



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-70
Regulation title	Other Provisions
Action title	Proration of License Fee for Businesses Destroyed by Natural Disaster
Date this document prepared	August 5, 2013

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The purpose of this regulatory action is to carry out the mandate of chapter 728 of the 2011 Acts of Assembly, which amended §§ 4.1-111 and 4.1-232 of the Code of Virginia to require that the board promulgate regulations that “prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.” This subsection requires the board to prorate license fees when a licensed place of business is destroyed by natural disaster.

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 or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to amend 3 VAC 5-70, Other Provisions, by the adoption of a new section 3 VAC 5-70-95, entitled “Proration of License Tax for Businesses Destroyed by Natural Disaster.”

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.

Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of the Code of Virginia. Section 4.1-111 authorizes the board to promulgate reasonable regulations, not inconsistent with Title 4.1 of the Code of Virginia or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of Title 4.1.

Section 4.1-232 C of the Code of Virginia provides that the board shall make refunds, prorated according to a schedule of its prescription, to licensees of state license taxes paid pursuant to § 4.1-231 A of the Code of Virginia if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon.

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 it 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 proposed regulatory action is essential to protect the welfare of citizens by providing a means to protect them from the total loss of unused license fees when natural disaster prevents them from exercising the privileges of a license.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The board adopted a new section (3VAC5-70-95), which provides a schedule of the percentage of the license fee that will be refunded to a licensee whose place of business is destroyed by natural disaster. The percentage will vary depending on when in the course of the license year the destruction occurs.

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 the public is providing some relief to businesses whose facilities are destroyed by natural disaster. The expense to the Commonwealth is expected to be minimal. There are no disadvantages to the public.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

None

Section number	Requirement at proposed stage	What has changed	Rationale for change

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Virginia Hospitality & Travel Association	Supports proposal	

Enter any other statement here

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section	Proposed new section	Current requirement	Proposed change and rationale

number	number, if applicable		
	3 VAC 5-70-95	License fee is not refunded unless erroneously assessed	If the place of business designated in a license is destroyed by natural disaster, 75% of the license tax will be refunded if the destruction takes place in the first three months of the license year, 50% if the destruction takes place in the second three months of the license year, and 25% if the destruction takes place in the third three months of the license year. The proposed plan will provide relief to businesses which are unable to avail themselves of a prepaid license due to natural disaster.

Enter any other statement here