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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3VAC5-70
VAC Chapter title(s)	Other Provisions
Action title	Chapter 70 Reform
Date this document prepared	03/31/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

A comprehensive review and amendment of the full chapter. The intent is to remove any redundancies or language that contradicts the Code of Virginia. Additionally, to ensure that the regulations comport with current practices within the industry and the VA ABC.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms used in this form.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this regulatory change is both to comply with periodic review requirements and based on the Board decision to review the regulations to update them.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

- 1) The promulgating agency is the Virginia Alcoholic Beverage Control Authority.
- 2) Section 4.1-101 of the Code of Virginia (Code) establishes the Virginia Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act).

Section 4.1-103(7) states the Board has the authority to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised, and its duties performed.

Section 4.1-103(14) states the Board has the authority to control the possession, sale, transportation, and delivery of alcoholic beverages.

Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

Section 4.1-103(25) states the Board has the authority to assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations

Section 4.1-111 (A) of the Code provides the Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation is essential to protect the health, safety, and welfare of citizens because it provides comprehensive guidance to VA ABC licensees across tiers.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

New substantive provisions:

Substantive changes of existing regulations:

3VAC5-70-20: Removed subsections B, C, and F because they are redundant restatements of Virginia Code.

3VAC5-70-90: Removed subsection E because it is redundant; added “any time the licensee is open to the public” as a time period where records must be made available to special agents.

3VAC5-70-130: Revised the definition of “meals” so that it is consistent with the definition in another regulation.

3VAC5-70-140: Repealed because it is redundant language that appears in the Code.

3VAC5-70-170: Removed language that is redundant language that appears in the Code.

3VAC5-70-170: Removed commercial and culinary as permitted uses for obtaining a grain alcohol permit; added language that the medical use requires the request come from a federal or state board licensed medical professional or hospital; added language that the alcohol cannot be used in the manufacture of products intended for human consumption.

3VAC5-70-210: Raised penalties for sale to underage and intoxicated to \$2500; raised suspension periods to a minimum of 10 days; raised other penalties to a minimum of \$750; revised the address and email address for Education and Prevention; deleted the last textual portion of Subsection A.

3VAC5-70-225: Revised the title to include “delivery requirements”; changed “Form 805-52” to “an application for a permit” in Subsection A; added Code references to Subsections B, C, and D; added third party delivery licensee to Subsection D as well and clarified that this subsection is referencing licensees with delivery privileges pursuant to 4.1-212.1; added Code references and third party delivery licensee to Subsection F; added an exception to signature requirement in Subsection (F)(2); added “or license number of the delivering licensee” to the end of Subsection F, also that third party delivery licensees shall not deliver any alcoholic beverages that do not bear the required label.

3VAC5-70-230: Added definitions for “designer” and “vintage” as well as requirements for bottles sold at auction.

3VAC5-70-250: Changed reference to E4 to E5 in Subsection A so that it is correct with the Code reference; changed “shall” to “may” in Subsection A to maintain consistency with the Code; removed Subsections A (2), (3), and (20) for being violations too significant to allow a waiver of penalties.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There was no discussion of any alternative to these regulation changes.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Virginia Alcoholic Beverage Control Authority is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to LaTonya Hucks-Watkins, Senior Legal Counsel, 7450 Freight Way, Mechanicsville, VA 23116, 804-213-4698(o), 804-213-4574(f), latonya.hucks-watkins@virginiaabc.com. In order to be considered, comments must be received by 11:59 pm 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.