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Fast-Track Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3VAC5-70-60
VAC Chapter title(s)	Other Provisions
Action title	Amendment to Industrial Permit fees
Date this document prepared	January 10, 2023 (revised 2/3/2023)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Alcoholic Beverage Control Authority is amending Section 3VAC5-70-60 to reflect the current fee for industrial permits.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

NA

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

- 1) The date the action was taken is January 11, 2023, during the VA ABC Board meeting.
- 2) The Virginia Alcoholic Beverage Control Authority is the agency taking the action.
- 3) The title of the regulation is “Alcoholic Beverages for hospitals, industrial and manufacturing users; permits; fees; storage; suspension or revocation”.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The mandate for this change is the Authority's decision to ensure that the regulation matches current practice. Currently, the regulation states that applications for industrial permits shall be accompanied by a \$10 fee, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts; however, Section 4.1-103(30) of the Code of Virginia states the Board has the authority to establish and collect fees for all permits as set forth in the ABC Act including fees associated with applications for such permits. To that end, the Authority issued a general notice in April 2022 informing permit applicants of the new application and permit fees for permits. The general notice indicated that effective May 1, 2022, the Authority would be charging a \$50.00 application fee and a \$50.00 permit fee for all industrial permits. 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, without issue. This regulatory change is being promulgated so that the regulation comports with current practice.

This rulemaking is expected to be non-controversial because Section 4.1-103(30) of the Code of Virginia states the Board has the authority to establish and collect fees for all permits as set forth in the ABC Act and permittees have been paying this fee already. Additionally, this revision ensures the regulations align with the practice that has already been implemented.

Prior to the implementation of the permit fees and even before the general notice announcing the start date for the permit fees, VA ABC engaged in 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. VA ABC 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 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 VA ABC Bureau of Law Enforcement. Even after license reform became effective on January 1, 2022, VA ABC did not immediately begin charging the increased fee for industrial alcohol permits but continued to vet the increase to ensure that it was appropriate. VA ABC waited until the conclusion of the public comment period before charging the fee. Since the implementation of the increased fee, VA ABC has had at least forty-five permittees pay the new fees without complaint or objection. Given the feedback from the stakeholders in support of the fees, the lack of public comment to the general notice, and the lack of any complaints or objections to the fee increase that has been in place for over 8 months,

it would be prejudicial to require VA ABC to engage in a prolonged regulatory process for the sake of providing multiple opportunities for public comment when that has already occurred.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

- 1) The promulgating agency is the Virginia Alcoholic Beverage Control Authority.
- 2) Section 4.1-101 of the Code of Virginia (Code) establishes the Virginia Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act). Section 4.1-103(7) states the Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

Section 4.1-111 (A) of the Code provides the Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Section 4.1-103(30) of the Code states the Board has the authority to establish and collect fees for all permits as set forth in the ABC Act including fees associated with applications for such permits.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

- (1) The rationale for this change is that it is needed to maintain consistency between the Authority's regulation and the Authority's practices.
- (2) The change is essential to protecting the health, safety, and welfare of citizens because those interests are protected through consistent application of regulations and practices.
- (3) The goal of the change is to achieve consistency between current practices and the text of the regulation. Inconsistencies between regulations and actual practices have the potential to create confusion in the regulated community and this change is intended to prevent any confusion.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The substantive change to the existing text will be adding language that states applicants for industrial permits will be charged a fee established by the Authority.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public and the Commonwealth is that the regulation will be consistent with the current practice within the Authority. There are no disadvantages.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements and no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>The average revenue that the Authority will receive from this change is approximately \$13,900.</p> <ul style="list-style-type: none"> a) The source of the revenue will be application and permit fees from those that apply for this permit. b) The application fee and permit are a one-time fee; however this permit can be renewed if the individual chooses which result in another payment of the permit fee c) There is no cost of revenue loss to the Authority.
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues associated with the change for other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit is that the regulation will be consistent with the current practice within the Authority.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no projected costs, savings, fees, or revenues associated with the change for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit is that the regulation will be consistent with the current practice within the Authority.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This change only impacts those entities that choose to obtain an industrial permit.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p>	<p>This revision will only impact those entities that choose to obtain an industrial permit</p>

<p>a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>Affected individuals will pay a \$50 application fee for this permit and a \$50 permit fee if issued.</p> <p>a) This change does not impose any new reporting or recordkeeping requirements. The administrative costs will be the application and permit fee associated with this license (approximately \$100). b) There are no costs to the development of real estate as a consequence of this change. c) The application fee and permit fee are \$50 each. d) There is no purchase of equipment or services. e) This change does not impose any additional time requirements on regulants.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit is that the regulation will be consistent with the current practice within the Authority.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other viable alternatives considered. This change was considered the least burdensome or intrusive because it has already been implemented. The Authority already solicited public comment on this change in April 2022 and did not receive any comment.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There was no analysis of alternative regulatory methods. This revision aligns the regulation with the current practice. Applicants for this permit have already been paying these fees since May 2022. The revision does not impose any new schedules or deadlines. There are no exemptions for small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Alcoholic Beverage Control Authority is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to LaTonya Hucks-Watkins, 7450 Freight Way, Mechanicsville, VA 23116, 804-213-4698, 804-213-4574, latonya.hucks-watkins@virginiaabc.com. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-70-60		<p>A. The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:</p> <ol style="list-style-type: none"> 1. For industrial purposes; 2. For scientific research or analysis; 3. For manufacturing articles allowed to be manufactured under the provisions of § 4.1-200 of the Code of Virginia; or 4. For use in a hospital or home for the aged (alcohol only). <p>Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.</p> <p>The application for such permits shall be on forms provided by the board.</p> <p>B. Applications for alcohol shall be accompanied by a fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated</p>	<p>A. The board Authority may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board Authority for alcohol or other alcoholic beverages for any of the following purposes:</p> <ol style="list-style-type: none"> 1. For industrial purposes (pursuant to a permit issued under 3 VAC 5-70-200); 2. For scientific research or analysis; 3. For manufacturing articles allowed to be manufactured under the provisions of § 4.1-200 of the Code of Virginia; or 4. For use in a hospital or home for the aged (alcohol only). <p>Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board Authority by the permittee.</p> <p>The application for such permits shall be on forms provided by the board Authority.</p> <p>B. Applications for alcohol shall be accompanied by an application fee and a permit fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts in an amount established by the Authority. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.</p> <p>C. A person obtaining a permit under this section shall:</p> <ol style="list-style-type: none"> 1. Store such alcohol or alcoholic beverages in a secure place upon the

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.</p> <p>C. A person obtaining a permit under this section shall:</p> <ol style="list-style-type: none"> 1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the application separate and apart from any other articles kept on such premises; 2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages at the permittee's place of business for a period of two years; and 3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee, a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year. <p>D. The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4.1-222 of the Code of Virginia for which the</p>	<p>premises designated in the application separate and apart from any other articles kept on such premises;</p> <ol style="list-style-type: none"> 2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages at the permittee's place of business for a period of two years; and 3. Furnish to the board Authority within 10 days after the end of the calendar year for which he or she was designated a permittee, a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year. <p>D. The board Authority may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4.1-222 of the Code of Virginia for which the board Authority might refuse to grant the applicant any license.</p> <p>E. The board Authority may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board Authority might suspend or revoke a license under § 4.1-225 of the Code of Virginia.</p> <p>F. The board Authority and its special agents shall have free access during reasonable hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.</p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		<p>board might refuse to grant the applicant any license.</p> <p>E. The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under § 4.1-225 of the Code of Virginia.</p> <p>F. The board and its special agents shall have free access during reasonable hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.</p>	

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage