



Fast Track Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Penalty Waiver for First-Time Violations
Date this document prepared	April 29, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Alcoholic Beverage Control Board proposes a new section 3 VAC 5-70-250, providing a process whereby licensees charged with a violation of statute or board regulation may have all penalties waived, or may be placed upon probation and have proceedings deferred and ultimately dismissed in lieu of license suspension or monetary penalty, in cases where the charge represents the first violation by the licensee within five years.

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.

On June 28, 2010, the Alcoholic Beverage Control Board took action to adopt amendments to 3 VAC 5-70, Other Provisions, adding 3 VAC 5-70-250, under the fast-track process.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Subsection E. 4. of Section 4.1-227 of the Code of Virginia provides that the board shall, by regulation, “establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation.” The choice of offenses to be included in the schedule is discretionary with the board, except that the statute prohibits the granting of a waiver for a licensee’s willful and knowing violation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The board has determined that this action promotes the public safety and welfare by encouraging licensees with a long record of compliance with laws and regulations to obtain appropriate training and give renewed attention to compliance when they commit a first violation within five years. The opportunity to avoid suspension or monetary penalty should be a compelling influence toward voluntary compliance with laws and regulations, which is the primary goal of the disciplinary process.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The board expects this rulemaking to be noncontroversial because it has adopted the broadest possible application of the statutory mandate. There should be no controversy as to which offenses have been placed in the schedule of eligible offenses and which have not, since the probation portion of the proposed regulation applies to all offenses. On the other hand, each situation will be reviewed by the board to determine the appropriate application of the policy.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This action creates a new section 3 VAC 5-70-250, which provides a schedule of violations for which punishment is waived for a first offense within five years. It also allows for deferral of disciplinary proceedings against a licensee and ultimate dismissal of charges, for any other first offense within five years. If the board finds that a violation was not willful and knowing, it will be able to defer further proceedings and place the licensee on probation. Probation will include a requirement of appropriate seller/server or manager training, and compliance with alcoholic beverage laws and regulations. Upon successful completion of probation, the charge will be dismissed.

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 to licensed businesses of implementing the new provision is the opportunity to avoid license suspension or monetary penalty in a case of a non-willful violation, when the business has a long history of compliance with the law. The primary disadvantage to the agency is a possible reduction in revenue from civil monetary penalties.

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 applicable federal requirements.

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.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

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 regulation contains no compliance or reporting requirements, design or operational standards. It will merely provide additional options for licensees to respond to violations of alcoholic beverage laws or regulations without the expense of a suspension or monetary penalty.

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.

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	The proposed regulation will not create additional cost to the state to implement and enforce, although there could be an undetermined reduction in penalty revenue.
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	All holders of licenses issued by the Department of Alcoholic Beverage Control
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 16,000, of which an estimated 90% are small businesses
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. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	Affected business entities will achieve a potential reduction in costs as a result of the change, with avoidance of monetary penalties or losses of revenue during license suspension.

<p>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>Beneficial impact the regulation is designed to produce.</p>	<p>Voluntary compliance with alcoholic beverage laws and regulations</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.

The other alternative considered was to only establish a schedule of a limited number of offenses for which penalty could be waived. This was not adopted. The board determined that the proposed regulatory action would make the option available to many more licensees. Since the legislation prohibits the granting of a waiver for a willful and knowing violation, these cases will have to go to hearing to make such a determination, unlike the other situations addressed in 3 VAC 5-70-210, where licensees can choose from a schedule of punishments in lieu of hearing.

Family impact

Please assess the impact of the proposed 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.

No impact on the institution of the family and family stability is expected.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	3 VAC 5-70-250		<p>For substantiated scheduled violations that the board finds are not willful and knowing, the board will enter an order substantiating the violation without imposition of punishment. If the board finds that any violation is not willful and knowing, it may waive suspension or monetary penalty in any case, defer further proceedings, and place the licensee upon probation. Upon successful completion of probation, the charge would be dismissed. Probationers would be required to complete training and comply with alcoholic beverage laws and regulations.</p> <p>This allows the board to waive penalties in any case, not just a limited number of scheduled violations. It provides maximum flexibility for the board, and an opportunity for any licensee with a record of no violations within five years to avoid suspension or monetary penalty.</p>

For new chapters, use this chart:

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

Enter any other statement here