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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 5-70
Regulation title	Other Provisions
Action title	Amendments Arising from Periodic Review
Document preparation date	August 13, 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 several of the Alcoholic Beverage Control Board's provisions governing manufacturers and wholesalers of alcoholic beverages recommended as a result of a recent periodic review. The amended sections will expand the ability of manufacturers and wholesalers to participate in tasting events at licensed premises; remove an unnecessary price change reporting requirement for licensees serving as both importer and wholesaler of a product; and increase the number of remote retail locations available to farm wineries in accordance with a recent statutory change. A new section will be added creating a procedure for sale by auction of designer or vintage spirits bottles.

The goals of this regulation are:

1. To maintain reasonable controls on the transportation, storage, and sale of alcoholic beverages in the Commonwealth through a permit procedure for transporting alcoholic beverages through the Commonwealth, sacramental wine, culinary uses, hospital, industrial or manufacturing uses, contract distilling, bonded and out of bond warehouse operations, sale of beer in kegs, and grain alcohol;
2. To require licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance without unreasonable burden;
3. To provide a reasonable means for first-time violators of the Board's regulations to avoid the expense of an administrative hearing by agreeing to accept a prescribed penalty; and
4. To provide guidance to licensees in situations not covered by other chapters.

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. Sections 4.1-103 and 4.1-111 mandate 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.

The Alcoholic Beverage Control Board intends to amend three sections of this regulation. In 3 VAC 5-70-100, subsection C would be amended to allow all alcoholic beverage manufacturers and wholesalers to participate in tasting events sponsored by retail licensees. Current provisions restrict this activity to wine and beer wholesalers and gourmet shop licensees. Subsection B of 3 VAC 5-70-150 would be amended by the addition of language exempting licensees who are both the importer and wholesaler of a product from having to notify themselves of price increases. Subsection C of 3 VAC 5-70-160 would be amended to increase from 2 to 5 the number of remote retail outlets allowed a farm winery. This change is necessitated by a recent action of the General Assembly. In addition, a new section would be added, prescribing the procedures to be followed in selling designer or vintage spirits bottles at auction. The Alcoholic Beverage Control Board has determined that this action will allow industry members greater flexibility in the marketing and sale of their products, while ensuring that the health, safety, or welfare of citizens is protected through the maintenance of adequate controls on the transportation and sale of alcoholic beverages.

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.

Alternatives considered include the additional changes suggested by commenters during the public comment period, as well as the possibility of taking no action. The Board determined that additional changes to the regulation could not be taken at this time without undermining the purpose of the regulation. 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
A. Smith Bowman Distillery	Spirits industry should be more on parity with the beer and wine industries with respect to sampling, tasting, and certain retail sales from the distillery.	Anticipated change to 3 VAC 5-70-100 will give spirits manufacturers same tasting participation privileges as wine and beer. Sampling rules are already similar. Retail sales privileges are set by statute, and beyond Board’s regulatory authority.
Miller Brewing Company	Manufacturers should be able to participate in tasting events at retail premises. Manufacturers, bottlers and wholesalers should be able to give beer or wine to fairs, conventions, trade associations or similar gatherings, not limited to those composed of licensees. Manufacturers, importers, bottlers, brokers, wholesalers should be able to purchase alcoholic beverages for patrons at retail licensees.	Anticipated change to 3 VAC 5-70-100 will allow manufacturers to participate in tasting events at retail premises. The Board does not intend to expand the ability of industry members to give away alcoholic beverage products to consumers.
Diageo North America	Extend current authority for tastings to include on-premises licensees. Provide for distilled spirits tastings. Allow supplier representatives to participate in wine, beer and spirits tastings conducted on retail premises.	Anticipated change to 3 VAC 5-70-100 will allow manufacturers to participate in tasting events at retail premises.
Richmond Pub Alliance	Repeal the prohibition on gifts of alcoholic beverages and/or amend this regulation to allow manufacturers and/or wholesalers to sponsor tasting events at on-	Anticipated change to 3 VAC 5-70-100 will allow manufacturers to participate in tasting events at retail premises. The Board does not intend to expand the ability of industry members to give away alcoholic beverage

<p>The Country Vintner</p>	<p>premises licensees. Wine wholesalers should be allowed to donate wines to charitable organizations. Wholesalers who also serve as importers of a product should not have to notify themselves of price increases.</p>	<p>products to consumers. The Board does not intend to expand the ability of industry members to give away alcoholic beverage products to consumers. The anticipated change to 3 VAC 5-70-150 will remove the requirement of price increase notification when the importer and wholesaler are the same entity.</p>
<p>Virginia Retail Merchants Association</p>	<p>Board should adopt provisions specifying the scope of inquiry into personal background information for officers, directors, and shareholders of licensees in connection with license application or changes in corporate structure.</p>	<p>Current provisions of the Virginia Code provide license sanctions based upon criminal convictions of any officer, director, partner, member, manager, or 10% or more shareholder of a licensed organization, and require a criminal history records check on all applicants. The Board believes current procedures are adequate without adopting a formal regulation.</p>
<p>Virginia Hospitality & Travel Association</p>	<p>Board should repeal the prohibition on gifts of alcoholic beverages. Allow suppliers to conduct wine, beer, or spirits tasting events at on-premises licensees.</p>	<p>The Board does not intend to expand the ability of industry members to give away alcoholic beverage products to consumers. Anticipated change to 3 VAC 5-70-100 will allow manufacturers to participate in tasting events at retail premises.</p>
<p>Virginia Wineries Association</p>	<p>Term “commercial carrier” should be defined. Subsection D.4. of 3 VAC 5-70-10 should be amended to allow winery employees to carry wine in their personal vehicle. If peddling wine is allowed, subsection D. 5. of the same section should be amended to provide an exception for peddling. Ban on gifts of alcoholic beverages should be retained. Number of remote outlets allowed farm wineries should be increased from 2 to 5 as allowed by recent statute change.</p>	<p>3 VAC 5-70-100 does not apply to the situations raised by the Wineries Association. With respect to wine and beer, this section only applies if the beverages were purchased outside the Commonwealth. The Board does not intend to expand the ability of industry members to give away alcoholic beverage products to consumers. The anticipated change to 3 VAC 5-70-160 will increase the farm winery remote retail outlet allowance to 5.</p>

Rules governing the transportation, storage, sale and giving away of alcoholic beverages are essential to protect the health, safety, and welfare of the public by helping to prevent the unlicensed or unlawful manufacture or sale of such products and to ensure the collection of state tax revenue. The regulations are clearly written and easily understandable.