



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Alcoholic Beverage Control Board
VAC Chapter Number:	3 VAC 5-30
Regulation Title:	Tied-House
Action Title:	Tied-House Amendments
Date:	November 20, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This chapter generally sets forth the types of goods and services alcoholic beverage manufacturers, bottlers, or wholesalers may provide to retailers.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Section 4.1-111, subsection B. 3., mandates that the Alcoholic Beverage Control Board promulgate regulations which: "Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; 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." This chapter seeks to carry out this mandate by limiting the things of value which may be provided by manufacturers and wholesalers of alcoholic beverages to retailers.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

Public comment was received from four industry associations--the Distilled Spirits Council of the United States, the Virginia Beer Wholesalers Association, the Virginia Hospitality and Travel Association, and the Virginia Wine Wholesalers Association. Each association recommended that various restrictions on the provision by manufacturers or wholesalers of alcoholic beverages to retailers of services or other things of value be repealed or loosened. In addition, the Distilled Spirits Council suggested expanding the scope of the regulations, which now apply primarily to sellers of beer and wine, to include distilled spirits purveyors. Much of the comment dealt with liberalizing limits on business entertainment provided by manufacturers and wholesalers to retailers. There were suggested amendments to six of the seven section of the regulation. The Board intends to consider most of the changes suggested. The Virginia Hospitality and Travel Association made two suggestions which the Board does not believe to be within their power to implement. One suggested an amendment to extend the application of 3 VAC 5-30-20 to banquet and special event licensees. An informal opinion of the Attorney General provided to the Board states that these licensees are not retail licensees within the meaning of the legislation underlying the tied-house regulations. In the other case, the association advocated the amendment of 3 VAC 5-30-30 to allow the purchase of alcoholic beverages by retailers from wholesalers on credit terms. Section 4.1-324 of the Code of Virginia prohibits the sale of alcoholic beverages in such circumstances for other than cash.

The Board does not intend to proceed with several recommendations of the Distilled Spirits Council to extend the regulations to sales of distilled spirits. The current regulations are not applied to distilled spirits products because the Department of Alcoholic Beverage Control is the sole retailer of distilled spirits for off-premises consumption in Virginia. The Board is able to control relationships between distilled spirits suppliers and its personnel through its own internal policies, as well as the Virginia Conflicts of Interest Act.

No informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

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. The Board has determined that the regulation is essential to comply with the mandate of Section 4.1-111 and to protect the health, safety and welfare of the citizens by reducing the pressure on retailers to promote excessive consumption of alcoholic beverages which can be caused by the undue influence of manufacturers and wholesalers. The regulation is clearly written and easily understandable by the individuals and entities affected. None of the public comment received from industry members indicated any problems of lack of clarity.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Since the General Assembly has mandated regulations in this area, the alternative of repealing the regulation in its entirety was not available. Each section of the regulation was reviewed, and the Board considered lessening or removing each restriction. Where a lessened restriction was felt to allow manufacturers a reasonable opportunity to promote their products without violating the spirit of the statutory mandate, a change to the regulation will be initiated.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board recommends that the regulation be amended and retained, to carry out the statutory mandate while allowing a reasonable loosening of the restrictions, adjusting some for economic changes since the regulation's adoption, and repealing others where they do not seem to advance the purposes of the regulation.

Substance

Please detail any changes that would be implemented.

Changes that would be implemented include:

In 3 VAC 5-30-10, the restriction on Sunday merchandising activities would be eliminated, except in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, and in subsection B.3.g., exchanges of wine or beer for quality control purposes would not require replacement with identical packages;

In 3 VAC 5-30-30, subsection C.2., sales of nonalcoholic merchandise and alcoholic beverages would be allowed to appear on a single invoice, as long as the alcoholic beverage items are separately identified and totalled;

3 VAC 5-30-40 would be repealed;

In 3 VAC 5-30-60, subsection D, the maximum wholesale value of can or bottle openers given by a manufacturer, bottler, or wholesaler to a retailer, upon which advertising matter regarding alcoholic beverages appears, would be increased from \$5 to \$10, and in subsection H, the limits on the number of wine or beer brands which may appear on a table tent would be removed; and

In 3 VAC 5-30-70, subsection C.4. would be repealed, and in subsection C.5., the \$200 per day per person limit on the value of business entertainment provided by wholesalers or manufacturers to employees of retail licensees would be raised to \$400.

In addition, the Board will consider any additional changes to the regulation which may be deemed advisable based upon information developed during the public comment period.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

The proposed regulatory action should have no impact on the institution of the family or on family stability.