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

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-30
Regulation title	Tied-House
Action title	Revisions as a Result of Periodic Review
Document preparation date	August 20, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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.

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing relationships between manufacturers, bottlers, brokers, importers and wholesalers of alcoholic beverages and the businesses that retail such products. The action is the result of a recent periodic review of this regulation.

The goal of this regulation is:

To promote the public health, safety, and welfare by maintaining the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers.

Legal basis

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. Section 4.1-111, subsection B 3 requires that the Board promulgate regulations which maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers, prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth, and promote reasonable accommodation of arm's length business transactions. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In 3 VAC 5-30-10, subsection B2 would be amended to allow wholesalers to affix prices to products they have sold to a retailer.

In 3 VAC 5-30-20, the last sentence would be amended to add farm wineries to the exemptions from the provisions of this section.

In 3 VAC 5-30-30, subsection B, the definition of "Cash" would be expanded to include payments by credit or debit cards.

In 3 VAC 5-30-60, subsection D, the wholesale value of bottle or can openers which may be given by a manufacturer, bottler or wholesaler to a retailer would be increased to \$20.

In 3 VAC 5-30-60, subsection F, wine glasses upon which advertising matter regarding wine may appear would be added to the items which a manufacturer or wholesaler could sell at reasonable wholesale price to banquet licensees.

A new section would also be added to this chapter, moving to this chapter current restrictions on the provision of various advertising items presently contained in the Advertising regulation, 3 VAC 5-20. These amendments will protect the health, safety, or welfare of citizens by maintaining reasonable restrictions on alcoholic beverage promotion and maintaining a reasonable separation between the manufacturing, wholesaling and retail interests, to help ensure temperance, while allowing industry members additional ability to market their products.

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.

The Alcoholic Beverage Control Board has considered making no changes to the regulation, but believes the changes being considered can be made without endangering the public. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
The Country Vintner	Define cash to include credit cards. Allow wholesalers to provide wine lists to retailers.	Suggested amendment to 3 VAC 5-30-30 will define cash to include credit cards. While another regulatory change currently at the proposed stage will eliminate the limits on the number of wines which may be included on clip-ons and table tents, the Board feels that allowing the provision of extensive wine lists is too large an inducement to allow.
Diageo North America	Allow manufacturers to sell any type of equipment to retail licensees, as long as it is not sold at less than cost. Allow manufacturer, bottler, or wholesaler to give drink lists, clip-ons, and table tents containing a listing of wine, beer or distilled spirits, without a numerical limit.	The Board does not intend to expand the types of equipment manufacturers and wholesalers may sell to retailers at this time. While another regulatory change currently at the proposed stage will eliminate the limits on the number of wines which may be included on clip-ons and table tents, the Board feels that allowing the provision of extensive wine lists is too large an inducement to allow.
Richmond Pub Alliance	Allow wine or beer solicitor to conduct tastings at on-premises retailer. Allow wholesalers to provide the same services and equipment to retail licensees that they are permitted to provide banquet/special event licensees.	The Board is of the opinion that an intended amendment to 3 VAC 5-70-100, which would allow manufacturers to participate in tastings on retail premises, will allow solicitors, as representatives of manufacturers to so participate. Other than the amendments detailed herein, the Board does not intend to increase the services and equipment which may be provided to retailers by wholesalers at this time.
Virginia Beer Wholesalers Association	Allow wholesalers to affix retail prices. Repeal current container deposit schedule and require distributors to collect reasonable deposits and document transactions. Allow customized	The suggested amendment to 3 VAC 5-30-10 will allow wholesalers to affix prices to products they sell to retailers. Another action currently at the proposed stage will repeal the current container deposit schedule and leave the choice of whether to charge a deposit and the

	<p>advertising to include references to any malt beverage product, not just the wholesaler’s own. Move language prohibiting provision of service items from 3 VAC 5-20 to this chapter, and add display assemblies to the list of service items which may not be supplied by manufacturers and wholesalers to retailers. Move current provisions in 3 VAC 5-20 concerning cooperative advertising and works of art to this chapter, as well as provisions governing point-of-sale advertising materials which may be given by manufacturers and wholesalers to retailers.</p>	<p>appropriate amount to the marketplace. The Board does not intend to allow manufacturers and wholesalers to provide customized advertising materials with reference to products other than those sold by the particular manufacturer or wholesaler. Current restrictions on the provision of advertising materials by manufacturers and wholesalers to retailers will be moved from 3 VAC 5-20 to this chapter.</p>
<p>Virginia Hospitality & Travel Association</p>	<p>Allow retailers to pay wholesalers by credit or debit card. Allow wine or beer solicitor to conduct tastings at on-premises retail establishment. Allow illuminated and mechanical draft beer knobs. Allow manufacturers, bottlers, and wholesalers to give retailers any advertising material up to the monetary limit imposed by the regulations of the federal government. Delete the current limit on number of wines or beers which may be included on table tents.</p>	<p>Suggested amendment to 3 VAC 5-30-30 will define cash to include credit cards. The Board is of the opinion that an intended amendment to 3 VAC 5-70-100, which would allow manufacturers to participate in tastings on retail premises, will allow solicitors, as representatives of manufacturers to so participate. The Board does not intend to allow illuminated or mechanical draft beer knobs at this time. Other than the amendments detailed herein, the Board does not intend to increase the services and equipment which may be provided to retailers by wholesalers at this time. Another regulatory change currently at the proposed stage will eliminate the limits on the number of wines which may be included on clip-ons and table tents.</p>
<p>Virginia Retail Merchants Association</p>	<p>Define “cash” to include credit cards.</p>	<p>Suggested amendment to 3 VAC 5-30-30 will define cash to include credit cards.</p>
<p>Virginia Wineries Association</p>	<p>Expand exception to 3 VAC 5-30-20 to include farm wineries. Eliminate obsolete references to wine tapping equipment. Increase allowed value of bottle openers to \$20. Allow wineries to sell wine glasses with winery logo to banquet licensees. Make the regulations with respect to number of brands on table tents and clip-ons uniform between beer, wine, and spirits.</p>	<p>Suggested amendment to 3VAC 5-30-20 will extend exception to farm wineries. Further investigation is necessary on whether wine tapping references are unnecessary. Suggested amendment to 3 VAC 5-30-60D will increase bottle opener limit to \$20. Suggested amendment to 3 VAC 5-30-60F will allow the sale of wine glasses with logo to banquet licensees. Another regulatory change currently at the proposed stage will eliminate the limits on the number of wines which may be included on clip-ons and table tents.</p>

This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. This regulation governs the reasonable separation of alcoholic beverage manufacturers and wholesalers from retailers, and it is essential to the Board's duty mandated by § 4.1-111 B. 3. of the Code of Virginia.