



Economic Impact Analysis Virginia Department of Planning and Budget

3 VAC 5-40 – Requirements for Product Approval

Department of Alcoholic Beverage Control

January 27, 2004

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

§4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations that it deems necessary to carry out the provisions of Title 4.1 (Alcoholic Beverages and Industrial Alcohol). Specifically, §4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to determine the nature, form, and capacity of all containers used for holding alcoholic beverages kept or sold under Title 4.1 and prescribe the form and content of all labels and seals to be placed on these containers.

The proposed regulation (1) removes the certification and chemical analysis requirements for new beer and wine products sold in Virginia, (2) allows individuals and establishments licensed to sell beer on- and off-premises to use growlers, and (3) permits references to athletes and athletic teams on beer labels to the extent that it is permitted in point-of-sale advertising under 3 VAC 5-20 (the regulation setting forth limitations on advertising of alcoholic beverages by manufacturers, distributors, and retailers).

Estimated Economic Impact

(1) The proposed regulation removes the certification and chemical analysis requirements for new beer and wine products sold in Virginia. The existing regulation requires the submission of a certification or a sample of wine or beer for analysis prior to the wine or beer being sold in Virginia. The cost of certification or chemical analysis is to be covered by fees charged by the Department of Alcoholic Beverage Control (ABC) from all applicants seeking approval as to the content, container, and label of the wine or beer in question. Under the proposed regulation, rather than requiring a separate certification or chemical analysis, the Alcoholic Beverage Control Board will rely on the label approval provided by the federal Bureau of Alcohol, Tobacco, and Firearms.

The Bureau of Alcohol, Tobacco, and Firearms is required to approve the formulation of all alcoholic beverages sold in the United States. By removing the state certification and chemical analysis requirement, the proposed change will avoid wasting resources on duplicating federal label approval procedures and activities. However, the net economic impact of the proposed change is not likely to be significant. According to ABC, certification and chemical analysis has not been required for several years now and the proposed change simply makes the regulation consistent with current practice.

(2) The proposed regulation relaxes the provision in the existing regulation dealing with the use of growlers¹. Rather than limiting the use of growlers to brewpubs, the proposed regulation allows all individuals and establishments licensed to sell beer on- and off-premises to use growlers. According to ABC, the use of growlers applies to certain types of specialty beers not ordinarily available in bottles and cans. In such cases, the draft beer is put into growlers and sold for off-premises consumption.

The proposed change is likely to affect alcoholic beverage manufacturers, wholesalers, and retailers licensed to sell beer on- and off-premises. According to ABC, there are approximately 14,000 manufacturers, wholesalers, and retailers currently operating in Virginia. Of the approximately 13,000 retail licensees, facilities with licenses allowing the consumption of beer on- and off-premises, such as restaurants (5,421 licensees) and hotels and resorts (308 licensees), will be affected by the proposed change.

¹ Re-closeable containers, usually jars with re-closeable lids

The proposed change is likely to have a small net positive economic impact. It is likely to increase the number of individuals and establishments selling specialty beers not usually available in bottles or cans. Under the existing regulation, only brewpubs are allowed to use growlers, limiting the number of establishments selling these types of beers for off-premises consumption. By relaxing the provision to include other licensees allowed to sell beer for on- and off-premise consumption, the proposed change is likely to increase competition and exert downward pressure on the price of these specialty beers.

(3) The proposed regulation permits references to athletes and athletic teams on beer labels to the extent that it is permitted in point-of-sale advertising under 3 VAC 5-20 (the regulation setting forth limitations on advertising of alcoholic beverages by manufacturers, distributors, and retailers). The existing regulation allows the Alcoholic Beverage Control Board to withhold approval for a label when the label makes references to any athlete, former athlete, or athletic team as these references might be construed to imply that the product enhances athletic prowess. This provision is modified to allow such references under certain circumstances.

The proposed change is not likely to have a significant economic impact. A change to this effect was made in the Code of Virginia a few years ago and references to athletes and athletic teams on beer labels have been permitted since that time. Thus, the proposed change is not likely to have any impact on current practice.

Businesses and Entities Affected

The proposed regulation is likely to affect alcoholic beverage manufacturers, wholesalers, and retailers. According to ABC, there are approximately 14,000 manufacturers, wholesalers, and retailers operating in Virginia. Of the 14,000, approximately 13,000 hold retail licenses (including restaurants, grocery stores, and convenience stores).

Licensees will be able to sell wine and beer in Virginia without first obtaining a certification or doing a chemical analysis. All establishments licensed to sell beer for on- and off-premise consumption, not just brewpubs, will be allowed to use growlers to sell draft beer for off-premise consumption. Licensees will be allowed to make references to athletes and athletic teams on beer labels as long as they meet the advertising requirements under 3 VAC 5-20.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation is not likely to have a significant impact on the use and value of private property. Removing the certification and chemical analysis requirement and allowing references to athletes and athletic teams is not likely to have a significant effect as these provisions have been implemented for several years. The relaxing of the provision dealing with the use of growlers is likely to have a negative impact on brewpubs currently selling beer in growlers. However, the proposed change is likely to have a positive impact on all other categories of retailers who were previously not allowed to use growlers.