



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-30
Regulation title	Tied-House
Action title	Updating Tied-House Regulations as a Result of Periodic Review
Date this document prepared	May 30, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.

The purpose of this action is to amend the board's regulation governing industry member/retailer relations to implement changes suggested by a recent periodic review. The action is intended to 1) allow wine wholesalers to merchandise product on Sunday, 2) expand the definition of "cash" to include credit and debit cards, 3) apply provisions governing giving of tapping equipment to retailers to distilled spirits, as well as beer and wine, 4) allow manufacturers, bottlers or wholesales of alcoholic beverages to give wine lists to retailers, and 5) transfer the prohibitions of price discrimination between wholesalers and retailers from the "Other Provisions" section of the Regulations to this section.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of the Alcoholic Beverage Control Act. § 4.1-111 of the Code of Virginia also provides that the Alcoholic Beverage Control Board must “(m)aintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, imports and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services provided; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm’s length business transactions.”

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.

The proposed regulatory action is necessary to clarify and expand commercial transactions between wholesalers and retailers of alcoholic beverages by allowing credit/debit cards to be used as “cash”. This and the other proposals allow for more unfettered commerce between the wholesalers and retailers of alcoholic beverages and promote the welfare of the citizens.

In addition, the streamlining and clarification of the provisions of this regulation should help promote the welfare of the citizens by providing more definitive and reliable guidance on the marketing of alcoholic beverages.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. 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.

It is anticipated that Chapter 30 will be amended to 1) recognize that credit/debit cards are a “cash” transaction between wholesalers and retailers of alcoholic beverages, 2) expand and clarify the merchandising of alcoholic beverages and 3) establish a new section that more appropriately incorporates into this regulation the current provisions prohibiting price discrimination between wholesalers and retailers of alcoholic beverages.

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.

There is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, curtis.coleburn@abc.virginia.gov, telephone (804) 213-4409, facsimile (804) 213-4411**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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.

This action is not anticipated to have any impact on the institution of the family or family stability.

Periodic review/small business impact review result

If this NOIRA is the result of a periodic review/small business impact 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 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

No comments were made concerning this regulation.

In keeping with Executive Order 14 (2010), this proposal is necessary to promote the general health, safety and welfare of the public and is easily understandable. While there is some expansion of allowed activities between the wholesalers and retailers, there is a continued need to have some conditions and restrictions on the marketing of alcoholic beverages and the relationships between the respective tiers of distribution.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2005. These proposals are a result of suggestions from certain industry members.