



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

3 VAC 5-60 Manufacturers and Wholesale Operations
Virginia Alcoholic Beverage Control Authority
Town Hall Action/Stage: 6208 / 10233
March 1, 2024

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.¹

Summary of the Proposed Amendments to Regulation

The Virginia Alcoholic Beverage Control Board (Board) proposes amendments to the regulation to align the regulation with current industry practices, conform to the Code of Virginia, improve clarity, and remove redundant and obsolete language.

Background

In order to meet the regulatory reduction requirements of Executive Order 19, the Board met six times between June and October 2022 to review all of the Virginia Alcoholic Beverage Control Authority’s (ABC) regulations, and convened roughly sixty stakeholders, representing all categories of license holders.² As a result of that review process, and as part of a periodic review,³ the Board proposes to make the following changes:

¹ 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.

² See <https://townhall.virginia.gov/L/Meetings.cfm?BoardID=2&time=Past>. ABC provided a list of external stakeholders; although all stakeholders may not have attended every meeting, the meetings were spent conducting a line-by-line review of the regulations, and the proposed changes reflect the Board’s decisions after considering stakeholder input.

³ Pursuant to the Administrative Process Act, agencies are required to review regulations every four years.

- Section 10: References to salesmen would be changed to “salesperson.” The existing subsection C would be struck as these provisions are addressed in Sections 4.1-229, 4.1-225, and 4.1-227 of the Code of Virginia (Code).⁴ The rest of the proposed new language in Section 10 is being moved from sections 60 and 80 of this regulation because it consolidates all related provisions into one section and would minimize confusion.
- Section 30: “Off-premise” and “retail off-premise” would be struck as the 2020 license reform separated winery licenses from retail licenses.⁵
- Section 40: Wine wholesalers are currently required to pay an indemnifying bond of \$2,500 to obtain a license. ABC proposes to increase this amount to \$10,000, which is the maximum amount allowed in Code § 4.1-223.⁶ The purpose of the bond is to protect the Board if a wholesale wine licensee fails to make timely tax payments; the Board seeks to increase this amount to maximize the protection to the Board in such cases. However, the Code does allow the Board to waive the bond requirement if the wholesaler has previously demonstrated his financial responsibility, and this flexibility is reflected in the regulation as well. The Board also proposes to insert “for good cause shown” as a requirement for wholesale wine licensees to request a waiver of the surety and the bond.
- Section 50: The term “readily calculable” would be added in the reporting requirements for wine volumes; this change is intended to allow regulants to convert the volume to liters when reporting the volume of a product that is labeled in a different unit of measurement.
- Sections 60 and 80: These sections would be repealed and moved in their entirety into Section 10.
- Section 70: The term “legal holiday” would be replaced with “state or federal holiday.”
- Section 90: This section currently prohibits wholesale deliveries of wine and beer on Sundays and would be repealed in its entirety because the stakeholder workgroup considered it to be outdated.

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/>).

⁴ See <https://law.lis.virginia.gov/vacode/4.1-227/>, <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-225/>, and <https://law.lis.virginia.gov/vacode/4.1-229/>.

⁵ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB390>.

⁶ See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-223/>.

- Section 100: The title of this section would be changed to “Certain Employees of manufacturers and wholesalers” to be more accurate.

Estimated Benefits and Costs

The proposed amendments largely serve to update the regulation to reflect current practice, conform to statute, and remove redundant or obsolete language. The proposed increase to the indemnity bond amount from \$2,500 to \$10,000 would increase the overall cost of obtaining a wholesale wine license. It should be noted that the increase in cost would depend on how much more the wholesaler would have to pay to obtain the bond from the surety.⁷ In addition, current licensees who have been in good financial standing with ABC may request a waiver of the bond altogether, provided they show good cause. Removing the prohibition on wholesale deliveries on Sundays would benefit wholesalers and their customers for whom Sunday deliveries would be more convenient and desirable.

Businesses and Other Entities Affected

The proposed amendments primarily affect ABC’s manufacturer, distiller, and wholesaler licensees; currently, there are 897 active manufacturer-type licensees (including winery, farm winery, brewery, and limited brewery), 112 active distillery or limited distillery licensees, and 524 active wholesaler-type licensees (beer and wine wholesalers).⁸

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ 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.¹⁰ The proposed increase in the indemnity bond amount would marginally increase the

⁷ The price of the bond to the wholesaler is generally less than the bond amount and reflects the surety’s estimation of the wholesaler’s risk of defaulting on taxes.

⁸ Data Source: ABC

⁹ 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.

¹⁰ 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.

cost of maintaining the wine wholesale license for current and future licensees. Thus, an adverse impact is indicated for wine wholesalers.

Small Businesses¹¹ Affected:¹²

The proposed amendments do not appear to adversely affect small businesses. ABC does not collect information on which of their licensees qualify as small businesses; however, wine wholesalers are not likely to meet the definition of small businesses.

Localities¹³ Affected¹⁴

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

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed increase in the required indemnity bond amount would increase the license cost of wine wholesalers, which would decrease the value of these private businesses. However, any reduction in value arising from this cost increase is likely to be negligible relative to wine wholesalers' revenues. The proposed amendments do not affect real estate development costs.

¹¹ 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.”

¹² 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.

¹³ “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.

¹⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.