



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

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### **3 VAC 5-10 Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers**

**Virginia Alcoholic Beverage Control Authority**

**Town Hall Action/Stage: 5856 / 9447**

November 29, 2021

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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 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

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

The Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to remove the citation to § 2.2-4019 of the Code of Virginia, which is part of the Administrative Process Act (APA). The cited section addresses pre-hearing conferences, and would be removed because the Virginia Alcoholic Beverage Control Authority's (Authority) pre-hearing conference procedure slightly differs from the procedure referenced in the APA.

### **Background**

The purpose of this action is to amend the regulation so that it comports with how the Authority conducts its pre-hearing conferences in practice. The current regulation states that the Authority will conduct an informal conference for the reasons set forth in § 2.2-4019, which states in part:

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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.

*A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, which notice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case; (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof; and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.*

In practice however, the Authority's pre-hearing conference procedure departs from the statute in two aspects regarding items *ii* and *iv*. First, the Authority conducts pre-hearing conferences also virtually or telephonically in addition to in-person meetings. Second, the Authority may not issue a decision at the prehearing conference. The proposed amendments account for these two differences and more accurately reflect how the pre-hearing conference is conducted in practice.<sup>2</sup>

### **Estimated Benefits and Costs**

Since the proposed amendments more accurately describe how the pre-hearing conferences are already conducted in practice, no economic effect is expected other than improving the accuracy of the regulatory text.

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

This revision will impact applicants for Alcoholic Beverage Control (ABC) licenses and current ABC licensees. According to the Authority, there are 20,728 active licenses. They are all

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<sup>2</sup> The Authority cites § 2.2-4000.B of the Code of Virginia and states that the APA is meant to supplement an agency's basic laws in deciding cases, not supersede them. Based on this interpretation, the Authority believes its pre-hearing conference procedure in the proposed regulation is allowed to depart from § 2.2-4019.B of the Code of Virginia in the two aspects as discussed. The Office of Attorney General has certified the Board's authority to promulgate this regulation and concluded that the proposed amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect. See [https://townhall.virginia.gov/l/GetFile.cfm?File=2\5856\9447\AGmemo\\_ABC\\_9447\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=2\5856\9447\AGmemo_ABC_9447_v1.pdf)

subject to the APA and would be impacted by this amendment if they were to go through the hearing process with the Authority. In 2021, there were 44 pre-hearing conferences conducted by the Authority. None of the ABC licensees appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed changes to the regulatory text would more accurately reflect the current practice with no other significant economic impact expected. Thus, an adverse impact is not indicated.

### **Small Businesses<sup>4</sup> Affected:<sup>5</sup>**

The majority of ABC licensees are believed to qualify as a small business. However, the proposed amendments do not appear to adversely affect small businesses.

### **Localities<sup>6</sup> Affected<sup>7</sup>**

The proposed amendments do not affect localities.

### **Projected Impact on Employment**

The proposed amendments do not affect total employment.

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<sup>3</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. 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.

<sup>4</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>5</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>6</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>7</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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

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