

3 VAC 5 Chapter 10. PROCEDURAL RULES FOR THE CONDUCT OF HEARINGS BEFORE THE BOARD AND ITS HEARING OFFICERS AND THE ADOPTION OR AMENDMENT OF REGULATIONS

REASON FOR THE PROPOSED REGULATION:

The Board received four suggestions from the public for changes to parts of this regulation. The first suggestion was to simplify part III by adopting the Supreme Court discovery rules by reference, avoiding duplication of regulations already in the possession of the attorneys practicing before the Board. Secondly, it was suggested that the Board's hearing officers make a preliminary determination of reasonable cause in Franchise Act cases, rather than the Board's Secretary and deputy department director for regulation (a position which has been eliminated). The third suggestion was to delete from part V the current requirement that the Board conduct rulemaking on an annual basis. Finally, it was suggested that a new part of this regulation be adopted combining duplicative rules applicable to both hearings before hearing officers and before the Board.

The Board contemplates amending this regulation to adopt three of the four suggestions received from the public. The discovery rules of the Virginia Supreme Court, as far as applicable to proceedings under the Wine and Beer Franchise Acts, should be adopted by reference. The Supreme Court rules are a part of virtually every law library and are readily available to practitioners before the Board. This action would reduce the Board's regulations by some 23 pages. Since the position of deputy department director for regulation has been abolished, and Franchise Act hearings may be required despite a finding of lack of reasonable cause, the Board contemplates that this step be eliminated, and such cases be docketed for hearing upon receipt of the complaint. Finally, the Board contemplates that the requirement of the annual institution of rulemaking should be eliminated. New regulations or amendments to existing ones should be proposed when needed, and the time, effort and expense of the regulatory process should not be expended on an annual basis if it is not needed. The fourth suggestion, that of combining some duplicative rules, is not contemplated. While such a step would reduce the length of the regulation to a small degree, the Board believes that the benefit of this reduction does not outweigh the benefit of having all the rules for a particular type of hearing in a single section of the regulations. The Board also contemplates a revision to 3 VAC 5-10-70 to clarify the authority of the Board to refer a case back to the hearing officer prior to an appeal hearing, and to clarify the procedure for the admission of additional evidence at an appeal hearing. Minor additional amendments are intended to simplify other sections.

SOURCE OF THE AGENCY LEGAL AUTHORITY TO PROMULGATE THE CONTEMPLATED REGULATION:

The Board's authority to adopt this regulation is derived from §§ 4.1-103, 4.1-111, 4.1-224, 4.1-227, 4.1-410, 4.1-509, and the Administrative Process Act (§§ 9-6.14:1, et seq.), Code of Virginia.

While the statutes cited do not contain any specific mandate, the Alcoholic Beverage Control

Board is required by statute to establish and enforce regulations relating to the Alcoholic Beverage Control Act.

REASONING BY WHICH THE AGENCY HAS CONCLUDED THAT THE CONTEMPLATED REGULATION IS ESSENTIAL TO PROTECT THE HEALTH, SAFETY OR WELFARE OF CITIZENS OR FOR THE EFFICIENT AND ECONOMICAL PERFORMANCE OF AN IMPORTANT GOVERNMENTAL FUNCTION:

Rules of procedure are necessary for the efficient performance of the Board's regulatory function, which is essential to the public health, safety, and welfare. The statutes do not establish specific minimum requirements for these procedural rules. The contemplated changes are intended to simplify the rules for the benefit of the regulated industry and the public, and to reduce agency costs, both in publication of the regulations and by the avoidance of unnecessary annual rule-making procedures.

CONSIDERATION OF LESS BURDENSOME AND LESS INTRUSIVE ALTERNATIVES:

With the exception of the current requirement for annual rulemaking, this regulation is not particularly burdensome or intrusive. The contemplated change to the public participation guidelines eliminating the annual rulemaking process would reduce the burden on those parties interested in the Board's regulations.

IMPACT ON FAMILIES:

The proposed regulation is unlikely to have any impact on families.