



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5 -70
Regulation title	Other Provisions
Action title	Delivery Permit Records and Reports
Date this document prepared	August 30, 2007

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Chapters 99 and 799 of the 2007 Acts of the General Assembly are identical enactments, creating a new delivery permit which may be issued by the Department of Alcoholic Beverage Control to certain alcoholic beverage manufacturers or retailers. Each act provides that the Alcoholic Beverage Control Board shall enact regulations to implement the provisions of the act within 90 days of July 1, 2007. The new regulation details the application, record-keeping, and reporting requirements for delivery permittees.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. The Code mandates that the board promulgate regulations, but details are left to the board's discretion. Section 4.1-212.1, which creates the delivery permit, provides that the board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the board.

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.

By statute, delivery permittees are required to require recipients to demonstrate that they are at least 21 years of age; maintain records of their deliveries; report deliveries monthly to the board; collect wine or beer taxes and state sales taxes on each sale; and forward collected taxes to the appropriate state agency. The goal of the emergency regulation is to provide the administrative framework for carrying out the legislation's requirements.

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 essential to ensure that alcoholic beverages are only delivered to adults of legal drinking age, and that the appropriate taxes are collected on all such beverages sold in the Commonwealth.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	3 VAC 5-70-225		<p>Applicant must apply using board form, attaching a copy of its license as a manufacturer or retailer of alcoholic beverages, and a copy of its registration with the Department of Taxation for the collection of retail sales and use tax. Only manufacturers and retailers are eligible under the statute for this permit, and they must collect sales tax on their delivery transactions.</p> <p>Permittees must maintain records of their deliveries for two years, and make them available to the board or its agents upon request. Section 4.1-204 requires the maintenance of records by delivery permittees, and the two-year requirement is consistent with the record-maintenance requirement for other licenses.</p> <p>Permittees must file a monthly report for all deliveries during previous month, and pay any wine or beer tax due. No report is due if no deliveries were made, but a report must be made at least once every 12 months. This provision tracks statutory language.</p> <p>All deliveries must be made by the owner of the permit holder or its agent, officer, director, shareholder, or employee; the person making the delivery must require the recipient to demonstrate that he is at least 21; a signature of the recipient must be obtained; and a notice must be affixed to the container identifying the contents as alcohol. These provisions follow statutory language.</p>

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 describe the process by which the agency

has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

The board has not identified any viable alternatives to the proposed regulatory action. The emergency regulation closely tracks the language of the related statutes, and appears to be the least restrictive, most cost-effective approach. The board will consider any alternatives identified during the public comment on adopting the permanent regulation.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include 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 meeting is to be held to receive comments on this notice.

The board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a 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 board 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) 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 for the public comment file may do so by mail, email or fax to **Jeffrey L. Painter, Post Office Box 27491, Richmond, Virginia 23261, telephone (804) 213-4621, fax (804) 213-4411, e-mail jeffrey.painter@abc.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The board is not using the participatory approach in the development of the proposal pursuant to an authorization to proceed without the participatory approach;

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.

It is not expected that this regulatory action will have any impact on the institution of the family.