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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Alcoholic Beverage Control
Virginia Administrative Code (VAC) citation(s)	3-VAC5-70
Regulation title(s)	Other Provisions
Action title	Schedule of Penalties for First Offense Violations
Date this document prepared	02/13/2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

Any licensee charged with one of the offenses listed in 3VAC5-70-210, provided that the licensee has no other pending charges and had not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and accept a period of suspension or pay a civil charge in lieu of a suspension. The amounts of the civil charge are listed in 3VAC5-70-210 and are significantly less than the maximum monetary penalties permitted by the Code of Virginia (§4.1-227).

The current schedule of penalties in 3VAC5-70-210 are based on previous maximums listed in §4.1-227; however, in July 2017 the maximum monetary penalties for these offenses increased. The proposed regulation amendment changes the penalty schedule by increasing the amounts to reflect higher civil penalties based off the new maximums in §4.1-227. The proposed increases are still lower than the maximum that the Code of Virginia permits ABC to impose for civil penalties.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 4.1-101 of the Code of Virginia (Code) establishes the Department of Alcoholic Beverage Control (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act). Section

Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111. 4.1-103(26) states the Board may assess and collect civil penalties and civil charges for violations of this title and Board regulations.

Section 4.1-227(B) permits the Board to impose and collect civil penalties.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulation change is to amend civil penalties for first-offense violations so that they are still lower than the maximum penalties listed in the Code of Virginia, but are more in line with the increases in §4.1-227 that were enacted in 2017.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The amendments to schedule of penalties for first offenses increases the civil charges listed in 3VAC5-70-210 by either \$250 or \$500. The current civil charges are based on out-of-date maximum penalties that existed prior to the amendments to §4.1-227.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives to this proposal. 3VAC5-70-210 can actually be viewed as an alternative to the licensee assuming the risk of having to pay the maximum fee penalty listed in §4.1-227 along with possibly paying the costs for the investigation and the subsequent proceedings. The Code of Virginia provides that ABC can assess a fee penalty for a violation of the charges listed in 3VAC5-70-210 that is much higher than what this regulation proposes. This regulation (even with the proposed increases) allows the licensee to voluntarily choose to pay a much lower civil charge and not incur the additional costs, time, and resources involved in proceeding with a hearing.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **[insert staff contact person’s name, mailing address, phone number, fax number, and email address]**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

THEN, INSERT EITHER:

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

OR

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Periodic review/small business impact review announcement

If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

This is not the result of a periodic review or small business impact review.