



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Updating Other Provisions Regulations as a Result of Periodic Review
Date this document prepared	August 14, 2013

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Establishes clearer guidelines on which alcoholic beverage producers may engage in certain activities, and incorporates current Board interpretation that each licensed location is a separate entity for the purpose of reduced penalties for first offense. Clarifies price discrimination issues and provides members of regulated community extended time to file legislatively mandated reports or an ability to file electronically.

Statement of final agency action

Please 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 or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to amend 3 VAC 5-70, Other Provisions.

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.

§ 4.1-103.3 indicates the ABC Board has the power to control the possession, transportation, sale and delivery of alcoholic beverages while § 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 this title or the general laws of the Commonwealth.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to 1) extend the amount of time that a banquet and special event licensee has to report their income and expenses to the Board (from 30 days to 90 days after the event), 2) clarify which alcoholic beverage producers may give samples at their hospitality room and at conventions/ trade shows, 3) clarify price discrimination by removing pertinent parts of the regulation (sales of alcoholic beverages by wholesalers to retailers) to the "tied house" section, 4) codify Board interpretation that each location shall be considered a separate location with regard to reduced penalties for first time offenses and 5) allow for electronic filing of reports by wine and beer shippers.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Chapter 70 will be amended to establish clearer guidelines on which alcoholic beverage producers may engage in certain activities, as well as incorporate current Board interpretation into the regulation establishing that each licensed location is a separate entity for the purpose of taking advantage of reduced penalties for first offense. Other proposals will clarify price discrimination issues and provide some members of the regulated community extended time to file legislatively mandated reports or an ability to file electronically.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantages to the public associated with the proposed regulatory action include relaxed deadlines for monthly tax filing by wholesalers and manufacturers, and clarity in the application of regulations providing for leniency to first time offenders. There are no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

None

Section number	Requirement at proposed stage	What has changed	Rationale for change

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Virginia Beer Wholesalers Association, Inc.	Supports proposed new section 3 VAC 5-70-150.	
Distilled Spirits Council of the United States	3 VAC 5-70-100--Increase allowable sample size to 3 liters per brand for spirits and wine and 3 gallons per brand for beer. Eliminate requirement for “sample” marking on sample container. Allow all industry members and their representatives to furnish samples, not just wholesalers.	The purpose of samples are to allow retailers to taste products they do not currently carry. A large 3 liter sample is unnecessary for the purpose and raises tied house concerns. “Sample” markings are necessary to distinguish samples from saleable merchandise. Only wholesalers may sell wine or beer to retailers, so there is no reason for other industry members to give samples.

Enter any other statement here

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes.

Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3VAC5-70-90		<p>Licensee must maintain records at the licensee’s place of business.</p> <p>Requires 30 days notice to Board for a banquet and special event licensee to report income and expenses.</p>	<p>Licensee may store records off-site. Allows licensees additional flexibility.</p> <p>Extends the amount of time that a banquet and special event licensee has to report their income and expenses to the Board to 90 days, to reduce the reporting burden on one-day licensees.</p>
3VAC5-70-100		<p>Limits to wine and beer the alcoholic beverages producers may give as samples at hospitality room and at conventions/ trade shows.</p>	<p>Changed to include all alcoholic beverages. There is no policy reason to not allow distilled spirits samples.</p>
3VAC5-70-150		<p>Governs pricing practices between manufacturer and wholesaler as well as between wholesaler and retailer.</p>	<p>Removed pertinent parts of the regulation (sales of alcoholic beverages by wholesalers to retailers) to the “tied house” section, where they more appropriately belong.</p>
3VAC5-70-210		<p>Licensees may receive reduced penalties for first violations.</p>	<p>Adds new provision that each location shall be considered a separate location with regard to reduced penalties for first time offenses. This is consistent with current board interpretation.</p>
3VAC5-70-220		<p>Wine and beer shippers must file monthly reports.</p>	<p>Allows for electronic filing of reports by wine and beer shippers, for added convenience.</p>

Enter any other statement here