



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Reduction in Penalty for Certified Alcohol Server Training
Date this document prepared	October 30, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to carry out the mandate of Chapter 513 of the 2008 Acts of Assembly, which amends § 4.1-227 of the Code of Virginia and requires the Alcoholic Beverage Control Board to promulgate a regulation providing for a reduction in penalty in certain disciplinary actions against licensees, where the licensee can demonstrate that it has provided certified alcohol server training to its employees. The amended regulation encourages alcoholic beverage seller-server training.

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

Section 4.1-227, Code of Virginia, as amended by Chapter 513 of the 2008 Acts of Assembly, provides that the Alcoholic Beverage Control Board shall, by regulation, (1) designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation and (2) provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail

licensee where the licensee can demonstrate that it provided to its employees alcohol server training certified in advance by the Board.

Need

Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.

The board has determined that this action promotes the public safety and welfare by insuring that licensees who do not comply with the regulations governing the sale of alcoholic beverages are appropriately punished, while saving the agency the cost of an administrative hearing.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The intended regulatory action would amend 3 VAC 5-70-210 to provide for a lesser suspension period and a lesser civil penalty in lieu of suspension for licensees charged with a first violation within three years of sale of alcoholic beverages to an underage or intoxicated person or allowing consumption of alcoholic beverages by an underage or intoxicated person, if the licensee can demonstrate that it has provided the employee responsible for the violation alcohol server training certified by the board within the 12 months immediately preceding the violation. A new provision added to the section will set out the process for certification of alcohol server training courses. Additional amendments will clarify that the ability to waive hearing and accept a penalty under this section does not apply to licensees charged with multiple violations, and deletes certain violations currently included in this section which the board feels are inappropriately listed.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Since regulatory action is mandated by the General Assembly, there is no viable alternative. The agency will consider all suggestions received during the public comment period to assist it in developing a proposal that addresses the need in the most cost-effective manner.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include 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 on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Jeffrey L. Painter, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, Virginia 23261, fax number (804) 213-4411, e-mail jeffrey.painter@abc.virginia.gov..** Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

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Family impact

Assess the potential 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.

It is not anticipated that this regulatory action will have any effect on the institution of the family or family stability.