6</sup> As noted above, the proposed repeal of large portions of the regulation may leave the public (including firms) less well informed and could in some cases potentially reduce their ability to participate in the regulatory development process. Thus, an adverse impact is indicated.

### **Small Businesses<sup>7</sup> Affected:<sup>8</sup>**

#### Types and Estimated Number of Small Businesses Affected

The proposed amendments affect small firms that manufacture, distribute, or sell and serve alcoholic beverages in the Commonwealth. ABC does not have the capability to determine which of its licensees meet the definition of a small business.<sup>9</sup>

---

<sup>4</sup> Data Source: ABC

<sup>5</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>6</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>7</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>8</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 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>9</sup> Source: ABC

---

### Costs and Other Effects

As described above, the proposed repeal of large portions of the regulation may leave small firms that manufacture, distribute, or sell and serve alcoholic beverages in the Commonwealth less well informed about regulatory activity that affects them and could in some cases potentially reduce their ability to participate in the regulatory development process.

### Alternative Method that Minimizes Adverse Impact

Adverse impact could be reduced if the sections of the regulation that contain information and requirements that are not duplicative of the Code were to be retained.

### **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 directly affect total employment.

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

The proposed amendments do not appear to directly affect either the use and value of private property or real estate development costs.

---

<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.