



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

3 VAC 5-70 Other Provisions

Virginia Alcoholic Beverage Control Authority

Town Hall Action/Stage: 6175 / 9908

February 15, 2023

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 these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to replace the dollar amounts for two fees (the application fee, and the permit fee for industrial use of alcohol) with the phrase that the fees are “in an amount established by the Authority.”

Background

Until May of 2022, the application fee for an industrial alcohol permit was \$10 and the yearly permit fee was an additional \$10 (\$20 total) for orders in excess of 110 gallons; for lesser volumes the amounts were \$5 for the application fee and \$5 for the permit fee (\$10 total). The industrial permit is required for shipment and transportation of alcohol or other alcoholic beverages from the Authority to the purchaser. This type of permit is needed for the use of alcohol or alcoholic beverages for industrial purposes, scientific research or analysis, manufacturing of articles under Virginia Code § 4.1-200, and for use in a hospital or home for the aged.

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.

The Virginia Alcoholic Beverage Control Authority (Authority) issued a General Notice in April 2022 informing stakeholders of the new amounts of various application and permit fees.² Among other fee adjustments, the general notice indicated that effective May 1, 2022, the Authority would charge a \$50 application fee and a \$50 permit fee (\$100 total) for all industrial permits regardless of the volume. The notice included a 21-day public comment period. The Authority did not receive any comments and the permit fees went into effect on May 1, 2022.

The Authority states that it held several stakeholder meetings to discuss license reform (which included the implementation of new permit fees and increases to existing permit fees). These meetings were open and held over several months. According to the Authority, it received overwhelming support from the stakeholders for the increase in licensing fees and existing permit fees as well as the creation of permit fees for permits that did not previously have a fee. The Authority relates that stakeholders found these fees to be fair and appropriate given the fees were directly tied to the amount of time and effort put into the investigation and regulation of permittees that is required of the Authority's Bureau of Law Enforcement.

This regulatory change is being proposed to remove the dollar amounts of fees from the regulation that applies specifically to the industrial permits and to insert language that the fees are "in an amount established by the Authority" so that the regulatory text comports with current practice following the Authority's implementation of these new fees on May 1, 2022.

Estimated Benefits and Costs

The \$10 and \$5 fees in the text of the regulation were established in November 1986 and were not updated until May of 2022. The fee amounts adjusted for inflation since November 1986 are \$27.10 and \$13.55 respectively for the \$10 and the \$5 amounts.³ The inflation adjusted total (application fee plus the permit fee) fees equate to \$54.20 for orders in excess of 110 gallons and \$27.10 for lesser amounts as of February 2023. Thus, the current total industrial permit fee amount of \$100 is 85 percent higher than the inflation-adjusted amount for larger orders and 269 percent higher than the inflation-adjusted total fee for smaller orders. It appears the current fees should be sufficient to cover increases in administrative and enforcement costs if such costs grew at the same rate as inflation. At the current fee levels, the Authority expects to

² <https://townhall.virginia.gov/L/ViewNotice.cfm?gnid=2386>

³ https://www.bls.gov/data/inflation_calculator.htm

collect \$13,900 per year from the 139 applications it estimates would be received. In essence, the adjustment aspect of fees would help the Authority recover a larger portion of the increase in administrative and enforcement costs that likely occurred since 1986 and the applicants would be required to contribute more to such costs involved in application review, issuance, and enforcement of industrial permits.

An additional aspect of the proposed changes is removal of the dollar amount of fees from the text of the regulation and replacing this with a process where fee amounts are established by the Authority outside of the regulatory process. This change would allow the Authority to make fee adjustments more expeditiously by effectuating them through a General Notice and accompanying comment period (as is currently done) or without any notice if the Authority chooses not to provide a general notice of such a change. In contrast, if the fee amounts were in the regulation, any adjustment to the fees would be expected to follow the steps required by the Administrative Process Act (APA). Generally speaking, under an APA-compliant process there are one or more regulatory stages that offer the public and any stakeholders an opportunity to provide a comment to which the Authority is required to respond to and take into consideration in the rulemaking. In this sense, removing the fees from the regulation would decrease the amount of time the Authority must spend when adjusting the fees, but at the same time may decrease the opportunity for the stakeholders and especially potential applicants to provide input and possibly object to such adjustments.

Businesses and Other Entities Affected

The proposed amendments primarily affect industrial permit applicants. The Authority expects 139 such applications per year. The current fees reflect a larger (inflation-adjusted) percentage increase (269 vs 85 percent) for permits involving fewer than 110 gallons compared to permits involving more than 110 gallons. Other than that, none of the applicants appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or

⁴ 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

reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposal would take the dollar amounts of industrial permit fees out of the regulation and would instead insert language to the effect of “the fee amounts established by the Authority” which is currently done through a general notice. Depending upon whether the Authority continues to use a General Notice to announce such changes, this aspect of the change may limit the opportunities available to the stakeholders and especially to the permittees to provide input for the fee adjustments or object to such adjustments compared to the opportunities required to be provided by the APA. Additionally, this change would indirectly incorporate the fee increases occurred effective May 1, 2022. Thus, an adverse impact on industrial permit applicants is indicated.

Small Businesses⁵ Affected:⁶

The Authority does not track which of the affected licensees would qualify as a small business. However, a review of the list of active industrial permit holders provided by the Authority suggests some permit holders may be small businesses.

Types and Estimated Number of Small Businesses Affected

The small businesses involved with the industrial alcohol permit fee would likely be industrial, manufacturing, research and analysis, and medically oriented businesses. There is no specific number of businesses that proposed amendments affect.

Costs and Other Effects

To the extent any of the industrial permit applicants are small businesses, the proposed amendments may adversely affect them by potentially limiting their ability to participate in the fee adjustment process to the same degree as would be required under

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.

⁵ 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.”

⁶ 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.

an APA-compliant process, as well as due to higher fees effectuated by this proposal. Thus, an adverse impact on small businesses appears to be indicated.

Alternative Method that Minimizes Adverse Impact

The alternative method that would minimize the adverse impact of adjusting fee amounts outside the regulation would be to keep the fee amounts in the regulation so that all the opportunities afforded by the APA in determining and establishing fee amounts would be available to entities who need to obtain permits from the Authority pursuant to this regulation.

Localities⁷ Affected⁸

The proposed amendments do not disproportionately affect any particular locality and do not introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to be significant enough to affect total employment.

Effects on the Use and Value of Private Property

No impact on the use and value of private property is expected in light of the fact that the higher fees are already implemented effective May 1, 2022. Similarly, no impact on real estate development costs is expected.

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.