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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	3VAC5-11
<b>VAC Chapter title(s)</b>	Public Participation Guidelines
<b>Action title</b>	Chapter 11 Reform
<b>Date this document prepared</b>	12/21/2023

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

A comprehensive review and amendment of the full chapter. The intent is to remove any redundancies and make sure the regulations comport with the Code of Virginia.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

NA

## 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The impetus for this change is to comply with the periodic review requirements of the Administrative Process Act and also to reduce regulatory requirements by 25%.

## 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.*

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

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

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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This regulation is essential to protect the health, safety, and welfare of citizens because it provides additional guidance that speaks to how VA ABC provides for public participation in the regulatory process.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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All existing regulations, except 3VAC5-11-10, were repealed because they were redundant and only restated what was currently in the Code of Virginia.

3VAC5-11-10 was revised to include any details from the repealed sections that were not already represented in the Code of Virginia.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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- 1) The primary advantage to the public is that this chapter is significantly reduced to remove several redundancies and makes it more accessible and easier to understand.
  - 2) The primary advantage to the Commonwealth is that several redundancies are removed and it prevents the Authority from having to engage in a regulatory process whenever the Code changes.
  - 3) The removal of these redundancies will require the interested community to rely on the Code guidance which is the primary authority on public participation guidelines.
- There are no disadvantages to the Commonwealth.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There no requirements that exceed applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for the Authority.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefits of the changes are they will remove any redundancies or language that contradicts the Code of Virginia.

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for localities.
Benefits the regulatory change is designed to produce.	The benefits of the changes are they will remove any redundancies from the regulation.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	These changes will impact the approximately 20,892 VA ABC licensees.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	VA ABC has approximately 20,892 licensees that would be subject to these regulation changes. VA ABC does not have the capability to determine which of its licensees meet the definition of a small business.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no projected costs for licensees based on the revisions to these regulations.
Benefits the regulatory change is designed to produce.	The benefits of the changes are they will remove any redundancies and make sure the VA ABC’s public participation guidelines always comport with the Code.

### 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 were no alternatives to these regulatory changes that were considered.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing*

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 regulatory change.

There were no alternatives to these regulatory changes that were considered.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

**Periodic Review and  
Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

The regulatory changes comply with EO 19 in that they reduce the number of regulatory requirements, remove redundant language, and bring clarity to the specifics of VA ABC’s public participation guidelines.

The regulation is still very much needed as VA ABC regularly engage the administrative process and frequently have to make regulatory changes and wants to ensure that the public knows its rights to participate and how to do so.

The regulatory changes do not have an economic impact on small businesses. There are no requirements in these regulatory changes that will result in costs to the regulated community.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response
Kevin Robert McNally, Esq – Counsel Virginia Beer Wholesalers Association	The Virginia Beer Wholesalers Association (“VBWA”) has represented the interests of Virginia’s family owned, independent beer distributors since its founding in 1937. Our members operate some 30 separate facilities throughout the Commonwealth of Virginia	The Authority agrees with this comment.

	<p>employing over 4,000 Virginians. VBWA member companies distribute a countless, ever-growing number of brands of imported and domestic beer, including craft beers brewed both in Virginia and in dozens of other states.</p> <p>VBWA’s primary mission is the preservation and protection of Virginia’s three-tier system of alcohol distribution. VBWA believes that the three-tier system provides the best method of ensuring distributor and retailer independence, which results in healthier competition, better consumer choice, and a more orderly alcoholic beverage market.</p> <p>VBWA wishes to commend the Authority for both its efforts to modernize and consolidate its regulations and for its willingness to include stakeholders from every tier in the lengthy review process. VBWA believes that the proposed amendments reflect the consensus opinion of the workgroups and that these changes are a welcomed improvement for our wholesale-tier members.</p> <p>Given the rapidly-evolving nature of the alcoholic beverage industry, VBWA hopes that the Authority will continue to invite the participation of industry members whenever it considers a reinterpretation or change in existing policy that affects those in the business of manufacturing, distributing, or selling alcoholic beverages.</p>	
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**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.*

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](mailto: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.

## Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-11-10		Provides for the purpose of the chapter.	<ul style="list-style-type: none"> <li>• Added Subsection B to establish a timeline for publication of agency guidance on public participation.</li> <li>• Added Subsections C and D to establish procedure for public notification of regulatory updates on the Town Hall website.</li> <li>• Changed “board” to “Authority” (universal change).</li> <li>• Revised section title to reflect the procedure added by Subsections B—D.</li> </ul> <p>The changes maintains the purpose of the chapter, but includes details about the procedure. There should not be an impact on the regulated community because the change just represents moving current requirements from another section to this section.</p>
3VAC5-11-30		Currently provides information regarding notice to interested persons.	Repealed
3VAC5-11-40		Provides information to be sent to persons on the notification list.	Repealed
3VAC5-11-50		Provides information regarding public comment	Repealed
3VAC5-11-60		Provides information regarding how to petition for a rule change.	Repealed
3VAC5-11-100		Provides information about hearings on regulation	Repealed



3VAC5-11-110		Provides information about periodic reviews	Repealed
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage