

3 VAC 5 Chapter 70. OTHER PROVISIONS.

REASON FOR THE PROPOSED REGULATION:

This regulation includes all those matters which the Board has seen fit to regulate which do not fit neatly into one of the other regulations. It provides for the issuance of transportation permits for alcoholic beverages, and establishes procedures for the handling of cider, sacramental wine, and alcoholic beverages used for culinary purposes, as well as industrial and hospital uses. It also provides detailed record-keeping and retention requirements for licensees, and regulates gifts of alcoholic beverages by licensees. Other provisions deal with such matters as price discrimination and keg registration.

The Board contemplates the following amendments to this regulation:

- (1) To clarify the storage requirement for alcoholic beverages used for culinary purposes.
- (2) To eliminate certain reporting requirements for industrial and hospital permittees, since the reports are not used by ABC.
- (3) To increase from two to three years the retention period for records required to be kept by licensees, to coincide with Internal Revenue Service requirements, but to allow these records to be kept other than on the licensed premises, as long as they are readily accessible by the Board's agents at the licensed premises, as on computer terminals.
- (4) To permit the use of electronic data interchange programs, subject to approval by the Board.
- (5) To allow wholesalers to price their products to recognize the differences between on-premises and off-premises retailers.
- (6) To lessen the restrictions on gifts of alcoholic beverages at certain public events, such as wine competitions at fairs, or the hosting of events at conventions of associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes.
- (7) To add a section 3 VAC 5-70-210 to provide a schedule of penalties for first offenses of certain violations, as required by action of the 1995 General Assembly.

The present regulation dealing with the storage of alcoholic beverages used for culinary purposes requires that the beverages be stored separate and apart from all other commodities. There is no reason for this requirement. The interests of the Board are only that the alcoholic beverages used for culinary purposes are kept separate and apart from other alcoholic beverages.

The Board received a suggestion from the Virginia Beer Wholesalers Association to eliminate certain reporting requirements for industrial and hospital permittees. It also received a proposal from Giant Food Stores to amend the regulation to allow for the use of electronic data interchange programs in the alcoholic beverage industry. This change would allow industry members to take advantage of recent advancements in technology and lower costs by automating transactions. Three wholesalers suggested that wholesalers be allowed to discriminate in price between on-premise and off-premise retailers, due to the inherent differences in such licensees' operations.

The Board's enforcement arm requested the increased record retention period. It has had several

investigations in which needed records had been disposed of, because the two-year period had passed.

The Board has found that there are a number of events throughout the Commonwealth at fairs, or political or community functions, which are presently being hosted by alcoholic beverage manufacturers, in violation of current regulations. These events do not present a public safety problem, and the Board feels that the current restrictions should be relaxed to allow some of them.

The 1995 General Assembly passed an amendment to § 4.1-227 of the Code of Virginia, which requires the Board to publish a schedule of penalties for certain first-time violations of its regulations or the ABC Act.

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

The Board's authority to promulgate this regulation is derived from §§ 4.1-103, 4.1-111, 4.1-204, 4.1-212, 4.1-227, 4.1-415, and 4.1-514, Code of Virginia. With the exception of the 1995 amendment to § 4.1-227 previously referred to, none of the contemplated changes are mandated by state or federal law.

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:

Most of the contemplated changes to this regulation represent a lessening of restrictions on Board licensees. The particular provisions relaxed do not represent any threat to public safety. The contemplated amendments to these provisions will add to the Department's efficiency by enabling agents to concentrate on more serious matters. The increase in record retention from two to three years is necessary for the Board to meet its responsibility to enforce such matters as the mixed beverage food ratio and to audit tax collections.

CONSIDERATION OF LESS BURDENSOME AND LESS INTRUSIVE ALTERNATIVES:

With the exception of the record retention provision, the contemplated amendments to this regulation are less burdensome to the regulated community than the current regulation. Since licensees are already required to maintain records for three years for federal tax purposes, it is not considered to be an additional burden.

IMPACT ON FAMILIES:

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