



Virginia  
Regulatory  
Town Hall

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### Proposed Regulation 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>	November 6, 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*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

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.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

There are no acronyms or technical terms used in the document.

### 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.*

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§ 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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 briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" 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 the regulatory action poses 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.

### Requirements more restrictive than federal

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no parallel federal requirements for some provisions. To the extent there are federal requirements, the proposal is not more restrictive than applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

This will not have any impact on any particular locality.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 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 date of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	None
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	none
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new</i></b>	Manufacturers, wholesalers and retailers of alcoholic beverages.

<b><i>regulations or changes to existing regulations.</i></b>	
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	15,000 businesses of which approximately 70% are small businesses.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	None
<b>Beneficial impact the regulation is designed to produce.</b>	The streamlining and clarification of the provisions of this regulation should help the regulated community by providing more definitive and reliable guidance on record keeping, price discrimination and administrative offenses.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There is no viable alternative to affect the proposed changes. Circular Letters and other memoranda of interpretation do not carry the consequences prescribed by the regulations if a reluctant licensee fails or refuses to comply with the standard.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The board has not identified any alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law. The proposed regulatory change has no reporting or additional record keeping requirements.

**Small business impact review result**

In order to minimize the economic impact of regulations on small businesses, 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 the 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. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Distilled Spirits Council of the United States	3VAC5-70-100 Suggest increase size of product samples that may be furnished to licensees.	The agency rejected this for public safety.
Diageo North America	3VAC5-70-100 Support allowing wine and beer tasting at conventions and making limited donations to specified events.	The agency accepted this position.
Virginia Hospitality and Travel Assoc.	3VAC5-70-90 Support change to allow off site record storage.	The agency accepted this position.
Virginia Beer Wholesalers Assoc.	3VAC5-70-150 Support price discrimination changes.	The agency accepted this position.

Virginia Wine Wholesalers Assoc.	3VAC5-70-150 Support price discrimination changes.	The agency accepted this position.
Virginia Wineries Assoc.	3VAC5-70-220 Support electronic filing amendment.	The agency incorporated this suggestion.
Virginia Retail Merchants Assoc.	3VAC5-70-220 Remove requirement to list brand names.	The agency rejected this because it would unreasonably reduce control of direct shipment of alcoholic beverages.
Virginia Wine Council	3VAC5-70-90 Support extension of reporting time from 30 to 90 days for certain licensees.	The agency incorporated this suggestion.
	3VAC5-70-220 Support removing reporting burdens.	The agency accepted this in so far as it relates to the allowance of electronic filing of reports.

No comments were made concerning this regulation on the Regulatory Town Hall.

**Family impact**

*Please assess the 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.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
3VAC5-70-90		Requires 30 days notice to Board for a banquet and special event licensee to report income and expenses.	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
3VAC5-70-100		Limits to wine and beer the alcoholic beverage producers may give as samples at hospitality room and at conventions/ trade shows.	Changed to include all alcoholic beverages as what producers may give as samples at their hospitality room and at conventions/ trade shows.
3VAC5-70-150		Governs pricing practices between manufacturer and wholesaler as well as between wholesaler and retailer.	Removed pertinent parts of the regulation (sales of alcoholic beverages by wholesalers to retailers) to the "tied house" section.
3VAC5-70-210		No regulation addresses this issue.	Codifies Board interpretation that each location shall be considered a separate location with regard to reduced penalties for first time offenses
3VAC5-70-220		Does not allow for electronic filing of reports by wine and beer shippers.	Allow for electronic filing of reports by wine and beer shippers.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here