



Virginia
Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-60
Regulation title	Manufacturers and Wholesalers Operations
Action title	Revisions as a Result of Periodic Review
Document preparation date	July 26, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing manufacturers' and wholesalers' operations, to eliminate restrictions on the peddling of wine, increase the amount of the indemnifying bond required of wholesale wine licensees from \$1,000 to \$2,500, allow mixed beverage solicitors to participate in tasting events held by mixed beverage retailers, and revise rules for giving away novelty and specialty items bearing spirits advertising. The action is the result of a recent periodic review of this regulation.

The goals of this regulation are:

1. To maintain reasonable controls on the sales and promotion of alcoholic beverages in the Commonwealth by wholesalers and manufacturers through a permit procedure for solicitor salesmen and mixed beverage solicitors; and
2. To require manufacturer and wholesale licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance and excise tax collection without unreasonable burden.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In 3 VAC 5-60-20, subsections B. 1., B. 2., and B. 3. would be amended to allow wholesale wine licensees to submit reports in lieu of actual copies of purchase orders and invoices, and subsection B. 4., which currently prohibits the peddling of wine, would be repealed. 3 VAC 5-60-40 would be amended to increase the penalty of the indemnifying bond required of wine wholesalers from the current \$1,000 to \$2,500. In 3 VAC 5-60-80, current provisions in subsection D. and D. 3. d. would be amended to increase the maximum wholesale value of novelty and specialty items which may be given to retailers to \$20 and to allow their display on the licensed premises, and a new provision added, allowing mixed beverage solicitor permittees to conduct tasting events on the premises of mixed beverage restaurant licensees. These amendments will protect the health, safety, or welfare of citizens by providing greater protection to wine tax revenues, and by maintaining reasonable restrictions on alcoholic beverage promotion, while allowing industry members additional ability to market their products.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Alcoholic Beverage Control Board has considered making no changes to the regulation, but believes the changes being considered can be made without endangering the public. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

It is not expected that this regulatory action will have any impact on the institution of the family.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
The Country Vintner	Eliminate the requirement that wholesalers file with the Board copies of purchase orders for wine, non-taxed sales invoices, and out-of-state sales invoices. Eliminate the prohibition against wine peddling.	The Board's Tax Management section uses the information obtained from the purchase orders and invoices in an automated tax audit system to ensure accurate tax remissions from wholesale licensees. Eliminating these filings would greatly increase the risk of loss to the Commonwealth of wine tax revenue. The anticipated amendments to 3 VAC 5-60-20 will give wholesalers the option to file reports in lieu of filing actual copies of purchase orders and invoices, and end the prohibition on wine peddling.
Virginia Hospitality & Travel Association	3 VAC 5-60-80 should be amended to permit a mixed beverage solicitor to conduct tastings at mixed beverage licensed premises, including the provision of samples for consumption by consumers.	The anticipated amendment to 3 VAC 5-60-80 will allow mixed beverage solicitors to participate in tastings at mixed beverage licensed premises, but the Board does not intend to allow solicitors to provide alcoholic beverages for this purpose.
Virginia Wineries Association	Farm wineries should be allowed to peddle wine.	The anticipated amendment to 3 VAC 5-60-80 will allow wine peddling by farm wineries as well as wholesalers.

This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. This regulation governs the record-keeping and reporting requirements for manufacturers and wholesalers, and it is essential to the Board's tax-collection mission.