



Virginia
Regulatory
Town Hall

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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 VAC5-50
Regulation title	Retail Operations
Action title	New regulation regulating noise emanating from licensed establishments
Date this document prepared	November 2, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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.

On August 2, 2007, Judge Walter D. Kelley, Jr., of the United States District Court for the Eastern District of Virginia entered a preliminary injunction, enjoining the Alcoholic Beverage Control Board and its agents from enforcing that portions of § 4.1-225 of the Code of Virginia which prohibits alcoholic beverage licensees from allowing noisy conduct on licensed premises in Virginia. With enforcement of this Code section enjoined, the board has no provision of law or regulation to address noise issues on licensed premises. The judge found that the term “noisy” as used in the statute was unconstitutionally vague. The purpose of this action is to more clearly define the noise levels allowable on premises licensed for the sale of alcoholic beverages.

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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Establishments licensed for the sale of alcoholic beverages often generate a great deal of noise, from the combined voices of patrons to amplified musical entertainment. This sound can impact nearby residences or businesses, and have a damaging effect on the quality of life and the health of persons subjected to excessive sound levels. The agency has determined that sound levels emanating from licensed businesses must be controlled to protect the peace and tranquility of surrounding neighborhoods, and the health of citizens. Issues which need to be addressed as the regulation is developed include acceptable sound levels at various types of affected properties, methods of measurement, and possible exemptions for emergency or unavoidable temporary sound levels.

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.

The agency intends to adopt a new regulation, providing that no licensee shall cause or permit noise on the licensed premises so as to create a sound pressure level which exceeds the limits set forth in the regulation, when measured at a receiving property. The regulation would establish maximum decibel levels for sound impacting residential, commercial, or industrial properties.

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. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The agency has considered and will consider taking no action or leaving noise control to regulation by local ordinances. Consideration will be given to the possible benefits of uniform statewide regulation versus varying local systems.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to **Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, VA 23261, jeffrey.painter@abc.virginia.gov, fax 804-213-4411**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency will use an ad hoc advisory committee to assist in the development of the proposed regulation. Anyone wishing to serve on the committee should communicate such interest to Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, VA 23261, jeffrey.painter@abc.virginia.gov, fax 804-213-4411.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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