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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Alcoholic Beverage Control
<b>Virginia Administrative Code (VAC) citation(s)</b>	3 VAC 5-30
<b>Regulation title(s)</b>	Tied House
<b>Action title</b>	Inducements to retailers; beer and wine tapping equipment; bottle or can openers; back-bar pedestals; banquets licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.
<b>Date this document prepared</b>	April 5, 2016

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*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-30, TIED HOUSE, by amending existing regulation 3 VAC 5-30-60 by the addition of language to permit any manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages to provide to retail licensees Co2 filters without charge and install such filters in the retailers draft beer lines. This proposed amendment is intended to bring the Board's Regulations into conformity with the agency guidance document Circular Letter 06-01 that permits any manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages to provide retail licensees with Co2 filters and install them without charge to the retail licensee.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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Co2 Filter – a filter installed in the carbon dioxide lines of draft beer systems.

Industry Member – a manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages.

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On April 20, 2016, The Alcoholic Beverage Control Board adopted an amendment to 3 VAC 5-30, TIED HOUSE, amending the existing regulation 3 VAC 5-30-60, Inducements to retailers; beer and wine tapping equipment; bottle and can openers; spirits back bar pedestals; banquet licenses; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties, to proceed under the fast track regulatory process.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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Section 4.1-103 authorizes the Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. and § 4.1-111 of the ABC Act). This section of the Code also provides the Board with broad authority to do all acts necessary to carry out the purposes of Title 4.1.

Section 4.1-111. A., further authorizes the Board to amend or repeal regulations adopted by it in accordance with the Administrative Process Act (§ 2.2-4000 et seq)

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The proposed amendment to 3-VAC 5-30-60 is to add language to this regulation that will bring it into conformity with the current agency guidance document Circular Letter 06-01 allowing manufacturers,

importers, brokers, bottlers and wholesalers of alcoholic beverage to provided and install Co2 filters in wine and beer draft lines of licensed retail establishments.

**Rationale for using fast-track process**

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

This proposal is expected to be noncontroversial as the amendment is merely adding language to bring the regulations into conformity with a practice authorized by an agency clarifying guidance document. The practice of the regulated community providing Co2 filters to retail licensees is now commonplace.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

The proposed amendment provides that representatives of manufactures, importers, bottler, broker or wholesaler of wine and beer products will be permitted to provide and install without charge Co2 filters in draft lines of retail licensees.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage for the agency, regulated community and the public in amending the current language of 3 VAC 5- 30-60 to bring it into conformity with an activity that was authorized by the agency through a guidance document and is now commonplace within the regulated community. Another advantage for the agency is the fulfillment of the commitment made when the guidance document was issued to update the regulation. Furthermore, the allowance of this practice enables businesses to insure that product quality and integrity are preserved without additional expense to many small businesses.

There are no disadvantages to the Commonwealth or the public.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no federal requirements that are more restrictive than the proposed amendment.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No locality is affected by this proposed regulatory action.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposal has no adverse affect on small businesses. The practice of industry members of the alcoholic beverage industry providing Co2 filters to retail licensees has been a common practice within the regulated community since 2006 with no negative impact(s). Furthermore, the allowance of this practice enables businesses to insure that product quality and integrity are preserved without additional expense to many small businesses.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	None
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	None
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</b>	9,000 plus licensed entities the majority which would be classified as small businesses.

<p><b>affected.</b> Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b>  a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There will no additional cost to the agency or industry members affected by this regulation.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>To bring the existing language in 3 VAC 5-30-60 into conformity with a practice that has been permitted for several years.</p>

### 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 other alternatives to amend the language in the regulation.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Periodic review and small business impact review report of findings

*If this fast-track is the result of a periodic review/small business impact review, use this form 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

There is no periodic review.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.*

This regulatory action will have no negative impact on the institution of the family and family stability.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
3 VAC 5- 30 – 60 (2) (a)		This regulation does not authorize industry members to provide Co2 filters to retail licensees. However, such practice is authorized by an agency guidance document.	The proposed amendment would authorize industry members to provide Co2 filters to retail licensees and install them in carbon dioxide lines of draft beer and wine systems in their establishments. The amendment will bring the regulation

			<p>into conformity with current practice within the regulated community.</p> <p>There is no anticipated impact on the regulated community.</p>
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements