



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Alcoholic Beverage Control Board
<b>VAC Chapter Number:</b>	3 VAC 5, Chapter 10
<b>Regulation Title:</b>	Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers and the Adoption or Amendment of Regulations
<b>Action Title:</b>	Franchise Act Procedure and Annual Rule-Making
<b>Date:</b>	August 1, 2001

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 sets forth the procedural rules for hearings held by hearing officers and the Alcoholic Beverage Control Board, discovery provisions for proceedings arising under the Wine and Beer Franchise Acts, provisions for telephone hearings, and the Board's public participation guidelines for adoption or amendment of regulations.

## 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.*

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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, and to hold hearings and make case decisions on license applications, violations of the Board's regulations by licensees, and disputes arising under the Wine and Beer Franchise Acts. The Code mandates that the Board promulgate regulations and hold hearings, but details of the procedural rules are left to the Board's discretion.

## 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.*

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The Board received comment from the Virginia Beer Wholesalers Association, Inc. (VBWA), as a result of the Notice of Periodic Review. They recommended amendment of 3 VAC 5-10-360, dealing with the handling of complaints arising under the Wine and Beer Franchise Acts. The current language provides that the secretary's office, in consultation with the deputy department director for regulation, will determine if reasonable cause exists to believe a violation has occurred, and if so, a hearing will be scheduled. The position of deputy department director for regulation no longer exists, so a change is necessary. The VBWA suggestion was to refer complaints directly to the Adjudication Division which conducts franchise hearings, and allow them to make the initial determination of reasonable cause. The Board recognizes the need to amend the regulation to eliminate the reference to the extinct position, but prefers to have the determination of reasonable make initially by the secretary, rather than put the Adjudication Division in the position of pre-judging the merits of a complaint which they may later hear.

The VBWA also commented on 3 VAC 5-10-480, the Board's public participation guidelines in regulation development. They suggested that the present regulation's requirement that rulemaking procedures be initiated by the Board at least once each calendar year was unnecessary, since anyone could petition the Board at any time for a rule change, and the Administrative Process Act requires a response to such petitions within 180 days. The Board agrees with this suggestion.

No other public comments were received. The Board does not intend to form an informal advisory group.

## 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 goals of this regulations are:

1. To provide an efficient process for the adjudication of contested license applications, disciplinary cases, and disputes under the Wine and Beer Franchise Acts, while protecting the public health, safety, and welfare.
2. To provide a reasonable opportunity for public input in the formation, amendment, or repeal of agency regulations.

Procedural rules and public participation guidelines are essential to the Board's duty to protect the health, safety and welfare of the citizens of the Commonwealth through the passage and enforcement of regulations governing the manufacture, distribution and sale of alcoholic beverages. The lack of public comment indicates a level of satisfaction with the current procedural scheme, and discussions with practitioners before the Board reveal that they believe the procedural rules and public participation guidelines are clearly written and easily understandable. The current rules appear to be effectively allowing cases to proceed through the system in an orderly fashion.

## 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.*

Other than the recommended amendments to the regulation, the Board did not identify any alternatives for achieving the purpose of the existig rsgulation. Procedural rules and public participation guidelines are necessary to the efficient exercise of the Board's regulatory functions.

## Recommendation

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

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The Alcoholic Beverage Control Board is recommending this regulation be amended in several minor respects. In addition to the amendments arising from the public comment received, staff review discovered several references to positions or divisions of the agency which no longer exist. Amendments will be proposed to correct these obsolete references. In addition, the Board recommends that 3 VAC 5-10-400 be rewritten to incorporate Part 4 of the Rules of the Virginia Supreme Court by reference. The current section, which takes up some 20 pages in the Administrative Code, is closely modeled after the Supreme Court discovery rules. Substitution of the reference will reduce the text of the regulations of the Board by almost 20 percent, while referring practitioners to a rule with which they are already familiar. A provision which prohibits the chief hearing officer from presiding over any case in which a consent settlement offer was submitted is recommended for deletion as unnecessary. The Board will also proceed with amendments to its public participation guidelines to incorporate the use of new electronic technologies, such as posting actions and meetings on the Regulatory Town Hall, and the use of the Town Hall's mailing list capabilities to provide notice.

### Substance

*Please detail any changes that would be implemented.*

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In 3 VAC 5-10-40, 3 VAC 5-10-60, and 3 VAC 5-10-130, the term "Administrative Hearings Section" would be replaced with "Adjudication Division".

In 3 VAC 5-10-50, "Division of Enforcement and Regulation" would be replaced with "Bureau of Law Enforcement Operations".

In 3 VAC 5-10-150, the last sentence in subsection A would be deleted.

In 3 VAC 5-10-230, "deputy department director for regulation" would be replaced with "Director, Bureau of Law Enforcement Operations", and "Division of Enforcement and Regulation" would be replaced with "Bureau of Law Enforcement Operations".

In 3 VAC 5-10-360, in the first sentence, the phrase "in consultation with the deputy department director for regulation" would be deleted.

In 3 VAC 5-10-400, the majority of the text would be replaced with language adopting the discovery rules of the Virginia Supreme Court by reference.

In 3 VAC 5-10-480, in the second sentence of subsection B, the language "but shall be initiated at least once each calendar year" would be deleted, and references to the use of internet technology, such as the Regulatory Town Hall to provide notice of regulatory actions.

**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.*

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It is not expected that this regulatory action will have any impact on the institution of the family.