



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

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC5-70
<b>Regulation title</b>	Other Provisions
<b>Action title</b>	Updating Other Provisions Regulations as a Result of Periodic Review
<b>Date this document prepared</b>	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 general provisions to implement changes suggested by a recent periodic review. The action is intended 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.

### 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 4.1-103 gives the ABC Board 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.

### 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 extend the time that a banquet and special event licensee has to file income and expense records with the Board from 30 days to 90 days. Further, part of the price discrimination regulation that involves sales between wholesalers and retailers is removed and relocated to the more appropriate "tied house" section (3 VAC 5-30). A proposal also allows wine and beer shippers to electronically file forms and reports with the ABC Board. A Board interpretation that each location is a separate licensee for the purposes of implementing reduced penalties for a first time offense. 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 advertising 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 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.

### 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](mailto: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. The intent with these proposals is to provide more flexibility to the regulated community.

The proposals are easily understandable and do not conflict with other state or federal laws or regulations. This regulation was last amended in 2012. Enhancements in technology prompted some of these proposals (electronic filing of reports). The remaining proposals are a result of industry suggestions, with the exception of the language dealing with price discrimination.

---