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

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	3VAC5-50
<b>VAC Chapter title(s)</b>	Retail Operations
<b>Action title</b>	Chapter 50 Reform
<b>Date this document prepared</b>	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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*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(27) states the Board has the authority to establish minimum food sale requirements for all retail licensees.

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.

Section 4.1-111 (B)(1) of the Code provides the Board with the authority to prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

Section 4.1-111 (B)(6) of the Code provides that the Board shall promulgate regulations that prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

## 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 for retail licensees on numerous issues, including but not limited to, designated manager requirements, qualifications, gifts of alcohol, and license specific regulations for such licensees as restaurants, bed and breakfast establishments, marketplace licensees, clubs, and caterers to name a few.

## 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:

3VAC5-50-60(A)(1): revised to allow licensees to serve the entire container of spirits if the container contains 16 ounces or less and the ABV content is 15% or less.

3VAC5-50-60(A)(2): revised to include the word "grain" before "alcohol" as it was initially intended to state.

3VAC5-50-60(B)(4): Revised to include limitations on mixed beverage licensees that serve flights of samples so that they are limited to no more than 5 mixed beverages, and each shall contain no more than one ounce of distilled spirits.

3VAC5-50-110(A)(5): Revised the definition of "meal" to include more specific text from the circular letter dated April 5, 2016.

3VAC5-50-110(A)(7): Revised to include the definition of "preparation" to include more specific text from the circular letter dated April 5, 2016.

3VAC5-50-110(C)(3): Revised to remove the requirement that a mixed beverage restaurant have at least as many seats at tables as counters.

3VAC5-50-110(H): Revised by removing text from 3VAC5-40-30 and placing it in the retail section.

3VAC5-50-130(C)(2): Revised to include a subsection that limits the number of times a nonmember may frequent a club, require nonmembers to be accompanied by club members, and makes it a violation if the club occupancy consists of a number of nonmembers that exceeds the number of club members.

3VAC5-50-130(C)(3): Revised to include a provision that a nonmember attending a member-sponsored private function is not to be counted as a guest with respect to the club guests' restrictions.

3VAC5-50-180: Removed language that was redundant restatements of text in the Code.

3VAC5-50-190: Removed language that was redundant restatements of text in the Code.

3VAC5-50-200: Removed language that was redundant restatements of text in the Code.

3VAC5-50-210: Removed language that distinguished between wine and beer and beer only licenses.

3VAC5-50-250: Clarified this section only applies to licenses issued pursuant to 4.1-206.3(C)(3) of the Code.

3VAC5-50-190: Removed language that was redundant restatements of text in the Code.

3VAC5-50-260 – Removed language that is no longer applicable because the deadlines have passed.

### 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.*

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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.