



VIRGINIA

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his

authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Poppo; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the Virginia Register: **Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Managing Editor; Erin Comerford, Regulations Analyst.**

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

August 2024 through August 2025

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
40:26	July 24, 2024	August 12, 2024
41:1	August 7, 2024	August 26, 2024
41:2	August 21, 2024	September 9, 2024
41:3	September 4, 2024	September 23, 2024
41:4	September 18, 2024	October 7, 2024
41:5	October 2, 2024	October 21, 2024
41:6	October 16, 2024	November 4, 2024
41:7	October 30, 2024	November 18, 2024
41:8	November 13, 2024	December 2, 2024
41:9	November 26, 2024 (Tuesday)	December 16, 2024
41:10	December 11, 2024	December 30, 2024
41:11	December 23, 2024 (Monday)	January 13, 2025
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Name of Petitioner: Jennifer Nicole Brandt.

Nature of Petitioner's Request: The petitioner requests that the Board of Pharmacy amend 18VAC110-20-322 to include mitragynine and 7-hydroxymitragynine, the active alkaloids found in kratom, in Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on June 25, 2024, the Board of Pharmacy voted to take no action on the petition. The board did not feel it possessed sufficient evidence at the meeting to determine that kratom has no medicinal value. The board may, however, research and review this matter at a future meeting.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4456, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. PFR24-39; Filed April 11, 2024, 1:05 p.m.

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Name of Petitioner: Sharon Watson.

Nature of Petitioner's Request: The petitioner requests that the Board of Counseling amend 18VAC115-20-52 B 10 and 18VAC115-50-60 B 8 to allow residents in counseling to directly bill for services and directly receive payments from clients.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on July 29, 2024. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which

opens July 29, 2024, and closes August 28, 2024. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment, currently scheduled for October 4, 2024. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: August 28, 2024.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR24-40; Filed June 27, 2024, 12:13 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Alcoholic Beverage Control Authority conducted a periodic review and a small business impact review of **3VAC5-20, Advertising; 3VAC5-40, Requirements for Product Approval; 3VAC5-50, Retail Operations; and 3VAC5-70, Other Provisions** and determined that these regulations should be amended. The proposed regulatory actions amending 3VAC5-20, 3VAC5-40, 3VAC5-50, and 3VAC5-70, which are published in this issue of the Virginia Register, serve as the reports of findings.

Contact Information: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **11VAC10-47, Historical Horse Racing**. The Notice of Intended Regulatory Action to amend 11VAC10-47, which is published in this issue of the Virginia Register, serves as the agency notice of announcement.

Contact Information: Rhonda Davis, Director of Pari-Mutuels and Licensing, Virginia Racing Commission, 10700 Horsemens Road, New Kent, VA 23124, telephone (804) 966-7415, or email rhonda.davis@vrc.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **18VAC160-30, Waterworks and Wastewater Works Operators Licensing Regulations and 18VAC160-40, Onsite Sewage System Professionals Licensing Regulations**. The review of these regulations will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 29, 2024, and ends August 19, 2024.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Marjorie King, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and small business impact review: **22VAC40-100, Minimum Standards for Licensed Child Caring**

Periodic Reviews and Small Business Impact Reviews

Institutions. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether the regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins July 29, 2024, and ends August 19, 2024.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Alisa Foley, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7138, or email a.foley@dss.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Racing Commission intends to consider amending **11VAC10-47, Historical Horse Racing**. The current regulation requires Churchill Downs Incorporated, the owner of Colonial Downs Racetrack, to have eight live tellers at the Rose satellite wagering facility (SWF) due to the number of historical horse racing terminals at that facility. The purpose of the action being considered is to reduce the current number of required tellers at historical horse racing terminals from two to one at Collinsville, Dumfries, and Emporia SWFs; from three to two at Hampton and Richmond SWFs; and from eight to three at the Rose SWF.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Comment Deadline: August 28, 2024.

Agency Contact: Rhonda Davis, Director of Pari-Mutuels and Licensing, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7415, or email rhonda.davis@vrc.virginia.gov.

VA.R. Doc. No. R24-7958; Filed June 27, 2024, 3:35 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-60, Common Interest Community Association Registration Regulations**. The purpose of the proposed action is to undertake a general review of the regulation in accordance with the regulatory reduction goal of Executive Directive Number One (2022). The regulation prescribes when and how common interest

community associations are to register with the Common Interest Community Board by filing an annual report in accordance with the Code of Virginia. The regulation establishes registration application filing fees, procedures for renewing registrations, and requirements for updating registration information. The goals of the action include (i) reviewing discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare or are not necessary to effectively administer the licensure program; (ii) ensuring the regulation conforms to current Virginia law and meets applicable federal requirements, is organized, clear, and understandable, and provides minimal burdens on regulants while still protecting the public; and (iii) ensuring the regulation reflects current Department of Professional and Occupational Regulation procedures and policies, along with any other changes determined to be necessary and appropriate.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: August 28, 2024.

Agency Contact: Anika Coleman, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R24-7709; Filed July 2, 2024, 1:05 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Proposed Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-10, 3VAC5-20-30, 3VAC5-20-90, 3VAC5-20-100; repealing 3VAC5-20-20, 3VAC5-20-60).**

Statutory Authority: §§ 4.1-103, 4.1-111 and 4.1-320 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 27, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia authorizes the board to promulgate regulations that establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because it provides guidance for alcohol advertising to ensure that regulants do not engage in conduct that would (i) encourage consumption by those that cannot lawfully consume, (ii) violate the Tied House Laws (3VAC5-30), or (iii) mislead or harm the public.

Substance: The proposed amendments (i) include a new provision that excludes combinations of food and alcoholic beverages offered at a discounted price by an on-premises licensee during the permitted hours for a happy hour pursuant to 3VAC5-50-160 from the prohibition against advertising that constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages and (ii) remove unnecessary and duplicative provisions.

Issues: The primary advantage to the public is that the public can now enjoy combination food and alcoholic discounts during happy hour. Also, the proposed amendments make the regulation more understandable by removing provisions that do not relate to advertising. The authority is of the position there are no disadvantages to the public regarding the amendments. The primary advantage to the Commonwealth is that the regulation utilizes current terminology and the changes bring clarity to certain advertising rules that have been subjective and caused confusion in the regulated community. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. As part of a periodic review, the Virginia Alcoholic Beverage Control Authority Board of Directors (board) proposes to update the rules pertaining to outdoor advertising of alcoholic beverages, remove language that it reports is redundant to the Code of Virginia, and align the regulation with current industry practices.

Background. Section 4.1-111 B 13 of the Code of Virginia directs the board to "establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages," and § 4.1-112.2 of the Code of Virginia provides specific distance and zoning requirements for outdoor advertising, indicates when the board may grant variances, and lists acceptable exceptions to the distance and zoning requirements.² In addition, § 4.1-113 of the Code of Virginia limits the type of indoor advertising that the board may regulate.³ Accordingly, 3VAC5-20 addresses various details pertaining to interior and exterior advertising of alcoholic beverages, print and electronic media, coupons, and other advertising channels. In order to meet the regulatory reduction requirements of Executive Order 19, the board met six times between June and October 2022 to review all of the Virginia Alcoholic Beverage Control Authority (ABC) regulations and convened roughly 60 stakeholders, representing all categories of license holders.⁴ Thus, the board seeks to make a number of changes that would update the regulation to reflect current practice, align the language with statute, and remove redundant or obsolete language. The most substantive changes are summarized as follows.

Regulations

3VAC5-20-10: Advertising; generally; cooperative advertising, federal laws; cider; restrictions. Eliminate the requirement that advertising of cider conform to the requirements for advertising beer because the laws governing advertising apply to all types of alcohol and alcoholic beverages, except as specifically indicated. Thus, the current requirement is moot as there are no separate requirements for beer to which cider advertising could conform.⁵

Specify that advertising should not tend to induce "persons younger than 21 years of age" to drink or consume to excess. The current language refers to "minors," which was not defined, but implied individuals younger than 18 years of age. This change would newly prohibit advertising targeted at persons older than 18 years of age and younger than 21 years of age.

Remove the current language restricting the use of present or former athletes and athletic teams and suggesting that the product enhances athletic prowess. The replacement language would prohibit advertising that "implies that the product enhances athletic prowess; depicts any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; or depicts an athlete consuming alcohol while operating or about to operate a motor vehicle or other machinery." ABC states that this change acknowledges the growing collaborations between sports teams and manufacturers, while ensuring that the use of these images does not imply any of the prohibitions listed in the regulation.

The current language prohibiting any advertising for a contest or sweepstakes "where a purchase is required for participation" would be amended to specify that the prohibition only applies to the "purchase of alcoholic beverages." Under the current language, advertising is restricted for contests that require any purchases, including products unrelated to alcohol, which falls outside the board's authority to regulate.

Add language that would allow a combination of food and alcoholic beverages to be offered at a discounted price by an on-premises licensee during the permitted time for a happy hour. ABC reports that this change reflects current practice and that such discounts may already be offered in some places.

Add language that prohibits indoor advertising materials from being illuminated, except for back bar pedestals that are allowed to contain advertising regarding spirits. Currently, this language appears in similar form in 3VAC5-20-20 B.

3VAC5-20-20: Advertising; interior; retail licenses. This section would be entirely repealed because it is redundant to § 4.1-216.1 of the Code of Virginia.⁶ Currently, this section contains a definition of "advertising materials" that is also found in § 4.1-216.1 A of the Code of Virginia. It also specifies the advertising materials used by retail licensees, which is also in § 4.1-216.1 C of the Code of Virginia. A stipulation regarding illuminated indoor advertising materials would be moved to 3VAC5-20-10.

3VAC5-20-30: Advertising; exterior. Eliminate language in the exterior advertising section of the regulation that ABC

states is redundant to § 4.1-112.2 of the Code of Virginia. Delete language that prohibits alcoholic beverage manufacturers, importers, or wholesale licensees from selling, renting, loaning, or giving any billboard placements for outdoor alcoholic beverage advertising, or "in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising." The "billboard placement" and "any other way or anything of value" language would be moved to the Tied-House regulation (3VAC5-30-80) and replaced by a reference to "materials except for items permitted by 3VAC5-30-60 and 3VAC5-30-80."⁷

Repeal language that prohibits alcoholic beverage manufacturers, importers, or wholesale licensees from engaging in cooperative advertising on behalf of retail licensees. Such activity is already prohibited by 3VAC5-30-80.

3VAC5-20-60: Advertising; novelties and specialties. This section would be repealed entirely. These requirements would be added as 3VAC5-30-100 because the board believes they more properly belong in the regulation governing tied-house requirements.

3VAC5-20-90: Advertising; coupons. Specify that consumer submitted refund coupons may not be honored for "on-premises consumption" at retail outlets or state government stores. The current regulation does not contain the phrase "on-premises consumption," and ABC indicates that it is necessary in order to prevent individuals who have over-consumed from driving.

3VAC5-20-100: Advertising; sponsorship of public events; restrictions and conditions. Update the cross-references to the definition of advertising materials in 3VAC5-30. Separate the provisions for manufacturers and wholesalers to clarify that manufacturers may sponsor public events and that wholesalers may only cosponsor charitable events with manufacturers.

Estimated Benefits and Costs. The proposed amendments largely serve to update the regulation to reflect current practice and remove redundant or obsolete language. The proposed amendments would benefit the public to the extent that restrictions on advertising to young adults and the use of refund coupons lowers the risk of underage drinking or excessive drinking. The loosening of restrictions with respect to athletes and athletic teams could benefit manufacturers that wish to use more representations of athletes in their advertising in Virginia. The proposed amendments may generate some losses to entities that engage in advertising if they had already invested in advertising materials that specifically targeted people 18 to 21 years of age. Given that these changes were broadly supported by a number of stakeholders, it is unlikely that any manufacturer, importer, wholesaler, or retailer engaging in advertising would face significant costs or adverse economic impact as a result of these changes.

Businesses and Other Entities Affected. The proposed amendments potentially affect ABC's approximate 20,892 licensees⁸ who manufacture, distribute, or sell and serve

alcoholic beverages in the Commonwealth, and other interested parties. Only licensees and other entities that engage in advertising would be affected by the changes to this chapter.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁹ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.¹⁰ The proposed amendments do not appear to increase net costs or reduce benefit. Thus, no adverse impact is indicated.

Small Businesses¹¹ Affected.¹² The proposed amendments do not appear to adversely affect small businesses.

Localities¹³ Affected.¹⁴ The proposed amendments neither disproportionately affect any particular localities, nor affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-111/> and <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-112.2/>, respectively.

³ See <https://law.lis.virginia.gov/vacode/title4.1/chapter1/section4.1-113/>.

⁴ See <https://townhall.virginia.gov/L/Meetings.cfm?BoardID=2&time=Past>. ABC provided a list of external stakeholders; although all stakeholders may not have attended every meeting, the meetings were spent conducting a line-by-line review of the regulations, and the proposed changes reflect the board's decisions after considering stakeholder input.

⁵ ABC explained that the law currently treats cider the same way as beer for all purposes except taxes, where cider is treated the same as wine.

⁶ See <https://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-216.1/>.

⁷ The board is concurrently amending 3VAC5-30 to incorporate this language in 3VAC5-30-80. See <https://townhall.virginia.gov/l/viewstage.cfm?stageid=10230> for the proposed changes to that regulation.

⁸ Data Source: ABC.

⁹ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹⁰ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from

regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

¹¹ Pursuant to § 2.2-4007.04, small business is defined as "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."

¹² If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹³ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁴ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the majority of the Department of Planning and Budget's economic analysis; however, the authority does take exception to a statement mentioned by the analyst in the section entitled "Estimated Benefits and Costs." The analyst states, "The proposed amendments may generate some losses to entities that engage in advertising if they had already invested in advertising materials that specifically targeted people 18 to 21 years of age." The analyst's assessment assumes that there are members of the alcohol industry actively engaging in advertising to individuals older than 18 years of age yet younger than 21 years of age who cannot lawfully purchase, possess, or consume alcohol (§§ 4.1-304 and 4.1-305 of the Code of Virginia). The authority does not agree with taking into consideration the actions of entities that would promote violating the law in assessing the economic impact of the proposed regulations.

Summary:

The proposed amendments revise provisions surrounding outdoor advertising of alcoholic beverages, remove language that is duplicative or redundant, and align the regulation with current industry practices.

3VAC5-20-10. Advertising; generally; cooperative advertising; federal laws; cider; restrictions.

A. All alcoholic beverage advertising is permitted in ~~this the~~ Commonwealth except that which is prohibited or otherwise limited or restricted by regulation of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority). Any editorial or other reading matter in any periodical, publication, or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or

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indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

~~B. Advertising of cider, as defined in § 4.1-213 of the Code of Virginia, shall conform to the requirements for advertising beer.~~

~~C. B.~~ The board authority may issue a permit authorizing a variance from any of its advertising regulations for good cause shown.

~~D. C.~~ No advertising shall contain any statement, symbol, depiction, or reference that:

1. Would tend to induce ~~minors~~ persons younger than 21 years of age to drink, or would tend to induce persons to consume to excess;
2. Is obscene or is suggestive of any illegal activity;
3. ~~Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point of sale advertising materials that incorporate the use of any present or former professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the appropriate federal agency and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess~~ Implies that the product enhances athletic prowess, depicts any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, or depicts an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery;
4. Is false or misleading in any material respect;
5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals, or other insignia or otherwise;
6. Makes any reference to the intoxicating effect of any alcoholic beverages;
7. Constitutes or contains a contest or sweepstakes where a purchase of alcoholic beverages is required for participation; or
8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages, except for (i) a combination of food and alcoholic beverages offered at a discounted price by an on-premises licensee during the permitted hours for a happy hour pursuant to 3VAC5-50-160 or (ii) refund coupons and combination packaging. Any such combination packaging shall be

limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

~~E. D.~~ The board authority shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages and (ii) the advertising prominently states that the product is nonalcoholic.

E. Interior advertising materials may not be illuminated, except for back bar pedestals upon which advertising regarding spirits may appear.

~~3VAC5-20-20. Advertising; interior; retail licensees. (Repealed.)~~

~~A. As used in this section, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages; except when used in the advertisement of nonalcoholic beer or nonalcoholic wine in accordance with 3VAC5-20-10 E.~~

~~B. Retail licensees may use any advertising materials having a wholesale value of not more than \$250 per item that comply with 3VAC5-20-10 inside licensed retail establishments. Advertising materials may not be illuminated, except for back bar pedestals upon which advertising matter regarding spirits may appear.~~

3VAC5-20-30. Advertising; exterior.

Outdoor alcoholic beverage advertising shall comply with 3VAC5-20-10 and shall be limited as follows:

1. No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages, use cartoon characters in any way, or use persons who ~~have not attained the minimum drinking age~~ are younger than 21 years of age as models or actors.
- ~~2. No outdoor alcoholic beverage advertising shall be placed in violation of § 4.1-112.2 of the Code of Virginia.~~
- ~~3. No outdoor alcoholic beverage advertising shall be placed on property zoned exclusively for agricultural or residential uses, or on unzoned property.~~
- ~~4. All outdoor alcoholic beverage advertising must also comply with the provisions of Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 of the Code of Virginia and the regulations of the Virginia Department of Transportation promulgated pursuant thereto.~~
- ~~5. 2.~~ No alcoholic beverage manufacturer, importer, or wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, ~~any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising~~

materials, except for items permitted by 3VAC5-30-60 and 3VAC5-30-80.

~~6. No alcoholic beverage manufacturer, importer, or wholesale licensee may engage in cooperative advertising, as defined in 3VAC5-30-80, on behalf of any retail licensee.~~

~~7. 3. No alcoholic beverage manufacturer or importer may require a wholesale licensee to place outdoor alcoholic beverage advertising or exercise control over the funds of a wholesale licensee for any purpose, including but not limited to the purchase of outdoor alcoholic beverage advertising.~~

3VAC5-20-60. Advertising; novelties and specialties. (Repealed.)

~~Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:~~

~~1. Items not in excess of \$10 in wholesale value may be given away;~~

~~2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give licensed retailers items not in excess of \$10 in wholesale value in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees; however, manufacturers or their authorized representatives other than wholesalers conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event; and such items bearing moderation and responsible drinking messages may be displayed by the licensee and his employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or its brands are subordinate in type size and quantity of text to such moderation message;~~

~~3. Items in excess of \$10 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;~~

~~4. Items may be sold by mail upon request or over the counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;~~

~~5. Wearing apparel shall be in adult sizes;~~

~~6. Point of sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesalers may not be involved in the redemption process; and~~

~~7. Novelty and specialty items bearing alcoholic beverage advertising may not be distributed to persons younger than the legal drinking age.~~

3VAC5-20-90. Advertising; coupons.

A. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers or importers of spirits, wine, and beer may use only consumer submitted refund, not instantly redeemable discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored for on-premises consumption at a retail outlet or state government store but shall be submitted directly to the manufacturer or importer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Consumer proof of purchase (such as a dated, retail-specific retail-specific receipt) is required for redemption of all consumer coupons. Coupons are permitted in the print media, via the Internet, by direct mail or electronic mail email to consumers, or as part of, or attached to, the package. Manufacturers, importers, bottlers, brokers, wholesalers, and their representatives may provide coupon pads to retailers for use by retailers on their premises if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or retailer's representative. Wholesale licensees may attach refund coupons to the package if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or retailer's representative.

2. Manufacturers or importers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least 15 days in advance of the issuance of the coupons of its amount, its expiration date, and the area of the Commonwealth in which it will be primarily used if not used statewide.

3. Wholesale licensees are not permitted to offer coupons.

4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point of sale point of sale, or by direct mail to consumers.

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5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons, and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers that are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual younger than the legal age for purchase.

3VAC5-20-100. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally, Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs; professional, semi-professional, or amateur athletic and sporting events; and events of a charitable or cultural nature by distilleries, wineries, breweries, importers, and bottlers.

B. Restrictions and conditions.

1. Any sponsorship on a college, high school, or younger age level is prohibited;

2. Cooperative advertising, as defined in 3VAC5-30-80, is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable ~~fund raising~~ fundraising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization ~~which that~~ that is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be in any media, such as print media, the Internet or other electronic means, television, or radio; by direct mail or ~~flyers~~ fliers to consumers; on programs, tickets, and schedules for the event; on the inside of licensed or unlicensed retail establishments; and at the site of the event;

7. Advertising materials as defined in ~~3VAC5-30-60 G~~ 3VAC5-30-80 M, table tents as defined in 3VAC5-30-60 ~~H~~ A, and canisters are permitted;

8. Prior written notice shall be submitted to the ~~board~~ Virginia Alcoholic Beverage Control Authority describing the nature of the sponsorship and giving the date, time, and place of it; ~~and~~

9. Manufacturers may sponsor public events ~~and wholesalers may only cosponsor charitable events;~~ and

10. Wholesalers may only cosponsor charitable events with manufacturers.

VA.R. Doc. No. R23-7508; Filed July 1, 2024, 4:16 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-10, 3VAC5-40-20, 3VAC5-40-30).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 27, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors (board) has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia authorizes the board to promulgate regulations regarding the sale of beer and wine for off-premises consumption in resealable containers.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because it provides guidance for how alcohol is labeled so that the label does not encourage unlawful consumption, does not mislead the consumer, and does not exceed maximum lawful quantities for containers.

Substance: The proposed amendments include (i) addressing the labeling of alcoholic brands of nonalcoholic products and (ii) adding language regarding wine and beer sold for off-premises consumption by on-premises licensees.

Issues: The proposed revisions will benefit the public because they update the rules to comport with modern practices for label approval while maintaining the mission of preventing misleading advertising, advertising that encourages overconsumption, and advertising that is otherwise improper. The Commonwealth benefits from these revisions because they clarify the authority's regulation and make the regulation more accessible and understandable and easier to apply equitably. There are no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive

Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Board of Directors (board) proposes to (i) add that the Virginia Alcoholic Beverage Control Authority (ABC) may withhold approval of any wine or beer label that is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding low alcohol beverage coolers; (ii) add that ABC may withhold approval of any wine or beer label that is not clearly distinguishable from a nonalcoholic product, or which minimizes, fails to identify, or disguises the product's alcoholic contents; (iii) remove current language that states that the agency may withhold approval of any wine or beer label "that implies or indicates that the product is government (federal, state, or local) endorsed"; (iv) amend the current language, which states that ABC may withhold approval of labels designed to induce "minors" to drink, to labels designed to induce "underage persons" to drink; (v) amend text to reflect current nomenclature, repeal text that the board states is duplicative of the Code of Virginia, and add clarifying language.

Background. This action is part of a periodic review of the regulation.²

Estimated Benefits and Costs. According to ABC, there have been instances where beer and wine product labels imitate spirits products, and this has led to market confusion and complaints to the agency. The proposal to add that ABC may withhold approval of any label that is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding low alcohol beverage coolers, would be beneficial in that members of the public may become less likely to be misled concerning the nature of some beverages they consume. Similarly, the agency has stated that there has been a nationwide issue where beer or wine labels are not clearly distinguishable from a nonalcoholic product or minimize, fail to identify, or disguise the product's alcoholic contents. These occurrences have led to consumer confusion and underage consumption.³ Thus, the proposal to add that ABC may withhold approval of any label that is not clearly distinguishable from a nonalcoholic product or that minimizes, fails to identify, or disguises the product's alcoholic contents would be beneficial in that it may decrease the likelihood of unintentional underage consumption and unintentional consumption of alcohol by adults. ABC also proposes to eliminate text that states that the agency may withhold approval of any wine or beer label that implies or indicates that the product is government endorsed. The agency reports that stakeholders have advocated for this change as more manufacturers were producing brands with labels that had state college or university logos or Virginia landmarks, and that these labels were being rejected because of this prohibition. Manufacturers would still have to get permission from the colleges and universities or other relevant entities to get to use

their logos or images. Most of the landmarks on labels have been buildings associated with colleges or universities, and the manufacturer has to have permission here as well.⁴ Since under the proposed language the manufacturers would have to receive consent from the entities whose image or logo is represented, there appears to be no cost associated with this proposed change. Since it newly allows manufacturers to use labels that they appear to wish to use to sell their product, these firms would be better off. Because public colleges and universities could be compensated for their permission, these institutions may benefit as well.

The current regulation entitles ABC to withhold approval of labels designed to induce minors to drink. Because minors are younger than 18 years of age, and the legal drinking age is 21 years of age, the current text does not specifically allow the agency to withhold approval of labels designed to induce individuals who are older than 18 years of age but younger than 21 years of age to drink. Amending "minors" to "underage persons" would conform the prohibition to the legal drinking age. This could be beneficial in that it could potentially reduce the encouragement of drinking by those who are older than 18 years of age, but not yet legally permitted to consume alcohol.

Businesses and Other Entities Affected. The proposed amendments potentially affect ABC's approximate 20,892 licensees⁵ who manufacture, distribute, or sell and serve alcoholic beverages in Virginia, public colleges and universities in the Commonwealth, and other interested members of the public.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ The proposed amendments appear to neither increase cost nor reduce benefit. Thus, an adverse impact is not indicated.

Small Businesses⁸ Affected.⁹ The proposed amendments do not appear to adversely affect small businesses.

Localities¹⁰ Affected.¹¹ The proposed amendments neither disproportionately affect any particular localities nor directly affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. Proposed amendments would affect which beer and wine labels may be used. Manufacturers that wish to use labels with state college logos or Virginia landmarks, and distributors and direct sellers of beer or wine who believe their sales would increase with such labels may have some increase in value. The proposed amendments do not affect real estate development costs.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed

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regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Pursuant to the Administrative Process Act, agencies are required to review regulations every four years. See § 2.2-4007.1 of the Code of Virginia <https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4007.1/> and § 2.2-4017 of the Code of Virginia <https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4017/>.

³ Source: ABC

⁴ Ibid.

⁵ Data Source: ABC

⁶ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁷ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁸ Pursuant to § 2.2-4007.04, small business is defined as "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."

⁹ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁰ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) add that the Virginia Alcoholic Beverage Control Authority (authority) may withhold approval of any wine or beer label that is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding low-alcohol beverage coolers; (ii) add that the authority may withhold approval of any wine or beer label that is not clearly distinguishable from a

nonalcoholic product or that minimizes, fails to identify, or disguises the product's alcoholic contents; (iii) remove current language that states that the authority may withhold approval of any wine or beer label that implies or indicates that the product is government endorsed; (iv) update "minor" to "underage person"; and (v) reflect current nomenclature, repeal text that is duplicative of the Code of Virginia, and add clarifying language.

3VAC5-40-10. Spirits; labels, definitions and standards of identity.

Spirits sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions, standards of identity, and standards of fill. In addition, the prior approval of the board Virginia Alcoholic Beverage Control Authority (authority) must be obtained as to the spirits, containers, and labels. The board authority may request a copy of the federal certificate of label approval before a product is approved for sale.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board authority and shall be packaged in approved types and sizes of containers.

3VAC5-40-20. Wine and beer; qualifying procedures; disqualifying factors; samples; exceptions.

A. Except as provided in subsection F of this section, all wine and beer sold in the Commonwealth shall be first approved by the board Virginia Alcoholic Beverage Control Authority (authority) as to content, container, and label.

1. All wine and beer sold in ~~this the~~ Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions, and standards of identity. An application acceptable to the board authority or on a form prescribed by the board authority describing the merchandise shall be submitted for each new brand and type of wine or beer offered for sale in the Commonwealth. Applicants shall submit a copy of the approval of the label by such federal agency. A registration fee in ~~such the~~ amount ~~as may be~~ established by the board authority shall be included with each application.

2. A gift package containing wine or beer for which label approval has been granted may be sold without additional approval by the board authority.

~~B. While not limited thereto, the board shall withhold approval of any wine if the alcoholic content exceeds 21% by volume.~~

~~C. While not limited thereto, the board~~ B. The authority may withhold approval of any label if it has reasonable cause to believe the container or label:

~~1. Which implies or indicates that the product contains spirits;~~

~~2. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;~~

~~3. Which contains~~ 1. Contains any obscene subject matter or illustration;

~~4. Which contains subject matter designed~~ 2. Contains a design or statement that is likely to induce minors underage persons to drink; or is suggestive of the intoxicating effect of wine or beer ~~5. Which contains~~ targets underage persons;

3. Suggests the intoxicating effect of wine or beer;

4. Contains any design or statement which that is likely to mislead the consumer;

5. Is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding products defined as "low alcohol beverage coolers" in § 4.1-100 of the Code of Virginia;

~~6. Which implies or indicates that the product is government (federal, state, or local) endorsed; or Is not clearly distinguishable from a nonalcoholic product or minimizes, fails to identify, or disguises the product's alcoholic contents. The authority shall take into account:~~

a. The number, location, size, and clarity of references to the alcohol content on the label;

b. Whether the labeling or container emphasizes features that are more commonly associated with nonalcoholic consumable products;

c. Any and all differences between the product's container or label and the nonalcoholic product, including color palette, font type, imagery, placement of words, images or descriptions, and backgrounds; and

d. Any other relevant factor, including whether the nonalcoholic product is clearly marketed as a nonalcoholic beverage alternative to an alcoholic beverage product; or

~~7. Which implies~~ Implies that the product enhances athletic prowess or includes any reference to any athlete, former athlete, or athletic team except that references to athletes or athletic teams shall be allowed to the extent such references are permitted in point of sale advertising pursuant to 3VAC5-20-10 depicts any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; or depicts an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery.

C. In analyzing products and labels for approval, the authority may consider the totality of the product label and packaging and consider any other relevant factors.

D. A person holding a license as a winery, farm winery, brewery, or a wine or beer wholesaler shall, upon request, furnish the board authority without compensation a reasonable

quantity of such brand sold by ~~him~~ the person for chemical analysis.

E. Any wine or beer sold only by direct shipment to consumers by holders of wine or beer shippers' licenses shall be approved upon compliance with subdivision A 1 of this section.

F. If the board authority has not approved a wine or beer for sale within 30 days after receipt by the board authority of a complete application and registration fee, the wine or beer may be sold in the Commonwealth pending a decision from the board authority on the application. If the application for approval is rejected, the manufacturer or importer shall discontinue sales of the rejected product upon notice from the board authority. Any wholesale or retail licensee may continue sales until any inventory on hand at the time of notice from the board authority is depleted.

3VAC5-40-30. Wine and beer containers; sizes and types; on-premises and off-premises limitations; cooler-dispensers; novel containers; carafes and decanters.

A. Wine and beer may be sold at retail only in or from the original containers of the sizes that have been approved by the appropriate federal agency, except that farm winery licensees may conduct barrel tastings at the winery; at which samples of wine not yet bottled may be sold to visitors to the winery. Each farm winery conducting a barrel tasting shall measure the wine withdrawn for the tasting, maintain full and complete records, and remit the taxes imposed by § 4.1-234 of the Code of Virginia.

B. Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original container with closure. Beer dispensed for on-premises consumption shall not be removed from authorized areas upon the premises. No wine or beer shall be sold for off-premises consumption in any container upon which the original closure has been broken, except for (i) a growler; or (ii) wine or beer sold for off-premises consumption by on-premises licensees that are not in the manufacturer's original sealed container, which shall (a) be enclosed in a container that has no straw holes or other openings and is sealed in a manner that allows a person to readily discern whether the container has been opened or tampered with subsequent to its original closure; (b) display the name of the licensee from which the wine or beer was purchased; (c) be clearly marked with the phrase "contains alcoholic beverages"; and (d) have a maximum volume of 16 ounces per beverage. A "growler" is defined as a resealable container made of glass, ceramic, metal, or other materials approved by the board Virginia Alcoholic Beverage Control Authority (authority) as well as resealable containers approved by the board authority.

1. Beer and cider may be sold for off-premises consumption by persons licensed to sell beer and cider for off-premises

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consumption in growlers with a maximum capacity of 128 fluid ounces or, if in metric size containers, four liters.

2. Wine may be sold for off-premises consumption in growlers with a maximum capacity of 64 fluid ounces or, for metric size containers, two liters. Wine sold in growlers may only be sold by persons licensed to sell wine for both on-premises and off-premises consumption and by gourmet shop licensees. Wine sold by gourmet shop licensees shall be labeled with the (i) manufacturer's name or trade name, (ii) place of production, (iii) net contents in fluid ounces, and (iv) name and address of the retailer.

3. Retail licensees licensed to sell wine and beer for both on-premises and off-premises consumption and gourmet shop licensees licensed for off-premises consumption may sell wine and beer in sealed containers made of metal or other materials approved by the board authority with a maximum capacity of 32 fluid ounces or, if in metric size containers, one liter, provided that the alcoholic beverages are placed in the container following an order from the consumer.

C. Novel or unusual containers are prohibited except upon special permit issued by the board authority. In determining whether a container is novel or unusual, the board authority may consider, but is not limited to, the following factors: (i) nature and composition of the container; (ii) length of time it has been employed for the purpose; (iii) the extent to which it is designed or suitable for those uses; (iv) the extent to which the container is a humorous representation; and (v) whether the container is dutiable for any other purpose under customs laws and regulations.

~~D. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 80 fluid ounces in capacity.~~

VA.R. Doc. No. R23-7511; Filed July 1, 2024, 4:17 p.m.

Proposed Regulation

Title of Regulation: 3VAC5-50. Retail Operations (amending 3VAC5-50-10 through 3VAC5-50-150, 3VAC5-50-170 through 3VAC5-50-220, 3VAC5-50-240, 3VAC5-50-250, 3VAC5-50-260).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 27, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of

Directors (board) has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia requires the board to promulgate regulations regarding requirements and restrictions on retail and other licensees.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because it provides comprehensive guidance for retail licensees on numerous issues, including designated manager requirements, qualifications, gifts of alcohol, and license-specific requirements for such licensees as restaurants, bed and breakfast establishments, marketplace licensees, clubs, and caterers.

Substance: The proposed amendments (i) allow licensees to serve an entire container of spirits if the container contains 16 ounces or less and the alcohol by value content is 15% or less; (ii) add the word "grain" before "alcohol"; (iii) add limitations on mixed beverage licensees that serve flights of samples so that the licensees are limited to no more than five mixed beverages, and each shall contain no more than one ounce of distilled spirits; (iv) add a subsection that limits the number of times a nonmember may frequent a club, requires nonmembers to be accompanied by club members, and makes it a violation if the club occupancy consists of a number of nonmembers that exceeds the number of club members; (v) add a provision that a nonmember attending a member-sponsored private function is not to be counted as a guest with respect to the club guest restrictions; (vi) clarify language; and (vii) remove redundant or duplicative language.

Issues: The primary advantage to the public is that the proposed amendments remove text that is redundant and make the regulation easier to read. The regulation is updated to account for low-alcohol beverage coolers. Additionally, the regulation is revised to remove requirements that are no longer applicable since license reform. The advantage to the Commonwealth is that requirements that are simply restatements of the Code of Virginia do not have to be maintained and the result is a more condensed regulatory chapter. Also, the Commonwealth benefits because the regulation will be up to date with the Code of Virginia. There are no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (board) proposes to (i) remove the exception for the City of Danville, where wine and beer can be sold for off-

premises consumption as late as 1:00 am as opposed to midnight everywhere else in Virginia; (ii) expand the availability of an employee compensation plan based on total sales, including the sale of alcoholic beverages to other retailers than just beer and wine only establishments; (iii) allow a mixed beverage restaurant licensee to serve the entire contents of a low alcohol beverage cooler; (iv) allow sale of a flight of samples or a flight of up to five mixed beverages that do not contain more than one ounce of distilled spirits; (v) increase the required monthly sales of oysters and other seafood for gourmet oyster house licensed establishments from \$1,000 a month to \$2,000 a month; (vi) revise the methodology to determine the membership level of a club; (vii) remove subject's height from identification requirements; and (viii) make editorial changes aimed at removing text that the board indicates is redundant of the Code of Virginia or otherwise updating the language to comport with current practices within the industry and the agency.

Background. This regulation contains rules about alcoholic beverage retail operations, including but not limited to designated manager requirements, licensee qualifications, gifts of alcohol, and license specific regulations for such licensees as restaurants, bed and breakfast establishments, marketplace licensees, clubs, and caterers. After conducting a comprehensive review of this chapter, the board proposes several changes. One such change would remove the exception for the City of Danville, where wine and beer can be sold for off-premises consumption as late as 1:00 a.m. as opposed to midnight everywhere else in the Commonwealth. The board reports that this exception was provided a long time ago to accommodate workers who were working for a large employer in the locality that had a shift end at midnight, but that that facility is no longer in operation. Consequently, the board proposes to repeal the exemption.

Another proposed change would expand the availability of a compensation plan that is based on total sales, including the sale of alcoholic beverages to employees of retailers other than beer and wine only establishments. The current regulation contains a blanket requirement that the compensation of a retail employee must be based, in whole or in part, only upon the volume of alcoholic beverage sales. However, the regulation also provides an exception that allows the compensation of employees of retail wine and beer only licensees to be based on the total volume of sales of the business, including the sales of alcoholic beverages. The proposal would expand the availability of such a compensation plan to retailers other than wine and beer retailers. The board also proposes to allow the entire contents of a container of spirits to be served in its original package for on-premises or off-premises consumption, provided that the containers are small and have a low alcohol content. The current language states that serving the entire contents of a spirits bottle is prohibited. However, since the adoption of this prohibition, low alcoholic beverage coolers emerged in the market. In order to accommodate the consumption of cocktails that have low alcohol content and

that are in smaller volume containers designed for a single serving, the board proposes to allow a mixed beverage restaurant licensee to serve the entire contents of a low alcohol beverage cooler for on-premises and off-premises consumption if the container is 16 ounces or less and the alcohol by volume content is 15% or less.

Similarly, the board proposes to expand the sale of samples. Currently, the regulation allows the sale of a flight of no more than five different spirits products, where each product contains no more than one-half ounce of distilled spirits. In addition, the board would also allow the sale of a flight of no more than five mixed beverages that do not contain more than one ounce of distilled spirits. Such sales are currently not allowed explicitly. However, the board believes that such samples are already being served to customers. The purpose of this change is to provide for a more comprehensive and specific regulation on such sales by introducing limits in terms of number of mixed beverages such flights can contain as well as limitation on the spirits content. Moreover, the proposal would increase the required monthly sales of oysters and other seafood for gourmet oyster house licensed establishments from \$1,000 a month to \$2,000 a month. Currently, the required monthly sales of food for other types of licensed establishments such as boats, restaurants, and hotels are all \$2,000. Generally speaking, the intent of food sales thresholds is to discourage establishments from solely focusing on alcohol sales. This change would bring the required monthly food sales from gourmet oyster houses in line with other types of establishments.

The proposed changes would also revise the methodology by which the membership level of a club is determined, to use the current rather than the average membership, and remove subject's height from identification requirements because height is not clearly associated with age and is not contained on some forms of identification. The remaining proposed changes are editorial in nature and are intended to remove text that the board states is redundant of the Code of Virginia, or otherwise update the language to comport with current practices within the industry and the agency.

Estimated Benefits and Costs. The impetus for the City of Danville's exemption, which allows sales of beer and wine to occur until 1:00 a.m. as opposed to midnight, was to provide convenience for the workers of a large employer in the city who left the late shift after midnight and wished to purchase alcohol for off-premises consumption. The exemption is locality-wide, and currently anyone in the city can purchase beer and wine until 1:00 a.m. and any licensee can sell beer and wine until 1:00 a.m. The proposed revised hours would apply to all consumers and licensed stores equally in the locality. Thus, this change is unlikely to provide any disproportionate advantage or disadvantage to specific consumers or stores within the City of Danville. It would be rational to expect a reduction in the volume of beer and wine sales in the city as the number of hours in which beer and wine could be bought and sold legally decreases. However, some consumers would

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likely adjust the timing of their purchases and offset the potential reduction. However, there are no data available that could be used to determine the volume of sales or the number of transactions involving beer and wine that occurs after midnight in the City of Danville. Nor does any discernible information exist with which to estimate the likely reduction in sales. Also, compared to other localities in the Commonwealth, the consumers and stores in Danville currently enjoy an additional hour to buy and sell wine or beer. Under the proposed change, they would lose that convenience or advantage, but they would not be any worse off than other consumers statewide. Additionally, some non-Danville residents that live just outside the city limits, and stores that operate just inside the city limits selling to non-Danville residents, would also lose their advantage to buy or sell wine and beer for an additional hour.

The change involving employee compensation plans results from comments the board received regarding the prohibition on the ability of licensees other than beer and wine only licensees to utilize an employee compensation plan based on alcohol sales. The comments reflected a perception that the exemption for the beer and wine only licensees is not fair to the other types of licensees. In response, the board proposes to expand the availability of this exemption to all licensees. The board believes that the proposal is more equitable since this exception would be accessible to others. The board also concedes that such a change may appear to have the effect of encouraging consumption of alcohol as employees may increase alcohol sales; however, the board counters this concern by stating that all alcohol consumption must adhere to the rules and regulations that place limits on consumption of alcohol and require the servers to monitor the signs of overconsumption, which are specifically designed to identify overconsumption patterns and prevent it from happening. If retail establishments other than beer and wine only licensees choose to adopt a compensation plan based on sales including alcohol sales, the employees would clearly have an incentive to promote sales, subject to the rules and regulations. Such an objective may lead to better customer service and product knowledge, thereby enhancing the overall customer experience as well as boosting employee morale and creating a more engaged workforce. However, such incentives may also unintentionally increase the risk of irresponsible sales and other violations, which may necessitate either additional training about the rules or additional monitoring to mitigate such risks. Assuming employees are fully knowledgeable about the rules, they may be able to find compliant and creative ways to promote total sales, rather than increasing sales to a customer who is at risk of overconsumption. However, no information exists to estimate the magnitude of such an impact.

The proposal to allow licensees to serve the entire contents of a low alcohol beverage cooler for on-premises and off-premises consumption would allow consumers to purchase and licensees to sell such coolers. Thus, an increase in sales of such cocktails may be expected. Similarly, the proposed changes

would explicitly allow sales of no more than five mixed beverages that do not contain more than one ounce of distilled spirits. This change may help clarify that such sales would not constitute a violation if the licensee is already engaged in such sales, and also inform other licensees that such cocktails can be sold. Thus, an increase in sales of such cocktails may be expected. The proposal to increase the required monthly sales of food for oyster house establishments from \$1,000 to \$2,000 is not expected to create a significant economic impact. According to the board, there are only two such licensees in Virginia. Although there is no information about the current monthly sales of the two establishments, it would be highly unlikely that their monthly sales would be less than \$2,000 for them to be a viable business operation. Thus, this proposed change is not expected to introduce a hardship on the two licensees if the proposed higher food sales threshold goes into effect. The proposed revision to the methodology used to determine the membership of a club would likely help improve compliance and enforcement of this requirement. The existing language specifies that the average number of club members in the preceding 12 months is used to determine the membership level. The proposed amendment would revise the methodology to use the current number of members to determine a club membership. According to the board, the current membership level is easier to calculate, verify, and enforce than the average membership in the preceding 12 months. And, in the case of a new club with less than 12 months in existence, the enforcement is particularly problematic.

Similarly, removing subject's height from identification requirements would be beneficial as it is problematic to enforce. The board states height is not a good indicator of age, and some forms of identification accepted by the board do not contain height information. Of the proposed editorial changes, some would remove text that the board states is redundant of the Code of Virginia. This would reduce the length of the regulatory text but would also remove the convenience of identifying relevant law requirements from the regulation itself. Although the laws of the Commonwealth are presumed to be known by all citizens, a decrease in information about statutory requirements may reduce compliance for those persons who rely upon the regulation instead of consulting the Code of Virginia. Although the board notes that the laws could change over time, and that outdated statutory requirements would remain in the regulation until the regulation is updated, to the degree that compliance is decreased the time and effort to update the regulation may be beneficial to the board and to citizens and consumers. The other editorial changes would remove language that is no longer applicable since the implementation of alcoholic beverage control license reform.

Businesses and Other Entities Affected. There are 20,892 licensees that are subject to this regulation. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs

for all entities combined.³ As noted, repealing the current exemption allowing licensees to sell wine and beer up to one hour past midnight in the City of Danville would remove the convenience of purchasing such drinks and may reduce store sales. Thus, an adverse impact on licensees and consumers in the City of Danville is indicated.

Small Businesses⁴ Affected.⁵ It is more than likely that some of the licensees who are poised to lose some wine and beer sales in the City of Danville are small businesses. Thus, that proposed amendment does appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected: The board states that it does not have the capability to determine how many of its licensees meet the definition of a small business.

Costs and Other Effects: The costs and other effects on licensees in the City of Danville who are small businesses are the same as discussed for all licensees.

Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁶ Affected.⁷ The proposed change eliminating the extended hours in which beer and wine can be purchased for off-premises consumption in the City of Danville particularly applies to consumers and licensees in that locality. However, this change is not likely to introduce costs for the City of Danville. In fact, ending wine and beer sales early in that locality may provide some relief to the local law enforcement to the degree that ceasing sales earlier may also shorten the length of time that law enforcement would need to monitor such purchases for compliance with laws and regulations. Thus, no adverse impact on the City of Danville is indicated. The remaining proposed changes apply statewide, but they do not appear to introduce any costs for the localities.

Projected Impact on Employment. Some of the proposed amendments have the potential to reduce alcoholic beverage sales while some others could increase sales. A significant revenue impact on licensed establishments would affect their demand for labor in one way or the other. However, there is insufficient data to estimate the net impact on sales revenues, demand for labor, and consequently on employment.

Effects on the Use and Value of Private Property. Similarly, a significant revenue increase or decrease may affect revenues, profitability of licensed establishments, and their asset values. However, there is insufficient data to estimate the net impact on sales revenues, profitability, and consequently the impact on asset values of affected licensees. No impact is expected on the use of private property nor on real estate development costs.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed

regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

³ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁴ Pursuant to § 2.2-4007.04, small business is defined as "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."

⁵ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) allow licensees to serve an entire container of spirits if the container contains 16 ounces or less and the alcohol by value content is 15% or less; (ii) add the word "grain" before "alcohol"; (iii) add limitations on mixed beverage licensees that serve flights of samples so that the licensees are limited to no more than five mixed beverages, and each shall contain no more than one ounce of distilled spirits; (iv) create a subsection that limits the number of times a nonmember may frequent a club, requires nonmembers to be accompanied by club members, and makes it a violation if the club occupancy consists of a number of nonmembers that exceeds the number of club members; (v) include a provision that a nonmember attending a member-sponsored private function is not to be

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counted as a guest with respect to the club guest restrictions; (vi) clarify language; and (vii) remove redundant or duplicative language.

3VAC5-50-10. Restrictions upon sale and consumption of alcoholic beverages.

~~A. Except as may be otherwise permitted under subdivision 7 of § 4.1-200 of the Code of Virginia, no licensee shall sell to or allow the consumption of any alcoholic beverage to a on the licensed premises by any person whom he shall know, the licensee knows or have has reason at the time to believe, is:~~

- ~~1. Under the age of Younger than 21 years of age;~~
- ~~2. Intoxicated; or~~
- ~~3. An interdicted person.~~

~~B. No licensee shall allow the consumption of any alcoholic beverage upon his licensed premises by any person to whom such alcoholic beverage may not lawfully be sold under this section.~~

3VAC5-50-20. Determination of legal age of purchaser.

A. In determining whether a licensee, or ~~his~~ the licensee's employee or agent, has reason to believe that a purchaser is not of legal age, the ~~board~~ Virginia Alcoholic Beverage Control Authority will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior, and manner of the purchaser; and
2. Whether the seller demanded, was shown, and acted in good faith in reliance upon bona fide evidence of legal age, as defined ~~herein~~ in subsection B of this section, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, ~~with the subject's height and the subject's date of birth.~~

C. It shall be incumbent upon the licensee, or ~~his~~ the licensee's employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification ~~which that~~ has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

3VAC5-50-30. Restricted hours; exceptions.

A. The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer, or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:
 - a. For on-premises sale and consumption: 2 a.m. to 6 a.m.
 - b. For off-premises sale: 12 a.m. to 6 a.m.
2. In all other localities: 12 a.m. to 6 a.m. for on-premises sales and consumption and off-premises sales, except that on New Year's Eve the licensees shall have an additional hour in which to exercise the on-premises privileges of their licenses.

B. Exceptions to restricted hours are:

1. Club licensees: No restrictions at any time;
2. Individual licensees whose hours have been more stringently restricted by the ~~board~~ Virginia Alcoholic Beverage Control Authority shall comply with such requirements; and
3. ~~Licensees in the City of Danville are prohibited from selling wine and beer for off premises consumption between the hours of 1 a.m. and 6 a.m. Mixed beverage casino licensees.~~

3VAC5-50-40. Designated managers of licensees; appointment generally; disapproval by ~~board~~ the authority; restrictions upon employment.

A. Each retail licensee, except a licensed individual who is on the premises, shall have a designated manager ~~able to understand and communicate in the English language in a reasonably satisfactory manner~~ present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The designated manager must be able to understand and communicate in the English language in a reasonably satisfactory manner. The name of the retail licensee's designated manager ~~of every retail licensee~~ shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time ~~he~~ the designated manager is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority).

B. The ~~board~~ authority reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any ~~cause condition~~ exists ~~which that~~ would justify the ~~board~~ authority in refusing to issue such person a license, or in suspending or revoking a license granted

to ~~that~~ such person ~~has committed any act that would justify the board in suspending or revoking a license.~~

Before disapproving a designated manager, the ~~board~~ authority shall accord ~~him~~ such designated manager the same notice, ~~and~~ opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

C. No licensee of the ~~board~~ authority shall knowingly permit a person ~~under~~ younger than 21 years of age, nor one who has been disapproved by the ~~board~~ authority within the preceding 12 months, to act as designated manager of ~~his~~ the licensee's business.

D. Notwithstanding the provisions of § 4.1-225 ~~(4)-(i)~~ A 1 h of the Code of Virginia, the ~~board~~ authority will not take action to suspend or revoke a retail license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The ~~board~~ authority may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting the manufacture, sale, distribution, use, or possession of controlled substances, imitation controlled substances, counterfeit controlled substances, ~~marijuana~~ cannabis, or synthetic cannabinoids; driving under the influence of alcohol or other self-administered intoxicants; or a similar offense under the laws of any state, or the United States; or

2. The ~~board~~ authority may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or ~~board~~ authority regulations; or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or ~~board~~ authority regulations, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting robbery, burglary, larceny, embezzlement, computer crimes, forgery, false pretenses, issuing bad checks, false representations to obtain property or credit, credit card forgery or fraud, or money laundering, or a similar offense under the laws of any state, or the United States.

E. If a retail licensee wishes to employ a person whose employment would be covered by subdivision D 1 or D 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use,

or sale of alcoholic beverages, the licensee may (i) immediately employ the individual if the offenses occurred more than five years preceding the date of employment or (ii) apply to the board authority for approval of such employment if the offense occurred within five years preceding the date of employment. The ~~board~~ authority will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the ~~board~~ authority shall accord ~~him~~ the person the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

3VAC5-50-50. Restrictions upon employment of minors.

No person licensed to sell alcoholic beverages at retail shall permit any employee ~~under the age of~~ younger than 18 years of age to sell, serve, or dispense in any manner any alcoholic beverage in ~~his~~ the licensed establishment for on-premises consumption, nor shall such person permit any employee ~~under the age of~~ younger than 21 years of age to prepare or mix alcoholic beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves, or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in 3VAC5-50-110, and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment ~~that sells beer only, or may sell or serve wine for on-premises consumption in an establishment that sells wine only.~~

3VAC5-50-60. Mixed beverage licensees generally; sales of spirits in closed containers; suspension of purchase privileges.

A. No mixed beverage restaurant or carrier licensee shall:

1. Serve as one drink the entire contents of a container of spirits in its original container for on-premises or off-premises consumption except (i) as provided by subsections C, D, and E of this section; or (ii) if the container of spirits contains 16 ounces or less and the alcohol by volume content is 15% or less.

2. Sell any mixed beverage to which grain alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow ~~to be kept upon the licensed premises~~ any container of alcoholic beverages of a type authorized to be purchased under ~~his~~ the license that does not bear the required mixed beverage stamp imprinted with ~~his~~ the license number and purchase report number to be kept on the licensed premises.

2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the ~~board~~ Virginia Alcoholic

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Beverage Control Authority (authority) or a wholesale wine licensee.

3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time, except that a mixed beverage licensee may sell to a patron who may lawfully purchase mixed beverages a flight of (i) distilled spirits products consisting of samples of not more than five different spirits products or (ii) no more than five mixed beverages. Each distilled spirits product shall contain no more than one-half ounce of distilled spirits and each mixed beverage shall contain no more than one ounce of distilled spirits.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-206.3 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the ~~board, as well as authority and~~ other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the ~~board~~ authority;

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only ~~in~~ to the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.

2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.

2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed 20 liters in volume, will be labeled with the following information:

- a. Date of infusion;
- b. Brand of spirits; and
- c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

G. Mixed beverage licensees may premix containers of sangria and other mixed beverages and serve such alcoholic beverages in pitchers subject to the following limitations:

1. Pitchers of mixed beverages may only be sold in containers with a maximum capacity of 32 fluid ounces or one liter if the container is in metric size containing a spirits product mixed with nonalcoholic beverages.

2. A pitcher of mixed beverages may only be served to two or more patrons. A licensee shall not allow any two patrons to possess more than one pitcher at any one time.

3. Containers of premixed sangria and other mixed beverages must be labeled as to the type of mixed beverage and the quantities of the products used to produce the mixed beverage.

4. Containers of premixed mixed beverages to be served by tapping equipment may not contain more than 20 liters in volume and must be labeled as to the type of mixed beverage and the brand and quantities of the spirits products used to produce the mixed beverage.

H. The ~~board~~ authority may suspend the privilege of a mixed beverage licensee to purchase spirits from the ~~board~~ authority upon such licensee's failure to submit any records or other documents necessary to verify the licensee's compliance with applicable minimum food sale requirements within 30 days of the date such records or documents are due.

3VAC5-50-70. Restrictions on construction, arrangement and lighting of licensed premises; inspections; obstruction; "reasonable hours".

A. The construction, arrangement, and illumination of the dining areas and designated areas and the seating arrangements ~~therein~~ of a licensed establishment shall be such as to permit ready access and reasonable observation by law-enforcement officers and by special agents of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority). The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such areas.

B. The ~~board~~ authority and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale, or sold, for the purpose of examining and inspecting such place.

C. In addition to special agents, other law-enforcement officers in the performance of their official duties shall be allowed free access to any retail licensed establishment for the purpose of observation of activities on those licensed premises during reasonable hours.

D. Any person who by use of threats, force, or intimidation or otherwise impedes or obstructs any special agent or other law-enforcement officer in the performance of ~~his~~ the agent's or officer's official duties from entering or remaining upon any licensed establishment shall be guilty of a violation of this regulation and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.

E. For the purposes of this regulation, the term "reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

3VAC5-50-80. Entreating, urging, or enticing patrons to purchase overconsume prohibited.

No retail licensee shall entreat, urge, or entice any patron of ~~his~~ the establishment to purchase overconsume any alcoholic beverage, nor shall such licensee allow any other person to so entreat, urge, or entice a patron upon ~~his~~ the licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales, ~~except for farm winery licensees operating at a remote location in connection with a wine festival.~~ Knowledge by a manager or employee of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the ~~board~~ Virginia Alcoholic Beverage Control Authority.

3VAC5-50-90. Storage of alcoholic beverages generally; permits for storage; exception.

A. Alcoholic beverages shall not be stored at any premises other than those described in the license, except upon a permit issued by the ~~board~~ Virginia Alcoholic Beverage Control Authority.

B. The licensee shall maintain at all times as a part of the records required by 3VAC5-70-90, an accurate inventory reflecting additions to and withdrawals of stock. Withdrawals shall specify:

1. The name of the person making the withdrawal who shall be the licensee or ~~his~~ the licensee's duly authorized agent ~~or servant~~;
2. The amount withdrawn; and
3. The place to which transferred.

C. Draft beer may be stored without permit by a wholesaler at a place licensed to do a warehousing business in the Commonwealth.

3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses ~~and off-premises beer~~.

A. Retail off-premises wine and beer licenses as described in § 4.1-206.3 C 1 of the Code of Virginia, excluding gourmet shops, may be issued to persons operating ~~the following types of those~~ establishments, provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "~~Delicatessen.~~" ~~An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:~~

Monthly sales.....	\$2,000
Inventory (cost).....	\$2,000

2. "~~Drugstore.~~" ~~An establishment selling medicines prepared by a licensed pharmacist according to prescription and other medicines and articles of home and general use:~~

Monthly sales.....	\$2,000
Inventory (cost).....	\$2,000

3. "~~Grocery store.~~" ~~An establishment that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals:~~

Monthly sales.....	\$2,000
Inventory (cost).....	\$2,000

4. "~~Convenience grocery store.~~" ~~An establishment that has an enclosed room in a permanent structure where stock is displayed and offered for sale, and maintains an inventory of edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:~~

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Monthly sales.....\$2,000
Inventory (cost).....\$2,000

~~In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids.~~

~~5. B. "Gourmet shop." An establishment provided with adequate inventory, shelving, and storage facilities where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products, such as cheese and gourmet foods, are habitually furnished to persons:~~

~~Monthly sales..... \$1,000
Inventory (cost)..... \$1,000~~

~~B. C. The board Virginia Alcoholic Beverage Control Authority (authority) may grant a license to an establishment not meeting the qualifying figures in subsections A and B of this section, provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.~~

~~C. The board in D. When determining the eligibility of an establishment for a license, the authority shall give consideration to, but shall not be limited to, the following:~~

- ~~1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;~~
- ~~2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and~~
- ~~3. The extent to which such establishment is constructed, arranged, or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.~~

~~D. E. Notwithstanding the above subsections A through D of this section, the board authority may issue a temporary license for any of the above retail operations licenses listed in § 4.1-206.3 C 1 of the Code of Virginia. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board authority shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.~~

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.
2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.
3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his ~~the~~ license, the location, equipment, and facilities of which room or area have been approved by the board Virginia Alcoholic Beverage Control Authority (authority). The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale ~~therein~~.
4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale ~~therein~~.
5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.
6. "Table" means an article of furniture supported by one or more vertical legs or similar supports and having a flat horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments, provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales.....\$2,000

2. "Restaurant." A bona fide dining establishment with special space and accommodation where, in consideration of payment, meals with entrees or other foods prepared on the premises are regularly sold:

Monthly sales.....\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales.....\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....\$1,000
\$2,000

C. Mixed beverage licenses. Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.

1. Service of food in a bona fide, full-service restaurant shall consist of serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The ~~board~~ authority may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision ~~D~~ 2 of this ~~section~~ subsection are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

4. A mixed beverage restaurant licensee shall have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served. This provision shall not apply to mixed beverage casino licensees.

D. The ~~board~~ authority may grant a license to an establishment not meeting the qualifying figures in this section, provided that the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this

section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

E. Notwithstanding subsections A through D of this section, the ~~board~~ authority may issue a temporary license for any of the retail operations in subsections A through D of this section. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the ~~board~~ authority shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

F. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the ~~board~~ authority, may be approved as a "dining area" or as a "designated area" in the discretion of the ~~board~~ authority.

G. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

H. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 80 fluid ounces in capacity.

3VAC5-50-130. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.

A. Each applicant for a club license shall furnish the following information:

- 1. A certified copy of the charter, articles of association, or constitution;
- 2. A copy of the bylaws;
- 3. A list of the officers and directors showing names, addresses, ages, and business employment;
- 4. The ~~average current~~ number of members ~~for the preceding 12 months~~. Only natural persons may be members of clubs; and
- 5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition

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as of the end of the month next preceding the date of application.

B. In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) will consider, but is not limited to, the following factors:

1. The club's purposes and its compliance with the purposes;
2. The club's qualification for ~~tax-exempt~~ tax-exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

C. The club shall limit nonmember use of club premises according to this section and shall notify the ~~board~~ authority each time the club premises are used in accordance with subdivision 1 of this subsection. The notice shall be received by the ~~board~~ authority at least two business days in advance of any such event.

1. A licensed club may (i) hold public events at the licensed premises, ~~such events~~ allowing nonmembers to attend and participate in the event at the licensed premises; or (ii) allow its premises to be used by organizations or groups who obtain banquet or banquet special events licenses. The total number of such events in both categories may not exceed 24 per calendar year.

2. The number of times a nonmember may patronize a club as a guest of any member during any given period of time should be stipulated in the bylaws of the club. The licensee shall limit the number of times a nonmember may visit the club and require the nonmember to be accompanied by a club member. If at any time club occupancy consists of more nonmembers than club members, it shall be deemed a violation of this chapter unless it is a public event pursuant to this section. In the case of a homeowner's association, unlimited guest visitations may be allowed as long as the guest is accompanied by an association member.

3. A member of a licensed club may sponsor private functions on club premises for an organization or group of which ~~he~~ the club member is also a member, such attendees being guests of the sponsoring club member. A nonmember attending a member-sponsored private function shall not be counted as a guest with respect to the club's guest restrictions.

~~3. Additionally, there~~ 4. There shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

D. Persons who are resident members of other clubs located at least 100 miles from the club licensed by the ~~board~~ authority (the "host club") and who are accorded privileges in the host

club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have ~~members'~~ member privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the ~~board~~ authority prior to the exercise of the privileges ~~thereunder~~ of the agreement.

The mileage limitations of this subsection notwithstanding, members of private, nonprofit clubs or private clubs operated for profit located in separate cities ~~which that~~ are licensed by the ~~board~~ authority to operate mixed beverage restaurants on their respective premises and ~~which that~~ have written agreements approved by the ~~board~~ authority for reciprocal dining privileges may be considered guests of the host club and deemed to have ~~members'~~ member privileges with respect to its dining facilities.

E. Any change in the officers and directors of a club shall be reported to the ~~board~~ authority within 30 days, and a certified copy of any change in the charter, articles of association, or ~~by-laws~~ bylaws shall be furnished to the ~~board~~ authority within 30 days thereafter.

F. Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the ~~board~~ authority. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by 3VAC5-70-90 D.

3VAC5-50-140. Prohibited conduct on licensed premises.

A. The following conduct upon any licensed premises is prohibited:

1. The real or simulated display of any portion of the genitals, pubic hair, or buttocks; or any portion of the breast below the top of the areola; by any employee, or ~~by~~ any other person, except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2 of this subsection;

2. The real or simulated display of any portion of the genitals, pubic hair, or anus by an entertainer; or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1 of this subsection;

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation, or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

4. The fondling or caressing by any person, whether an entertainer or not, of ~~his~~ the person's own or of another's breast, genitals, or buttocks.

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer may come in contact with any portion of the body of a patron.

B. No mixed beverage licensee shall permit any person connected with the licensed business in any capacity to enter or remain on the premises with less than a ~~fully opaque~~ fully opaque covering of the genitals, pubic hair, or buttocks, or any portion of the breast below the top of the areola. For the purposes of this subsection, "connected with the licensed business" shall mean: (i) any owner, partner, member, manager, agent, or employee of the licensed business; (ii) any entertainer or other contractor with the licensed business; or (iii) any participant in any contest, display, or other event conducted by or at the invitation of the licensed business.

C. The provisions of this section shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

3VAC5-50-150. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license ~~which that~~ authorizes the licensee to sell wine or beer at retail for consumption off the premises shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures, or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle. Notwithstanding any provision of law to the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered beer, wine, or farm wine in advance of the delivery; or (ii) such other locations as may be permitted by ~~board~~ Virginia Alcoholic Beverage Control Authority regulation.

3VAC5-50-170. Caterer's license; qualifications; privileges; restrictions and conditions.

A. Pursuant to § 4.1-206.3 A 2 of the Code of Virginia, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private

gatherings, or at special events as defined in § 4.1-100 of the Code of Virginia or as provided in § 4.1-206.3 A 3 of the Code of Virginia, and

2. With an established place of business with catering gross sales ~~average of~~ averaging at least \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction, or equipment and who has obtained all local permits or licenses ~~which that~~ may be required to conduct such a catering business.

B. The license authorizes the following privileges:

1. The purchase of spirits, vermouth, and wine produced by farm wineries from the ~~board~~ authority;

2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer from licensed wholesalers;

3. The retail sale of alcoholic beverages to persons who sponsor the private gatherings or special events described in subsection A of this section or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and

4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

C. In addition to other applicable statutes and regulations of the ~~board~~ authority, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;

2. The records required to be kept by 3VAC5-70-90 shall be maintained by caterers. If the caterer also holds other alcoholic beverage licenses, ~~he the caterer~~ shall maintain the records relating to ~~his the~~ caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time, and place of the event and the name and address of the sponsoring person or group of each event catered;

3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this ~~regulation~~ chapter, and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;

4. The caterer shall notify the ~~board~~ authority in writing at least 24 hours in advance of any events to be catered under ~~his the~~ license. For events to be catered on Saturday, Sunday, or holidays on which the ~~board's~~ authority's offices are closed, such notice shall be given by close of the last business day prior to the event. The notice shall include the date, time, location, and address of the event and the name of the sponsoring person, group, corporation, or association;

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5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages;

6. The private gathering referred to in subsection A ~~above of this section~~ shall be a social function ~~which that~~ is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not by the caterer;

7. The licensee shall ~~insure~~ ensure that all functions at which alcoholic beverages are sold are ones ~~which that~~ qualify for a banquet license, ~~for~~ a special event license, or a mixed beverage special events license. Licensees are entitled to all services and equipment ~~now~~ available under a banquet license from wholesalers;

8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised; and

9. The caterer's license shall be considered a retail license for purposes of § 4.1-216 of the Code of Virginia.

3VAC5-50-180. Volunteer fire departments or volunteer rescue squads; banquet facility licenses; restrictions and conditions.

A. Pursuant to § 4.1-206.3 D 2 b of the Code of Virginia, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad; and
3. Being duly recognized by the governing body of the city, county, or town in which it is located.

~~B. The license authorizes the following privileges:~~

~~The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.~~

~~↪ B.~~ In addition to other applicable statutes and regulations of the ~~board~~ authority, the following restrictions and conditions apply to persons holding such banquet facility licenses:

- ~~1. Alcoholic beverages cannot be sold or purchased by the licensee;~~

~~2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;~~

~~3. The private affair referred to in subsection B shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;~~

4. 1. The volunteer fire department or rescue squad shall notify the ~~board~~ authority in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location, and address of the event and the identity of the group; and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;

~~5. 2.~~ A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station; and

~~6. 3.~~ The fire department or rescue squad shall comply with the requirements of the local governing body concerning sanitation, health, construction, or equipment and shall obtain all local permits or licenses ~~which that~~ may be required to exercise the ~~privilege~~ privileges of its license.

3VAC5-50-190. Bed and breakfast licenses; restrictions and conditions.

A. Pursuant to § 4.1-206.3 A 9 of the Code of Virginia, the ~~board~~ may grant a bed and breakfast license to any person who operates an establishment consisting of:

- ~~1. No more than 15 bedrooms available for rent;~~
- ~~2. Offering to the public, for compensation, transitory lodging or sleeping accommodations; and~~
- ~~3. Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.~~

~~B.~~ In addition to other applicable statutes and regulations of the ~~board~~ Virginia Alcoholic Beverage Control Authority, the following restrictions and conditions apply to persons licensed as bed and breakfast establishments:

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a government store, wine or beer wholesaler, or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals, and service of alcoholic beverages shall be provided at one general price and no additional charges,

premiums, or surcharges shall be exacted for the service of alcoholic beverages;

4. Alcoholic beverages may be served in dining areas, private guest rooms, and other designated areas, including outside terraces or patios;

5. The bed and breakfast establishment, upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival; any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;

6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and

7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

3VAC5-50-200. Gift shops; wine and beer off-premises licenses; conditions; records; inspections.

~~A. Pursuant to § 4.1-206.3 C 1 of the Code of Virginia, the board may grant retail wine and beer off premises licenses to gift shops. Such gift shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum.~~

~~B. The following restrictions and conditions apply to gift shop licenses:~~

~~1. A gift shop shall be defined as any bona fide retail store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, souvenirs, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.~~

~~2. The board shall consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered a gift shop within the meaning of this section.~~

~~3. 1. Gift shop licenses, pursuant to this regulation, shall be granted only to persons who have places of business which that have been in operation for no less than 12 continuous months next preceding the filing of the application.~~

~~4. 2. Gift shop licenses shall authorize the licensees to sell wine and beer, which that have been purchased from and received at the establishment from farm winery or wholesale~~

licensees, to sell such alcoholic beverages ~~unchilled~~ only within the interior premises of the gift shop in closed containers for off-premises consumption; and to deliver or ship the same to purchasers thereof in accordance with Title 4.1 of the Code of Virginia and regulations of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority).

~~5. 3. In granting licenses under this regulation chapter, the board authority may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation chapter or as may be deemed reasonable by the board authority to ensure that the distribution of alcoholic beverages is orderly, and lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.~~

~~6. 4. Every person licensed to sell alcoholic beverages under this regulation chapter shall comply with 3VAC5-70-90.~~

3VAC5-50-210. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages sales only; provided, however, that ~~in the case of retail wine and beer or beer only licensees,~~ nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages.

3VAC5-50-220. Interests in the businesses of licensees.

Persons to whom licenses have been issued shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses;

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses and do not

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unreasonably restrict the control of the licensee over the sale and consumption of alcoholic beverages; or

3. The payment by the licensee of a management fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted under the license where the licensee has contracted with a management company or promoter to perform operational duties on behalf of the licensee, provided that:

a. All payments to any management company or promoter are less than 10% in aggregate of the gross receipts of the business conducted under the license; and

b. The licensee provides the Virginia Alcoholic Beverage Control Authority (authority) a copy of the contract between the licensee and the management company or promoter that identifies the management company or promoter as an agent of the licensee for the purposes of exercising the privileges of the license and holds the licensee liable for any violations of the Alcoholic Beverage Control Act (§ 4.1-100 of the Code of Virginia) or authority regulation committed by the management company or promoter.

3VAC5-50-240. Alcoholic energy drinks beverage displays.

~~A. "Alcoholic energy drink" means an alcoholic beverage that contains caffeine or other stimulants.~~

~~B. Any establishment licensed to sell beer or wine for off-premises consumption shall display alcoholic energy drinks for sale immediately adjacent to other alcoholic beverage products, and not immediately adjacent to any nonalcoholic beverages.~~

Any establishment licensed to sell beer or wine for off-premises consumption and that displays beer and wine for sale outside of a clearly discernible location reserved for alcoholic beverage products shall (i) place no such alcoholic beverages immediately adjacent to any nonalcoholic beverages containing the same or similar brand name, logo, or packaging and (ii) install additional signage on the shelving or the floor display to indicate that the product is an alcoholic beverage. Such signage shall be clearly visible to consumers and of sufficient size to notify the consumer of the alcohol contents of the product. Nothing in this section shall prohibit the sale and display of nonalcoholic beer or wine in the same display or near similarly branded alcoholic beer or wine products.

3VAC5-50-250. Confectionery; definition; restrictions; labeling.

A. "Confectionery" means baked goods and candies having an alcohol content not more than 5.0% by volume.

B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product.

C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol.

D. Subsections A, B, and C of this section shall only apply to licenses issued pursuant to § 4.1-206.3 C 3 of the Code of Virginia.

E. Any establishment licensed to sell confectioneries for off-premises consumption shall properly label the product with such label, including:

1. Notice that the product contains alcohol;
2. Notice that the product can only be consumed off premises; and
3. Warning that the product should not be consumed by anyone younger than 21 years of age.

3VAC5-50-260. Marketplace license; qualifications; application.

A. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1. "Bona fide customer" means a patron of the business enterprise that is seeking to obtain the goods or services of the licensee.
2. "Personalized experience" means goods or services catered to the specifications of an individual or event.

B. The marketplace license is a retail license. A premises described in an application for a marketplace license shall be subject to any regulations and requirements that apply to licensed premises upon which alcoholic beverages may be sold at retail for on-premises consumption. The employees who are involved in the marketplace licensee's service of complimentary alcoholic beverages shall be subject to the regulations and requirements that apply to employees of licensed establishments selling wine or beer at retail. A marketplace licensee's alcoholic beverage control manager shall be subject to the same regulations and requirements as designated managers of licensed establishments selling wine or beer at retail.

C. Marketplace licensees shall be subject to all requirements of 3VAC5-70-90 that apply to licensed premises upon which beer or wine may be sold at retail. In addition, every marketplace licensee shall keep complete, accurate, and separate records of the complimentary service of alcoholic beverages. Such records shall include accurate accounts of daily service of alcoholic beverages, by the drink, showing the kinds and quantities of alcoholic beverages served.

D. In addition to the requirements in § 4.1-206.3 E of the Code of Virginia, the Board of Directors of the Virginia Alcoholic Beverage Control Authority may also consider other requirements for licensure that the Virginia Alcoholic Beverage Control Authority may deem appropriate to protect

the public health, safety, and welfare based on a review of the application and determinations of the Virginia Alcoholic Beverage Control Authority, Bureau of Law Enforcement during the investigation of the applicant.

~~E. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, that wishes to maintain licensure after December 31, 2021, shall apply for a marketplace license on or before July 1, 2021. If the licensee fails to apply for a marketplace license, the licensee shall be authorized to continue to operate under such license until the expiration of its original term.~~

~~F. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, whose license expires prior to December 31, 2021, and wishes to renew the license, may renew the license for another year and shall be authorized to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the renewed license.~~

~~G. Any persons not currently licensed may apply for issuance of a license pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia on or before December 31, 2021. If such license is issued, the licensee shall be authorized to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the issued license.~~

VA.R. Doc. No. R23-7512; Filed July 1, 2024, 4:18 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-10 through 3VAC5-70-40, 3VAC5-70-70 through 3VAC5-70-130, 3VAC5-70-150, 3VAC5-70-160 through 3VAC5-70-250; repealing 3VAC5-70-140).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 27, 2024.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Basis: Section 4.1-103 of the Code of Virginia provides that the Virginia Alcoholic Beverage Control Authority Board of Directors (board) has the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt

reasonable regulations that it deems necessary to carry out the provisions of the Title 4.1 of the Code of Virginia and to amend or repeal such regulations.

Purpose: This regulation is essential to protect the health, safety, and welfare of citizens because it provides comprehensive guidance to Virginia Alcoholic Beverage Control Authority licensees across all tiers related to rules that do not squarely fit in one of the previous chapters.

Substance: The proposed amendments (i) remove redundant and duplicative language; (ii) revise and add definitions; (iii) increase license suspension periods or civil penalties for any licensee when a first-time offender chooses to settle a violation; (iv) allow first-time offenders more time to settle; (v) no longer allow a waiver of penalties for three types of serious offenses; (vi) add new restrictions on the use of grain alcohol; (vii) extend the time period during which a winery, brewery, bottler, or importer is not allowed to increase prices following a notification to the wholesaler; (viii) require monthly rather than quarterly activity reports from wine and beer shippers and Internet retail licensees; (ix) no longer require delivery permittees or licensees with a delivery privilege to file a report of activity if no sales or deliveries were made in the preceding 12 months; (x) add language stating that records kept by all licensees must be available for inspection "any time the licensee is open to the public"; and (xi) update reference and language for clarity.

Issues: The primary advantage to the public with these revisions is to remove redundant text, more clearly define when records should be available, simplify the granting of a grain alcohol permit, and incorporate guidance regarding designer and vintage bottles. The public in general is not disadvantaged, but licensees may see higher penalties and suspension periods for violations. The Commonwealth is benefited because there is a reduction in regulatory requirements as well as more clarity to the remaining requirements, making them more accessible. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Authority Board of Directors (board) proposes to (i) increase license suspension periods or civil penalties for any licensee when a first-time offender chooses to settle a violation; (ii) allow first-time offenders more time to settle; (iii) no longer allow a waiver of penalties for three types of serious offenses; (iv) add new restrictions on the use of grain alcohol; (v) extend the time period during which a winery, brewery, bottler, or importer is

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not allowed to increase prices following a notification to the wholesaler; (vi) require monthly rather than quarterly activity reports from wine and beer shippers and Internet retail licensees; (vii) no longer require delivery permittees or licensees with a delivery privilege to file a report of activity if no sales or deliveries were made in the preceding 12 months; (viii) add language stating that records kept by all licensees must be available for inspection "any time the licensee is open to the public"; and (ix) make editorial changes aimed at removing text that the board indicates is redundant of the Code of Virginia or otherwise updating the language to comport with current practices within the industry and the agency.

Background. This regulation contains catch-all rules about alcoholic beverages that do not clearly fall under other regulatory chapters of the board. These include but are not limited to transportation, shipping, delivery, warehousing, wholesale, recordkeeping, non-commercial or commercial carrier permits, handling of cider, culinary licenses, schedule of penalties, and waiver of penalty for first-offense violations.

After conducting a comprehensive review of this chapter, and to reduce regulatory requirements in response to the regulatory reduction objectives in Executive Order 19 (2022), the board proposes the changes discussed.

Estimated Benefits and Costs. Section 4.1-227 B of the Code of Virginia provides the board authority to impose a civil penalty of up to \$3,000 for first violations involving either the sale of alcoholic beverages to a person who is prohibited from purchasing alcoholic beverages or allowing alcoholic beverages to be consumed by underage, intoxicated, or interdicted persons; civil penalties of up to \$2,000 can also be imposed for other types of first violations. The Code of Virginia does not appear to limit the duration of the suspension period that can be imposed by the board and the board also appears to have the authority to revoke a license. In addition to any suspension or civil penalty, the board may impose a requirement that the licensee pay for the cost incurred by the board (not to exceed \$25,000) in investigating the licensee and in holding the proceeding resulting in the violation. Thus, a licensee faced with a notice of hearing for a first-time violation faces a substantial risk in terms of the range of possible outcomes of such a hearing.

This regulation allows for the settlement of first-time violations (i.e., no pending charges and no substantiated charges within the preceding three years) in lieu of going to a hearing and contesting the charge. Settlement is available if the licensee agrees to either a suspension period or a civil penalty, as provided in the schedule of penalties for first-offense violations and enters into an agreement with the Virginia Alcoholic Beverage Control Authority (authority). However, according to the authority, negotiated orders may include both a suspension period as well as a monetary fine if both sides agree.

One of the proposed changes would amend the schedule of penalties contained in 3VAC5-70-210. The schedule consists

of 26 types of violations for which the penalty includes either suspension of a license for a certain number of days or, in lieu of the suspension, the payment of a civil monetary charge. Additionally, four types of offenses allow for less stringent suspension periods or reduced charges if the licensee has recently completed certified training. All 26 violations would see an increase in either the suspension periods or in the monetary fines or both. The complete schedule with the proposed changes can be found in the appendix of this analysis. The increases currently proposed by the board would be in addition to increases that were made in 2019, at which time the civil monetary penalties were increased by either \$250 or \$500 over the amounts that were in effect prior to 2019.² The 2019 increases followed 2017 legislation that increased the maximum amounts that the board may charge.³

The changes in the appendix can be summarized as follows. For 16 types of offenses, the current suspension period of seven days would be increased to 10 days and the civil penalty would increase by an additional \$250 (i.e., from \$500 to \$750 for one type of violation, from \$750 to \$1,000 for 15 types of violations). For one type of violation, the suspension period would increase from 10 days to 15 days with a corresponding increase in the charge from \$1,250 to \$1,500. For five types of violations, the civil charge would increase from \$1,250 to \$1,500 with no change in the suspension period (i.e., the suspension period would remain at 10 days for all five violations). There is no change to either suspension periods or in monetary penalties in four offenses, although these four offenses provide for less onerous penalties if the licensee has completed training recently, which are separately discussed.

ABC reports that the intent of increasing these penalties is to act as a deterrent, although no data or information has been provided to indicate why additional deterrence is needed. As a result of the proposed changes to the schedule of penalties for first offense violations, the authority projects a 20% to 25% increase in the monetary penalties collected from licensees that settle their charges before a hearing. In fiscal year 2023, the authority collected \$853,429 in total from penalties (i.e., \$702,500 from 302 expedited consent orders and \$150,929 from 78 matters resolved through negotiations). Using these data, and assuming no change in behavior by licensees, this 20% to 25% increase corresponds to an amount between \$170,686 and \$213,357 in additional collections by the authority.

The proposed changes would also increase the suspension periods during which the licensee would be prohibited from selling alcohol. In cases where alcohol sales make up the majority of the revenue stream of the licensee, the licensee may close the business in its entirety. Thus, if suspension is chosen, the licensee would lose revenues for the duration of the suspension, which would be increased by an additional three or five days depending on the specific violation, and some businesses may have to temporarily furlough their employees if they are highly reliant upon alcohol sales. In fiscal year 2023, 36 consent orders (11% of all consent orders) and nine

negotiated orders (11% of all negotiated orders) contained a suspension period.

In general, the opportunity to settle may incentivize some individuals because settlements often result in the imposition of reduced penalties compared to the full extent of the law. This can include lower fines, shorter license suspensions, or other consequences. Additionally, settling a violation may lead to a faster resolution of the case. This can be advantageous for businesses looking to move past the incident and continue operations without prolonged administrative proceedings. Settling a violation may also help in preserving the reputation of the business. The act of contesting a violation is public information which can be damaging to a company's image, and settling may minimize negative publicity. Moreover, a settlement provides certainty regarding the outcome. A business can better plan for the future without the uncertainty of a protracted administrative process. This is no different in the case of the violations discussed.

However, an increase in the penalties associated with settlement may change this incentive, with the result that some individuals may decide to contest the charges. The imposition of higher penalties would increase the cost of settling disputed violations depending on the type of violation. Thus, an increase in the suspension periods or the monetary penalties may lead to an increase in the number of contested cases and hearings the authority would conduct. In fiscal year 2023, there were seven initial hearings involving a single first-time violation in the schedule of penalties that had a suspension period ranging from no suspension to up to 28 days, and the licensee also paid a monetary penalty ranging from \$900 to \$2,650. Thus, it is unclear whether and how much this change would lead to more contested cases.

Additionally, an increase in the cost of settling a dispute may incentivize some licensees to be more careful and devote more resources to employee training or supervision to reduce the chances of a violation. Thus, it is unclear whether and how much this change would alter the number of violations or contested cases.

The regulation also identifies four violations for which the suspension periods and monetary penalties are reduced if the licensee can demonstrate that they provided the employee responsible for the violation with certified training within the preceding 12 months. The authority provides the training online free of charge, and the reduced penalties are aimed at incentivizing licensees to ensure that their employees are knowledgeable about the current rules and regulations. The suspension period with training for all four of these violations would increase from five days to 15 days. Only two of the four violations would have an increased monetary penalty, which would increase from \$1,500 to \$2,000, while the monetary penalty for the other two violations would remain at \$1,500.

The proposed increases in suspension period or the monetary penalties for the four types of violations where the licensee has recently completed certified training would reduce the

potential benefit of having completed training compared to the status quo. For example, the current suspension period is five days with the training and 25 days without the training, which provides a 20-day reduction in the suspension period for all four types of violations in this category. Because the proposal would increase the suspension period from five days to 15 days for all four violations, it would reduce the benefit of training by half: from 20 days to 10 days. Similarly, the monetary benefit of training is currently \$1,000 for two of the four violations (i.e., \$2,500 without training versus \$1,500 with training). Under the proposal, the monetary penalty with training would increase from \$1,500 to \$2,000. This increase would therefore reduce the monetary benefit of training by half to \$500. In short, a potentially unintended consequence of these changes would be to decrease the relative attractiveness of training in terms of the suspension period and the monetary penalty. All other things being equal, the number of licensees who require their employees to complete annual training may decline.

The relative significance of the suspension period and monetary penalty would also change, because 17 violations would see an increase in both the suspension period and civil penalty, five of the violations would see an increase in only in monetary penalty, and suspension and monetary fines would remain the same for four violations unless the licensee recently completed training. Of the four violations that offer lesser penalties (suspension or monetary) compared to those licensees without recent training, two would see an increase in both types of penalties. The authority explains that the main reason for the proposed longer suspension periods for certain violations is to increase the significance of suspension periods in conjunction with the proposed increases in civil penalties. If suspension periods were not increased, the board feels that violators would choose the suspension period and easily avoid increased monetary fines.

Another amendment to the schedule of penalties would allow a licensee more time to settle. Currently, the regulation allows the licensees 20 days from the date of notification to settle the violation. The board proposes to strike the notification language, which would have the effect of allowing the licensee to settle the violation at any point until the time of the hearing. This change would benefit licensees who could not settle the violation within 20 days, but who would have settled it if they had more time.

The regulation currently also allows penalties to be waived for licensees that have not had a violation in the preceding five years, if it appears that the violation was unintentional. The board proposes to no longer allow penalties to be waived for three of these offenses because the board has determined that the nature of the offenses is "too significant." These offenses are: allowing an intoxicated person to loiter on the premises; after-hours sales or consumption of alcoholic beverages; and sale by a wholesaler of wine or beer to unauthorized person. Under the proposed changes, licensees who may have received a waiver of the penalty for one of these violations would no

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longer have that option. According to the board, the penalty for one of these offenses has only been waived twice in the past eight years and there were no waivers for two other offenses in the same time period; and no waivers for any of the three violations were granted in the last fiscal year. Removing the availability of a waiver for the three violations would make the penalties more punitive and encourage licensees to take actions (e.g., training or increased supervision) that would help them avoid these serious violations.

Two of the proposed changes would add new restrictions on the use of grain alcohol. The proposal would add that grain alcohol cannot be used in the manufacture of products intended for human consumption and remove the current allowance for the commercial and culinary uses of grain alcohol. According to the board, both internal and external stakeholders were concerned about the risks involved in the current approach, which allows products containing a high alcohol proof to be sold for human consumption. Thus, the board proposes to introduce restrictions on the use of grain alcohol in manufacturing and to no longer allow the commercial and culinary uses.

Another change in the proposal includes an extension in the time that must elapse before a price increase by a winery, brewery, bottler, or importer can go into effect. The regulation currently states that a price increase from a winery, brewery, bottler, or importer to wholesalers cannot go into effect until 30 calendar days after a notice of such increase is postmarked. The proposed change would start the required 30-day notice period from the date of delivery of the price increase notice to the wholesaler, rather than the day the notice is postmarked. Since the delivery of the notice to the wholesaler would be after the notice is postmarked, the price increase would not go in effect for a longer period of time. This change would delay the ability of winery, brewery, bottler, or importer to increase their prices and would allow the wholesaler additional time to take action if they choose.

Under the proposed changes, wine and beer shippers and Internet retail licensees would be required to file activity reports more frequently and would be required to report the weight of the items shipped and delivered in the report. Currently, these entities are required to file activity reports with the authority quarterly (i.e., on or before the 15th day of January, April, July, and October). Under the proposed changes, they would be required to file activity reports on or before the 15th day of each month. According to the authority, this change is being proposed because the current quarterly reporting is not effective. The board states that if there is a violation, several months would elapse before enforcement is made aware of the violation, and then even more time would pass before it is brought to a hearing. Reporting monthly increases the likelihood that violations would be discovered sooner and addressed more quickly. However, more frequent report filing would also add to shipper and licensee administrative costs because they would collect data more often and prepare and send additional reports to the authority.

As noted, the board also proposes to require the report to include the weight of the shipment. The board states that this would provide more oversight to make sure that entities are not shipping more than what is permitted by law.

Another report-related change would no longer require delivery permittees, or licensees with a delivery privilege, to file a report of activity at least once every 12 months even if no sales or deliveries were made in the preceding 12 months. Thus, affected permittees and licensees would be expected to save the administrative cost of this reporting.

The board proposes to also add language stating that records kept by all licensees must be available for inspection "any time the licensee is open to the public." Currently, the records must be available for inspection during reasonable hours and between the hours of 9 a.m. and 5 p.m., but some licensees open their business after 5 p.m. According to the board, this change clarifies that "reasonable hours" includes hours the licensee is open. The board states that there have been few instances where agents were not provided access when the businesses were open outside of the current 9 a.m. to 5 p.m. window. Therefore, this change should improve agent ability to inspect records and thereby improve compliance.

Of the proposed editorial changes, some would remove text that the board states is redundant of the Code of Virginia. This would reduce the length of the regulatory text but would also remove the convenience of identifying relevant statutory requirements by reading the regulation itself. Although the laws of the Commonwealth are presumed to be known by all citizens, a decrease in information about statutory requirements may reduce compliance for those persons who rely upon the regulation instead of consulting the Code of Virginia. Although the board notes that the laws could change over time, and that outdated statutory requirements would remain in the regulation until the regulation is updated, the time and effort to retain and then update the regulation may be beneficial to the board and to citizens and consumers to the degree that it increases compliance.

The other editorial changes would remove language that is no longer applicable since the implementation of alcoholic beverage control license reform.

Businesses and Other Entities Affected. There are 20,892 licensees that are subject to this regulation. No entity appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁵ As noted, all changes except three (i.e., allowing more time to settle a first time violation; no longer requiring delivery permittees or licensees with delivery privilege to file a report of activity if there is no deliveries or sales; and the editorial changes) are expected to add to compliance costs as discussed above. The changes to schedule of penalties would make it more costly for

a violator to settle the case. Thus, an adverse impact on licensees is indicated.

Small Businesses⁶ Affected.⁷ It is more than likely that some of the licensees are small businesses. Thus, the proposal does appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected: The board states that it does not have the capability to determine how many of its licensees meet the definition of a small business.

Costs and Other Effects: The costs and other effects on small business licensees are the same as discussed above for all licensees.

Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁸ Affected.⁹ The proposed changes apply statewide and they do not appear to introduce any costs for the localities.

Projected Impact on Employment. The proposal to increase the suspension periods for first-time offenders if they choose to settle the violation may lead to a reduction in their demand for labor because of decreased sales or potentially the closure of some licensed premises for a several additional days if they significantly rely on alcohol sales, depending on the type of violation. This may lead to a reduction in the need for employees and negatively affect employment.

Effects on the Use and Value of Private Property. With the exception of small benefits to licensees from having more time to settle with the authority and a reduced reporting requirement, all of the remaining proposed changes are expected to add to compliance costs of licensees. An increase in compliance costs would reduce profitability, and consequently lead to a negative impact on asset values of affected licensees. No impact is expected on real estate development costs.

Violation	Suspension	Civil Charge	Suspension with Certified Training	Civil Charge with Certified Training
Sale of beer, wine, or mixed beverages to a person at least 18 but younger than 21 years of age.	25 days	\$2,500	5 (15) days	\$1,500 (\$2,000)
Allowing consumption of beer, wine, or mixed beverages by a person at	25 days	\$2,500	5 (15) days	\$1,500 (\$2,000)

least 18 but younger than 21 years of age.				
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but younger than 21 years of age.	10 (15) days	\$1,250 (\$1,500)		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 (10) days	\$750 (\$1,000)		
Allow an intoxicated person to loiter on the premises.	7 (10) days	\$750 (\$1,000)		
Sale to an intoxicated person.	25 days	\$2,500	5 (15) days	\$1,500
Allow consumption by an intoxicated person.	25 days	\$2,500	5 (15) days	\$1,500
After hours sales or consumption of alcoholic beverages.	10 days	\$1,250 (\$1,500)		
No designated manager on premises.	7 (10) days	\$750 (\$1,000)		
Invalid check to wholesaler or authority.	7 (10) days	\$500 (\$750)		
Inadequate illumination.	7 (10) days	\$750 (\$1,000)		
ABC license not posted.	7 (10) days	\$750 (\$1,000)		
Not timely submitting	7 (10) days	\$750 (\$1,000)		

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report required by statute or regulation.				
Designated manager not posted.	7 (10) days	\$750 (\$1,000)		
Person younger than 18 years of age serving alcoholic beverages; younger than 21 years of age acting as bartender.	7 (10) days	\$750 (\$1,000)		
Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,250 (\$1,500)		
Consumption of alcoholic beverages in unauthorized area.	7 (10) days	\$750 (\$1,000)		
Removal of alcoholic beverages from authorized area.	7 (10) days	\$750 (\$1,000)		
Failure to obliterate mixed beverage stamps.	7 (10) days	\$750 (\$1,000)		
Employee on duty consuming alcoholic beverages.	7 (10) days	\$750 (\$1,000)		
Conducting illegal happy hour.	7 (10) days	\$750 (\$1,000)		
Illegally advertising happy hour.	7 (10) days	\$750 (\$1,000)		
Unauthorized advertising.	7 (10) days	\$750 (\$1,000)		
Failure to remit state	10 days	\$1,250 (\$1,500)		

beer or wine tax (if deficiency has been corrected).				
Wholesaler sale of beer or wine in unauthorized manner.	10 days	\$1,250 (\$1,500)		
Wholesaler sale of beer or wine to unauthorized person.	10 days	\$1,250 (\$1,500)		

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://townhall.virginia.gov/L/ViewXML.cfm?textid=13595>.

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0698&171+ful+CHAP0698> and <https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0707&171+ful+CHAP0707>.

⁴ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁵ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁶ Pursuant to § 2.2-4007.04, small business is defined as "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."

⁷ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority (authority) concurs with the majority of the Department of Planning and Budget's (DPB) economic impact analysis (EIA); however, the agency does take exception to various statements regarding the amendments made to the schedule of penalties made by the analyst that are highly speculative and fail to take into consideration specific aspects of the data provided to DPB regarding the penalties collected over the last fiscal year.

The analyst asserts that an increase in suspension periods or monetary penalties may lead to an increase in the number of contested cases and hearings the authority would conduct. The analyst notes that nine initial hearings were heard that included violations that are covered in the schedule of penalties; however, the analyst fails to mention that seven of those nine cases resulted in penalties exceeding the limits that the amendments to this chapter are proposing and would have resulted in the licensee seeing lower penalties had they settled according to the schedule of penalties. Additionally, there are various issues at play as to why matters may go to a hearing instead of settling pursuant to the schedule of penalties. The matter mentioned in the EIA that resulted in a \$10,750 civil penalty and a 71-day suspension (reduced to 30 days after payment of penalty) was one matter that involved a licensee that had committed 10 different violations, including multiple incidents of selling alcohol after hours, failing to submit the annual review, prohibited purchases of alcohol, and submitting an inaccurate annual report for multiple years. The settlement process is not meant for licensees that so blatantly violate the law to such a significant extent. Other than this singular example, there were no other cases with penalties or suspensions that high. To determine an overall adverse impact across all 20,892 licensees based on the actions of one singular licensee that would not have been subject to the chapter currently being amended is faulty logic at best. Of the nine cases cited by the analyst, only one resulted in a civil penalty less than the proposed amendments in the current action and that was only by \$100. It is also worth noting that the current schedule of penalties and as amended are suspensions and penalties that the licensee may voluntarily enter into; neither the authority nor the chapter mandate that the licensee must accept these penalties or suspensions. Furthermore, the licensee may also negotiate a different penalty or suspension period that may be considered based on the facts of the matter and through the offer and compromise process included in 3VAC5-10-160. If acceptance of the penalty or suspension period would adversely impact the licensee to such a degree that in the licensee's summation it is not worth it, the licensee does not have to accept either.

The analyst asserts that all but three changes are expected to add to compliance costs. But for the requirement to report monthly as opposed to reporting quarterly, there are no additional compliance requirements imposed on licensees that do not already currently exist. Even if the requirement to report monthly as opposed to quarterly results in an additional "compliance cost," said cost would be negligible because the licensee is reporting data that the licensee is already required to maintain. Also, in many cases the authority allows for this data to be submitted via email, which would avoid any postal charges. The analyst also asserts that an increase to suspension periods may lead to a reduction in need for employees. As previously mentioned, the proposed suspension periods are voluntary. There is no mandate in these amendments that the licensee must accept a suspension. Additionally, the suspension is a suspension of the licensee's alcohol privileges. The licensee may continue to engage in the non-alcohol related activities of the licensee's business (e.g., a convenience store may be prohibited from selling alcohol while the license is suspended but may continue to sell other nonalcoholic items in its inventory). Furthermore, any reduction in the need for employees would be negligible across the licensee community, considering that out of approximately 417 matters resolved through a consent settlement or negotiation in the last fiscal year, only 45 licensees chose to voluntarily accept a suspension. For the statements indicated, the authority only partially concurs with the analysis provided by DPB.

Summary:

The proposed amendments (i) remove redundant and duplicative language; (ii) revise and add definitions; (iii) increase license suspension periods or civil penalties for any licensee when a first-time offender chooses to settle a violation; (iv) allow first-time offenders more time to settle violations; (v) no longer allow a waiver of penalties for three types of serious offenses; (vi) add new restrictions on the use of grain alcohol; (vii) extend the time period during which a winery, brewery, bottler, or importer is not allowed to increase prices following a notification to the wholesaler; (viii) require monthly rather than quarterly activity reports from wine and beer shippers and Internet retail licensees; (ix) no longer require delivery permittees or licensees with a delivery privilege to file a report of activity if no sales or deliveries were made in the preceding 12 months; (x) add language stating that records kept by all licensees must be available for inspection "any time the licensee is open to the public"; and (xi) update reference and language for clarity.

3VAC5-70-10. Transportation of alcoholic beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. The transportation within or through ~~this~~ the Commonwealth of alcoholic beverages lawfully purchased within ~~this~~ the Commonwealth is prohibited, except upon a permit issued by the ~~board~~ Virginia Alcoholic Beverage

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Control Authority (authority), when in excess of the following limits:

1. Wine and beer. No limitation.
2. Alcoholic beverages other than those described in subdivision 1 of this subsection. Three gallons.

The transportation within, into, or through ~~this the~~ Commonwealth of alcoholic beverages lawfully purchased outside ~~of this the~~ Commonwealth is prohibited, except upon a permit issued by the board authority, when in excess of the following limits:

Alcoholic beverages, including wine and beer. Three gallons.

If satisfied that the proposed transportation is otherwise lawful, the board authority shall issue a transportation permit, which shall accompany the alcoholic beverages at all times to the final destination.

B. Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages within, into, or through ~~this the~~ Commonwealth shall, except as ~~hereinafter~~ noted in this subsection, obtain a transportation permit from the board authority or otherwise possess acceptable documentation as required by the following provisions.

A transportation permit may be obtained by filing an application in writing upon forms furnished by the board authority. If satisfied that the proposed transportation is otherwise lawful, the board authority shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages upon condition that there shall accompany each ~~such~~ transporting vehicle a bill of lading or other memorandum describing the alcoholic beverages being transported and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment. ~~Such a~~ The bill of lading or other memorandum may serve as a transportation permit so long as it is made available for inspection to special agents of the board authority or any law-enforcement officer upon request.

C. The board authority may refuse, suspend, or revoke a carrier's transportation permit, including the use of a bill of lading or other memorandum as a transportation permit as provided in subsection B of this section, ~~if it shall have reasonable cause to believe that alcoholic beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit for any reason that it may refuse to issue, suspend, or revoke a license.~~ Before refusing, suspending, or revoking such permit, the board authority shall accord the carrier involved the same notice and opportunity to be heard and follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia.

~~D. There shall be exempt from the requirements of this section~~ This section shall not apply to the following:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;
2. Persons transporting wine, beer, ~~or~~ cider, or spirits purchased from the board authority or a licensee;
3. Persons transporting alcoholic beverages that may be manufactured ~~and sold~~ without a license;
4. A licensee transporting lawfully acquired alcoholic beverages ~~he~~ the licensee is authorized to sell in a vehicle owned or leased by the licensee;
5. Persons transporting alcoholic beverages to the board authority, or to licensees, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment; and ~~provided further,~~ in the case of the licensee, that the merchandise is ~~such as his~~ merchandise that the license entitles him the licensee to sell;
6. Persons transporting alcoholic beverages as a part of their official duties as federal, state, or municipal officers or employees; and
7. Persons transporting lawfully acquired alcoholic beverages in a passenger vehicle, other than those alcoholic beverages referred to in subdivisions D 2 and D 3 of this section, provided ~~the same that the~~ alcoholic beverages are in the possession of the bona fide owners ~~thereof~~ and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A of this section.

E. This section shall not be construed to alter the ~~one-gallon (four liters if any part is in a metric sized container)~~ three-gallon limitation upon alcoholic beverages that may be brought into the Commonwealth pursuant to § ~~4.1-310 E~~ 4.1-311 B of the Code of Virginia.

3VAC5-70-20. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. The procedures established by regulations of the board Virginia Alcoholic Beverage Control Authority (authority) for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

~~B. Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth in this section.~~

~~C. Containers of cider containing less than 7.0% alcohol by volume may be sold in any containers that comply with federal regulations for wine and beer provided such containers are~~

~~labeled in accordance with board regulations. Cider containing 7.0% or more alcohol by volume may be sold in any containers that comply with federal regulations for wine, provided the containers are labeled in accordance with board regulations.~~

~~D. B.~~ If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the ~~board~~ authority.

~~E. C.~~ The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

~~F. Persons must be 21 years of age or older to purchase or possess cider.~~

~~G. D.~~ The provisions of subsection A and subdivision B 4 of 3VAC5-60-20 shall not be applicable to the sale of cider by wholesale wine licensees to retail licensees of the ~~board~~ authority.

3VAC5-70-30. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders for sacramental wine shall be on separate order forms prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and provided at cost if supplied by the ~~board~~ authority.

B. Sales for sacramental purposes shall be only upon permits issued by the ~~board~~ authority without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Requests for permits by a religious congregation shall be in writing, and executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

~~D.~~ Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

3VAC5-70-40. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. The ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may issue a culinary permit to a person operating an establishment where food is prepared on the premises. The ~~board~~ authority may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend, or revoke a license.

B. Spirits shall be purchased from government stores. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail ~~on or off premises~~ licenses. A permittee possessing a retail ~~on or off premises~~ license must purchase its wine and beer from wholesale licensees. ~~However, a permittee who only has an on or on and off premises beer license may purchase its wine from a retail licensee.~~

C. Permittees shall keep complete and accurate records of ~~their~~ purchases of alcoholic beverages at the permittee's place of business for two years. The records shall be available for

inspection and copying by any member of the board or its special agents during reasonable hours.

D. Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose. ~~They and~~ shall be stored at the permittee's place of business; separate and apart from all other commodities.

3VAC5-70-70. Permits for persons having alcoholic beverages distilled; limitations.

A. Any person who contracts with or engages a licensed distiller to manufacture spirits from grain fruit, fruit products, or other substances grown or lawfully produced by such person shall obtain a ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) permit before withdrawing the spirits from the distillery's premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address, and license number, if any, of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

B. Permits shall be issued only for (i) spirits shipments to the ~~board~~ authority, (ii) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of spirits samples to the person growing or producing the substance being distilled. Samples shall be packaged in containers of 375 or 750 milliliters and the words "Sample-Not for Sale" shall be printed in letters of reasonable size on the label.

3VAC5-70-90. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. All licensees shall keep complete, accurate, and separate records for a period of two years. The records shall be available for inspection and copying by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents during reasonable hours. Licensees may use ~~microfilm, microfiche, disks, or other~~ any available technologies for the storage of their records, and may store them off site, provided the records ~~so stored~~ are readily subject to retrieval and made available for viewing on a screen or in hard copy by the ~~board~~ authority or its special agents at the licensed premises between the hours of 9 a.m. and 5 p.m. or any time the licensee is open to the public. At any other time of day, if the licensee's records are not available for inspection, the licensee shall provide the records to a special agent of the ~~board~~ authority within 24 hours after a request is made to inspect the records.

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The ~~board~~ authority and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale, or sold, for the purpose of examining and inspecting all records, invoices, and accounts therein.

"Reasonable hours" ~~shall be deemed to~~ include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

B. All licensed manufacturers, bottlers, or wholesalers of alcoholic beverages shall keep a complete, accurate, and separate record of all alcoholic beverages manufactured, bottled, purchased, sold, or shipped by ~~him~~ the licensee. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold, or shipped by ~~him~~ the licensee; the dates of all sales, purchases, deliveries, or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries, or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged ~~therefor~~ for the alcoholic beverages, and the taxes applicable ~~thereto~~ to the alcoholic beverages, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery, and the name of the purchaser to whom the delivery is made.

C. Every retail licensee shall keep complete, accurate, and separate records, including invoices, of the purchases and sales of alcoholic beverages, food, and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases ~~thereof~~ of the alcoholic beverages, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged ~~therefor~~ for the alcoholic beverages, and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged ~~therefor~~ for such items.

D. In addition to the requirements of subsections A and C of this section, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the ~~board~~ authority, the licensee shall furnish to the ~~board~~ authority or its special agents a complete and accurate inventory of all alcoholic beverages currently held in inventory on the premises by the licensee; and
2. Once a year, each licensee shall submit on prescribed forms to the ~~board~~ authority an annual review report. The

report is due within 30 days after the end of the mixed beverage license year and shall include:

- a. A complete and accurate inventory of all alcoholic beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;
- b. An accounting of the annual purchases of food, nonalcoholic beverages, and alcoholic beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and
- c. An accounting of the monthly and annual sales of all merchandise specified in subdivision 2 b of this subsection.

~~E. The terms "sale" and "sell" shall include exchange, barter or traffic, or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages and other alcoholic beverages, and of meals or food.~~

~~F. E.~~ In determining "gross receipts from the sale of food" for the purposes of § 4.1-206.3 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, ~~as defined in this section~~. Food ~~which~~ that is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If, in conducting its review pursuant to § 4.1-114 of the Code of Virginia, the ~~board~~ authority determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages or other alcoholic beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the ~~board~~ authority may calculate the number of mixed drinks and other alcoholic beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

~~G. F.~~ Any changes in the officers, directors, or shareholders owning 10% or more of ~~the outstanding~~ the licensee's capital stock ~~of a corporation if the licensee is a corporation or, if the licensee is a limited liability company, any changes in member-managers or any members owning 10% or more of the membership interest of the limited liability company~~ shall be reported to the ~~board~~ authority within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

~~H. G.~~ All banquet and special event licensees in charge of public events shall report to the ~~board~~ authority the income and expenses associated with the public event on a form prescribed by the ~~board~~ authority when the licensee engages another person to organize, conduct, or operate the event on behalf of the licensee. Reports shall be made within 90 days after the

date of each event. "Public events" shall be deemed to include any event at which alcoholic beverages are sold to the general public and not only to personally invited guests.

All applicants for banquet or special event licenses shall indicate at the time of application whether the event is open to the public and whether another person has been or will be engaged to organize, conduct, or operate the event on behalf of the licensee. If the applicant indicates that the event is open to the public and another person has been or will be engaged to organize, conduct, or operate the event on behalf of the licensee, the applicant shall attach a copy of any contract between the applicant and such other person to the license application.

3VAC5-70-95. Proration of license tax for businesses destroyed by natural disaster.

The ~~board~~ Virginia Alcoholic Beverage Control Authority shall make refunds of the state license tax paid pursuant to subsection A of § 4.1-231 of the Code of Virginia to licensees whose 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, upon the following schedule:

If the destruction takes place within the first three months of the license year, 75% of the license tax shall be refunded. If the destruction takes place within the second three months of the license year, 50% of the license tax shall be refunded. If the destruction takes place within the third three months of the license year, 25% of the license tax shall be refunded. No refund shall be issued if the destruction takes place within the last three months of the license year.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, 4.1-206.3, 4.1-209, 4.1-215, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no ~~wise way~~ a shift or device to evade the provisions of this section.
2. Samples. A representative of a wholesaler, winery, brewery, or importer may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer if (i) the licensee is licensed to sell such product, provided that in the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and (ii) the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown, the ~~board~~ Virginia Alcoholic

Beverage Control Authority (authority) may authorize a larger sample container. Samples must be obtained from licensed wholesalers or purchased from retail licensees in the Commonwealth.

3. Gifts by retail licensees. An on-premises retail licensee may give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that such gifts are made to patrons to whom such alcoholic beverages may be sold. No subsequent gift shall be provided to the same patrons within 24 hours.

4. Hospitality rooms; conventions. The following activities are permitted:

a. A brewer or vintner may give samples of ~~his the brewer's or vintner's~~ the brewer's or vintner's products to visitors to ~~his the brewer's or vintner's~~ the brewer's or vintner's winery or brewery for consumption on premises only in a hospitality room approved by the ~~board~~ authority, provided the donees are persons to whom such products may be lawfully sold; and

b. A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional, or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational, or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, that is owned and operated by the licensee or a wholly owned subsidiary.

5. Conventions; educational programs, including alcoholic beverage tastings; research; licensee associations. Manufacturers, importers, bottlers, brokers, and wholesalers may donate alcoholic beverages to:

a. A convention, trade association, or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism; and

d. Official associations of alcoholic beverage industry members when conducting a bona fide educational program concerning alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

6. Conditions. Exceptions authorized by subdivisions 4 b and 5 of this subsection are conditioned upon the following:

a. That prior written notice of the activity be submitted to the ~~board~~ authority describing ~~it~~ and giving the date, time, and place of such activity; and

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b. That the activity be conducted in a room ~~or rooms~~ set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a ~~gourmet shop~~ an off-premises retail licensee enumerated in § 4.1-206.3 C 1 of the Code of Virginia for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

3VAC5-70-110. Release of alcoholic beverages from customs and bonded warehouses; receipts; violations; limitation upon sales.

A. Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The ~~board~~ Virginia Alcoholic Beverage Control Authority (authority);
2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;
3. Boats actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia; or
4. Persons for shipment outside the Commonwealth to someone legally entitled to receive the ~~same~~ alcoholic beverages under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the ~~board~~ authority and in accordance with the instructions ~~therein~~ set forth in such permit.

B. A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or ~~his~~ the consignee's duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the ~~board~~ authority by the permittee within 10 days after delivery.

C. The ~~board~~ authority may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. A maximum of six imperial gallons of alcoholic beverages may be sold, released, and delivered in any 30-day period to any member of foreign armed forces personnel.

3VAC5-70-120. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Upon the application of a person qualified under the provisions of § 4.1-130 of the Code of Virginia, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may issue a ~~certificate of approval~~ permit for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

B. The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the ~~same~~ alcoholic beverages only upon ~~permit issued~~ authorization by the ~~board~~ authority and in accordance with the instructions ~~therein~~ set forth therein. The owner of the alcoholic beverages, or the owner or operator of the ~~approved~~ permitted warehouse as agent of such owner, may ~~apply for release permits, for which a charge may be made by the board~~ enter into a memorandum of understanding with the authority for the purpose of allowing them to submit out-of-bond transfer reports via email.

D. Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available during reasonable hours for inspection by a member of the ~~board~~ authority or its special agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee;
2. Date of receipt or withdrawal, as the case may be; and
3. Type and quantity of alcoholic beverage.

E. Alcoholic beverages stored by licensees pursuant to 3VAC5-50-90 are excepted from the operation of this section.

3VAC5-70-130. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Special mixed beverage licenses may be granted to persons by the ~~board~~ Virginia Alcoholic Beverage Control Authority at places primarily engaged in the sale of meals where the place to be occupied (i) is owned by the government of the United States; or any agency thereof, (ii) is located on land used as a port of entry or egress to and from the United States, and (iii) otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, ~~which~~ Such licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified ~~herein~~ in this chapter.

B. "Meals" ~~need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the sale of food and nonalcoholic beverages at such establishment shall~~

be not less than 45% of the gross receipts from the sale of mixed beverages and food means the same as defined in 3VAC5-50-110 A 5.

C. The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax ~~thereon~~ on a special mixed beverage license shall be \$25 per day.

3VAC5-70-140. Definitions and requirements for wine licenses; wine; wine coolers. (Repealed.)

~~Wherever the term "wine" appears in this chapter, it shall include "wine coolers" as defined in § 4.1-100 of the Code of Virginia. Wine coolers shall be treated as wine for the purposes of the regulations, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth for resale on such installations, in accordance with §§ 4.1-112 and 4.1-236 of the Code of Virginia and 3VAC5-60-70.~~

~~Any person licensed to manufacture, bottle or sell wine shall not be required to pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler. Such person shall have the privilege to manufacture, bottle or sell any wine cooler under the provisions of Title 4.1 of the Code of Virginia as long as his license remains in full force and effect.~~

3VAC5-70-150. Wholesale alcoholic beverage sales; winery and brewery discounts, price-fixing; price increases; price discrimination; inducements.

A. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall require a wholesale licensee to discount the price at which the wholesaler shall sell any alcoholic beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler, or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage.

B. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall increase the price charged to any person holding a wholesale license for alcoholic beverages, except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler, or importer ~~which that~~ shall contain the amount and effective date of the increase.

No increase shall take effect prior to 30 calendar days following the date on which the notice is ~~postmarked;~~ delivered, provided that the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may authorize such price increases to take effect with less than the ~~aforesaid~~ 30 calendar days' calendar-day notice if a winery, brewery, bottler, or

importer so requests and demonstrates good cause ~~therefor~~ for such an expedited increase.

The provisions of this subsection shall not apply in any case where the importer required to provide notice of a price increase and the wholesaler to whom notice is to be provided are the same person.

C. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers, except where the difference in price charged by such winery or brewery is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery or brewery on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler does occur, the ~~board~~ authority may ask and the winery or brewery shall furnish written substantiation for the price difference.

D. No person holding a license authorizing the sale of alcoholic beverages at wholesale shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

3VAC5-70-160. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices, or other agricultural products used by the farm winery licensee shall be grown or produced outside the Commonwealth, except upon permission of the ~~board~~ authority as provided in § 4.1-219 of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels. The term "other agricultural products," as used in this subsection, includes wine.

~~B. The term "other agricultural products," as used in subsection A of this section, includes wine.~~

~~C. A farm winery license limits retail sales to the premises of the winery and to five additional retail establishments that need not be located on the premises. These~~ B. The five additional retail outlets permitted for farm winery licenses may be moved throughout the state as long as advance ~~board~~ authority approval is obtained for the location, equipment, and facilities of each remote outlet.

3VAC5-70-170. Credit and debit cards.

Government stores may accept credit or debit cards from consumers and licensees for the purchase of alcoholic beverages subject to the policies of the Virginia Alcoholic Beverage Control Authority (authority). The ~~board~~ authority may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties, or service charges where appropriate, establish credit procedures for returned

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merchandise, and make any other decisions to carry out the purpose of this chapter.

3VAC5-70-180. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. The following definitions shall apply for purposes of this section:

1. "Keg." Any container capable of holding four gallons or more of beer or wine and ~~which that~~ is designed to dispense beer or wine directly from the container for purposes of consumption; and
2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker, or device approved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) that is designed to be affixed to kegs and ~~which that~~ displays a registration number and such other information as may be prescribed by the ~~board~~ authority.

B. 1. No person licensed to sell wine or beer at retail for off-premises consumption, or any officer, agent, or employee thereof, shall sell any such alcoholic beverage in a keg without having (i) registered the sale on a form prescribed by the ~~board~~ authority and (ii) affixed a registration seal on the keg at the time of sale, provided, that if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G, the wholesale licensee shall affix the registration seal.

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the ~~board~~ authority shall be properly completed and shall contain:

- a. The name and address of the purchaser verified by valid identification as defined in 3VAC5-50-20 B;
- b. The type and number of the identification presented by the purchaser;
- c. A statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons under younger than 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and
- d. The particular address or location where the keg will be consumed, and the date ~~or dates~~ on which it will be consumed.

3. Where the purchaser obtains more than one keg for consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. ~~Such~~ The keg registration declaration and receipt

forms ~~which that~~ contain the reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove and obliterate the keg registration seal from the keg and note such action on the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

C. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

D. Except in accordance with this section, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this section. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee is in possession of a keg containing alcoholic beverages, ~~and which keg that~~ does not bear the registration seal, or upon which ~~keg~~ the registration seal has been altered, defaced, or obliterated, the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture.

E. Licensees shall maintain a complete and accurate record of all registration forms and other documentation of the sale of kegs at the place of business designated in ~~his~~ the license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall during reasonable hours be open to inspection by the ~~board~~ authority or its special agents or other law-enforcement officers.

F. Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to 3VAC5-30-30.

G. Except as authorized by the ~~board~~ authority, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply, ~~however,~~ to the return of the registered container to the seller.

3VAC5-70-190. Waiver of banquet license tax; qualifications; restrictions and conditions; exceptions.

A. Pursuant to § 4.1-111 of the Code of Virginia, the board The Virginia Alcoholic Beverage Control Authority (authority) may waive the banquet license tax for a duly organized not-for-profit corporation or association holding a nonprofit event. A "nonprofit event" means income from the event shall not exceed expenses for the event. Fixed costs, including ~~but not limited to~~ staff salaries, rent, utilities, and depreciation, shall not be included as expenses.

B. 1. The applicant shall sign an affidavit certifying the not-for-profit status of the corporation or association and that the event being held is nonprofit.

2. The applicant may serve alcoholic beverages in any combination, ~~the in an~~ amount to be no more than that which equals no more than the total alcohol content by volume in two kegs of beer (31 gallons).

3. The granting of a waiver is limited to two events per fiscal year (July 1 - through June 30) for any qualifying corporation or association.

C. The board authority may issue a permit authorizing a variance from subdivision B 2 of this section for good cause shown.

3VAC5-70-200. Grain alcohol; permits; qualifications; records; refusal, suspension, or revocation.

A. The board Virginia Alcoholic Beverage Control Authority (authority) may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 151 at government stores for any of the following purposes:

1. Industrial use; ~~2. Commercial use; 3. Culinary use, not to include the manufacturing of products intended for human consumption; or~~
- ~~4. 2. Medical use by a federal or state board-licensed medical professional or hospital.~~

B. The application for such permits shall be on forms provided by the board authority.

C. Permits may be issued to legitimate businesses for any one or more of the purposes stated in subsection A of this section upon presentation of satisfactory evidence of the conduct of the business activity involved. For good cause shown, the board authority may issue a permit to an individual for any of the uses stated in subsection A of this section.

D. A person obtaining a permit shall maintain complete and accurate records of all purchases for a period of two years. The board authority and its special agents shall have free access during reasonable hours to all records required to be kept pursuant to this section.

E. The board authority may refuse to issue, suspend, or revoke a permit if the board authority has reasonable cause to believe that (i) the permittee would use, has used, or allowed to be used grain alcohol for any unlawful purpose ~~or~~, (ii) any cause exists under § 4.1-222 of the Code of Virginia for which the board authority may refuse to grant the applicant any license, or (iii) the permittee has done any act for which the board authority might suspend or revoke a license under § 4.1-225 of the Code of Virginia.

3VAC5-70-210. Schedule of penalties for first-offense violations.

A. Any licensee charged with any violation of board Virginia Alcoholic Beverage Control Authority (authority) regulations or statutes listed in this subsection, if the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may accept an offer by the authority extended in writing to enter a written waiver of hearing and (i) accept the period of license suspension set forth in this subsection for the violation; or (ii) pay the civil charge set forth in this subsection for the violation in lieu of suspension. In the case of a violation involving the sale of beer, wine, or mixed beverages to a person at least 18 years of age but younger than 21 years of age; or to an intoxicated person; or allowing consumption of such beverages by such person, any retail licensee that can demonstrate that it provided alcohol seller or server training certified in advance by the board authority to the employee responsible for such violation within the 12 months immediately preceding the alleged violation may accept the lesser period of license suspension or pay the lesser civil charge listed for the violation in lieu of suspension. ~~Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options, and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.~~

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VIOLATION	SUSPENSION	CIVIL CHARGE	SUSPENSION WITH CERTIFIED TRAINING	CIVIL CHARGE WITH CERTIFIED TRAINING
Sale of beer, wine, or mixed beverages to a person at least 18 <u>years of age</u> but younger than 21 years of age.	25 days	\$2,500	5 <u>15</u> days	\$1,500 <u>\$2,000</u>
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 <u>years of age</u> but younger than 21 years of age.	25 days	\$2,500	5 <u>15</u> days	\$1,500 <u>\$2,000</u>
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 <u>years of age</u> but younger than 21 years of age.	10 <u>15</u> days	\$1,250 <u>\$1,500</u>		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Allow an intoxicated person to loiter on the premises.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Sale to an intoxicated person.	25 days	\$2,500	5 <u>15</u> days	\$1,500
Allow consumption by an intoxicated person.	25 days	\$2,500	5 <u>15</u> days	\$1,500
After hours sales or consumption of alcoholic beverages.	10 days	\$1,250 <u>\$1,500</u>		
No designated manager on premises.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Invalid check to wholesaler or board <u>authority</u> .	7 <u>10</u> days	\$500 <u>\$750</u>		
Inadequate illumination.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
ABC license not posted.	7 <u>10</u> days	\$750 <u>\$1,000</u>		

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Not timely submitting report required by statute or regulation.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Designated manager not posted.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Person younger than 18 years of age serving alcoholic beverages; younger than 21 years of age acting as bartender.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,250 <u>\$1,500</u>		
Consumption of alcoholic beverages in unauthorized area.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Removal of alcoholic beverages from authorized area.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Failure to obliterate mixed beverage stamps.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Employee on duty consuming alcoholic beverages.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Conducting illegal happy hour.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Illegally advertising happy hour.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Unauthorized advertising.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Failure to remit state beer or wine tax (if deficiency has been corrected).	10 days	\$1,250 <u>\$1,500</u>		
Wholesaler sale of beer or wine in unauthorized manner.	10 days	\$1,250 <u>\$1,500</u>		
Wholesaler sale of beer or wine to unauthorized person.	10 days	\$1,250 <u>\$1,500</u>		

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B. For purposes of this section, the ~~Virginia Alcoholic Beverage Control Authority~~ authority will certify alcohol seller or server training courses that provide instruction on all the topics listed on the ~~Seller/Server~~ Seller or Server Training Evaluation form. The following steps should be completed to submit a training program for approval:

1. Complete the Alcohol ~~Seller/Server~~ Seller or Server Training Data Sheet and review the ~~Seller/Server~~ Seller or Server Training Evaluation form to make sure the program will meet the listed criteria; and
2. Submit the Alcohol ~~Seller/Server~~ Seller or Server Training Data Sheet and a copy of the proposed training program materials for review. Materials submitted should include copies of any lesson plans and instructional materials used in the training program.

Requests for certification of training courses should be sent to:

Virginia Alcoholic Beverage Control Authority
~~Education Section~~ Community Health and Engagement
P.O. Box ~~27491~~ 3250
~~Richmond, VA 23261~~ Mechanicsville, VA 23116
Email: ~~education@abc.virginia.gov~~
education@virginiaabc.com

Persons in charge of any certified alcohol server training course shall maintain complete records of all training classes conducted, including the date and location of each class and the identity of all those successfully completing the course.

C. For a licensee that operates more than one retail establishment, each such establishment shall be considered a separate licensee for the purpose of this section.

3VAC5-70-220. Wine or beer shipper's licenses, Internet wine retailer licenses, and Internet beer retailer licenses; application process; common carriers; records.

A. Any person or entity qualified for a wine and beer shipper's license pursuant to § 4.1-209.1 of the Code of Virginia, or an Internet wine and beer retailer license pursuant to ~~subdivision F 2 of~~ § 4.1-206.3 F 2 of the Code of Virginia, must apply for such license by submitting ~~form 805-52, Application for the~~ Retail License Application form. In addition to the application, each applicant shall submit as attachments a list of all brands of wine or beer sought to be shipped by the applicant, along with the ~~board assigned~~ authority-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3VAC5-40-20 that will be sold only through direct shipment to consumers.

If the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with

the application a dated letter identifying each brand, from the brand owner or any wholesale distributor authorized to distribute the brand, addressed to the ~~Supervisor, Tax Management Section,~~ Virginia Alcoholic Beverage Control Authority (authority), indicating the brand owner's or wholesale distributor's consent to the applicant's shipping the brand to Virginia consumers.

The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which shipments will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery, or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's, or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the ~~Supervisor, Tax Management Section,~~ authority by the brewery, winery, or farm winery.

C. Any holder of a wine and beer shipper's license or Internet wine and beer retailer's license may add or delete brands to be shipped by letter to the ~~Supervisor, Tax Management Section,~~ authority designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine and beer shipper's license or Internet wine and beer retailer's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine and beer shipper's licensee or Internet wine and beer retailer's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the ~~Supervisor, Tax Management Section~~ authority. Withdrawals shall become effective upon receipt of the copy by the ~~Tax Management Section~~ authority, as evidenced by the postmark on the return receipt.

E. Wine and beer shipper's licensees and Internet wine and beer retailer's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;

4. Names and addresses of recipients; and
5. Price charged.

The records required by this subsection shall be made available for inspection and copying by any member of the board authority or its special agents upon request.

F. On or before the 15th day of each month, each wine and beer shipper's licensee or Internet wine and beer retailer's licensee shall file with the ~~Supervisor, Tax Management Section,~~ authority either in paper form or electronically as directed by the ~~department~~ authority, a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month; and
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped;
 - b. Volume of each container shipped;
 - c. Brand of each container shipped;
 - d. Names and addresses of recipients; and
 - e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine and beer shipper's licenses or Internet wine and beer retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for ~~approval a permit~~ approval to provide common carriage of wine or beer, or both, shipped by holders of wine and beer shipper's licenses or Internet wine and beer retailer's licenses, by ~~dated letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section~~ application. The board authority may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the board authority, or that a cause exists with respect to the carrier that would authorize the board authority to refuse, suspend, or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board authority shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board authority.

H. When attempting to deliver wine or beer shipped by a wine and beer shipper's licensee or Internet wine and beer retailer's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that the recipient is at least 21 years of age; and

2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be younger than 21 years of age and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine and beer shipper's or Internet wine and beer retailer's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the board authority unless the package bears the information required by this subsection.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine and beer shipper's licensees or Internet wine and beer retailer's licensees including for each shipment:

1. Date of shipment and delivery;
2. Number of items shipped and delivered;
3. Weight of items shipped and delivered;
4. Acknowledgment signed by recipient; and
5. Names and addresses of shippers and recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board authority or its special agents upon request.

J. On or before the 15th day of each ~~January, April, July, and October~~ month, each approved common carrier shall file with the ~~Supervisor, Tax Management Section,~~ authority a report of activity for the previous calendar ~~quarter~~ month. Such report shall include:

1. Whether any shipments were delivered during the quarter; and
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery; ~~and~~
 - b. Names and address of shippers and recipients for each delivery; and
 - c. Weight of items shipped and delivered.

3VAC5-70-225. Delivery permits; application process; records and reports; delivery requirements.

A. Any ~~out-of-state~~ out-of-state person or entity qualified for a delivery permit pursuant to § 4.1-212.1 of the Code of

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Virginia must apply for such permit by submitting ~~Form 805-52, the Retail License Application form.~~ The applicant shall attach (i) a photocopy of its current license as an alcoholic beverage retailer that is authorized to sell wine or beer at retail for off-premises consumption, issued by the appropriate authority for the location from which deliveries will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Delivery permittees and licensees with delivery privileges pursuant to §§ 4.1-212.1 and 4.1-212.2 of the Code of Virginia shall maintain for two years complete and accurate records of all deliveries made under the privileges of such permits, including for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;
4. Names and addresses of recipients;
5. Signature of recipient; and
6. Price charged for the wine or beer delivered.

The records required by this subsection shall be made available for inspection and copying by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents upon request.

C. On or before the 15th day of each month, each delivery permittee and licensees with delivery privileges pursuant to § 4.1-212.1 of the Code of Virginia shall file with the ~~Supervisor, Tax Management Section,~~ authority a report of activity for the previous calendar month; if any deliveries were made during the month ~~for which the licensee or permittee is required to collect and remit excise taxes pursuant to § 4.1-212.1 H of the Code of Virginia.~~ Such report shall include the following information for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;
4. Names and addresses of recipients; and
5. Price charged for the wine or beer delivered.

Unless previously paid, payment of the appropriate beer or wine tax imposed by § 4.1-234 or 4.1-236 of the Code of Virginia shall accompany each report. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report for that month; ~~however, every permittee must submit a report no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.~~

D. All deliveries by holders of delivery permits and licensees with delivery privileges pursuant to § 4.1-212.1 of the Code of Virginia shall be performed by the owner or any ~~agent,~~ officer, director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee.

E. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person, except that a permittee or licensee may deliver more than four cases of wine or more than four cases of beer if ~~he~~ the permittee or licensee notifies the ~~Supervisor, Tax Management Section,~~ authority in writing at least one business day in advance of such delivery. Any notice given pursuant to this section shall include the number of containers to be delivered, the volume of each container to be delivered, the brand of each container to be delivered, and the name and address of the intended recipient.

F. When attempting to deliver ~~wine or beer~~ alcoholic beverages pursuant to a delivery permit or license privilege pursuant to § 4.1-212.1 of the Code of Virginia, an owner, ~~agent,~~ officer, director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee shall require:

1. The recipient to demonstrate, upon delivery, that ~~he~~ the recipient is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section; ~~however, a signature shall not be required so long as the licensee verifies at the time of delivery that the recipient is 21 years of age or older; ensures that the recipient's bona fide identification, as described in 3VAC5-50-20 B, bears a photograph that reasonably appears to match the appearance of the recipient; and records the recipient's name and date of birth and the address to which the alcoholic beverages were delivered.~~

The owner, agent, officer, director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee shall refuse delivery when the proposed recipient appears to be ~~under the age of younger than~~ 21 years of age and refuses to present valid ~~identifications;~~ identification. All retail permittees or licensees delivering ~~wine or beer~~ alcoholic beverages pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of ~~wine or beer~~ alcoholic beverages delivered in the Commonwealth, in a conspicuous location, stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF RECEIPT BY PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the delivery permit number of the delivering permittee or license number of the licensee and shall be affixed to the package even if the product is delivered in the manufacturer's original sealed container. Third-party delivery licensees shall not deliver any alcoholic beverages that do not bear the required label.

3VAC5-70-230. Sale of designer or vintage spirit bottles.

A. The following definitions shall apply to designer and vintage bottles of spirits:

1. Designer: A bottle of spirits manufactured specifically as a departure from the manufacturer's standard trademark, design, or packaging; originally sold in limited quantities; and with a retail value in excess of \$500. Each bottle shall be accompanied by the manufacturer's certificate of designer status.

2. Vintage: A bottle of spirits wherein the product therein has been bottled for at least 20 years or has not been sold by the brand owner for a minimum of 10 years.

3. In either instance the bottle must be (i) the original manufacturer's unopened bottle; (ii) neither owned by a distillery nor sold on behalf of a distillery, manufacturer, or wholesaler; and (iii) not otherwise available for purchase from the Virginia Alcoholic Beverage Control Authority (authority).

B. Collectors of designer or vintage bottles containing distilled spirits may sell them at auction under the following conditions:

1. The seller shall notify the secretary to the board of the date, time, and place of the auction sale.
2. Any bottle sold must be unopened and the manufacturer's seals, marks, or stamps affixed to the bottles must be intact.
3. The auction must be conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia.
4. Any purchaser at such auction must be a minimum of 21 years of age.
5. For two years from the date of sale, the auctioneer must keep records, available to the board authority upon request, of the name and address of each purchaser and a description of the alcoholic beverages purchased.

3VAC5-70-240. Marketing portal and fulfillment warehouse approval process.

A. Any holder of a wine and beer shipper's license wishing to use the services of a marketing portal or fulfillment warehouse, as defined in § 4.1-209.1 of the Code of Virginia, must use an approved marketing portal or fulfillment warehouse. Marketing portals or fulfillment warehouses licensed to perform such services by the state in which they are located may apply for approval to provide such services to holders of Virginia wine or beer shipper's licenses by letter to the Supervisor, Tax Management Section, Virginia Alcoholic Beverage Control Authority, requesting such approval Virginia Alcoholic Beverage Control Authority (authority). Each applicant shall submit as attachments copies of all licenses issued by the state in which its place of business is

located that authorize the provision of the services to be provided. A marketing portal shall submit as attachments copies of documents showing that it is properly organized as an agricultural cooperative in the state where it is located. The ~~board authority~~ may refuse, suspend, or revoke approval if it ~~shall have~~ has reasonable cause to believe that a marketing portal or fulfillment warehouse is not licensed to provide such services by its home state, that it has failed to comply with the regulations of the ~~board authority~~, or that a cause exists with respect to the marketing portal or fulfillment warehouse that would authorize the ~~board authority~~ to refuse, suspend, or revoke a license pursuant to the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of ~~Title 4.1 of the Code of Virginia.~~ Before refusing, suspending, or revoking such approval, the ~~board authority~~ shall follow the same administrative procedures accorded an applicant or licensee under ~~§ 4.1-100 et seq. of Title 4.1 of the Code of Virginia~~ the Alcoholic Beverage Control Act and regulations of the board authority.

B. Any approved marketing portal or fulfillment warehouse shall, prior to performing services for a wine and beer shipper's licensee, enter into a written contract. The contract must designate the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with the provisions of this regulation and §§ 4.1-206.3 and 4.1-209.1 of the Code of Virginia. A copy of each such contract shall be submitted by the marketing portal or fulfillment warehouse to the ~~Supervisor, Tax Management Section, Alcoholic Beverage Control Authority, authority~~ prior to the commencement of services.

C. Approved fulfillment warehouses shall maintain for two years complete and accurate records of all shipments made on behalf of Virginia wine and beer shippers, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped; and
4. Names and addresses of recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board authority or its special agents upon request.

3VAC5-70-250. Waiver of penalty for certain first-time violations.

A. In accordance with ~~subdivision E 4 of § 4.1-227~~ E 5 of the Code of Virginia, whenever the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) finds that a charge against a licensee for a violation listed in this subsection is substantiated, the licensee has had no prior violations within five years immediately preceding the date of the subject violation, and the subject violation was not willful and knowing, the ~~board shall~~ authority may enter an order substantiating the violation without imposing a penalty. The

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provisions of this subsection shall apply to the following violations:

1. Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid;
- ~~2. Allowing an intoxicated person to loiter on the premises;~~
- ~~3. After hours sales or consumption of alcoholic beverages;~~
4. ~~2.~~ No designated manager on premises;
- ~~5. 3.~~ Invalid check to wholesaler or board authority;
- ~~6. 4.~~ Inadequate illumination;
- ~~7. 5.~~ Not timely submitting a report required by statute or regulation;
- ~~8. 6.~~ Designated manager not posted;
- ~~9. 7.~~ Person ~~less~~ younger than 18 years of age serving alcoholic beverages; ~~less~~ younger than 21 years of age acting as bartender;
- ~~10. 8.~~ Sale of alcoholic beverages in unauthorized place or manner;
- ~~11. 9.~~ Consumption of alcoholic beverages in unauthorized area;
- ~~12. 10.~~ Removal of alcoholic beverages from authorized area;
- ~~13. 11.~~ Failure to obliterate mixed beverage stamps;
- ~~14. 12.~~ Employee on duty consuming alcoholic beverages;
- ~~15. 13.~~ Conducting illegal happy hour;
- ~~16. 14.~~ Illegally advertising happy hour;
- ~~17. 15.~~ Unauthorized advertising;
- ~~18. 16.~~ Failure to remit state ~~beer/wine~~ beer or wine tax (if deficiency has been corrected); and
- ~~19. 17.~~ Wholesaler sale of ~~wine/beer~~ beer or wine in unauthorized manner; ~~and~~
- ~~20. Wholesaler sale of wine/beer to unauthorized person.~~

B. Whenever any licensee who has not had any substantiated violations of regulation or statute within the previous five years is charged with a violation, the board authority, if the facts found by the board authority would justify a finding that the charge is substantiated but is not a willful and knowing violation, with the consent of the licensee, may defer further proceedings and place the licensee on probation upon terms and conditions.

As a term or condition, the board authority shall require the licensee to participate in or provide employees such ~~board-approved seller/server~~ authority-approved seller or server or manager training as, in the opinion of the board authority, may

be best suited to the needs of the licensee based upon consideration of the nature of the violation.

As a condition of probation, the board authority shall require the licensee to (i) successfully complete the required training program and (ii) comply with all alcoholic beverage laws and regulations during the period of probation.

Upon violation of a term or condition, the board authority may enter an adjudication that the charge is substantiated and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the board authority shall dismiss the proceedings against the licensee. Dismissal under this section shall be without adjudication of the charge and is a substantiated violation only for the purposes of applying this section in subsequent proceedings.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (3VAC5-70)

[Retail License Application \(rev. 7/2024\)](#)

[Order and Permit for Transportation of Alcohol \(rev. 11/2015\)](#)

[Order and Permit for Transportation of Alcoholic Beverages \(rev. 11/2015\)](#)

[Instructions for Completion of the Mixed Beverage Annual Report and Inventory Report \(rev. 6/2018\)](#)

[Application for Grain Alcohol Permit, #805-75 \(filed 8/2021\)](#)

[Special Event License Application Addendum - Notice to Special Event License Applicants, Form SE-1 \(rev. 3/2019\)](#)

[Statement of Income and Expenses for Special Event Licenses \(with instructions\), Form SE-2 \(rev. 3/2019\)](#)

[Alcohol ~~Seller/Server~~ Seller or Server Training Data Form and Evaluation Form \(eff. 7/2009\)](#)

VA.R. Doc. No. R23-7514; Filed July 1, 2024, 4:20 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Proposed Regulation

Title of Regulation: 18VAC15-40. Home Inspector Licensing Regulations (amending 18VAC15-40-10 through 18VAC15-40-33, 18VAC15-40-35, 18VAC15-40-48, 18VAC15-40-50, 18VAC15-40-60, 18VAC15-40-72, 18VAC15-40-75 through 18VAC15-40-105, 18VAC15-40-120 through 18VAC15-40-160, 18VAC15-40-180, 18VAC15-40-210 through 18VAC15-40-270; adding 18VAC15-40-73; repealing 18VAC15-40-108).

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

August 15, 2024 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Second Floor, Richmond, VA 23233.

Public Comment Deadline: September 27, 2024.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email cameron.parris@dpor.virginia.gov.

Basis: Section 54.1-501 of the Code of Virginia allows the Virginia Board for Asbestos, Lead, and Home Inspectors to promulgate regulations for the licensing of home inspectors regarding (i) the professional qualifications of home inspector applicants, (ii) the requirements necessary for passing home inspector examinations, (iii) the proper conduct of its examinations, (iv) the proper conduct of the home inspectors licensed by the board, and (v) the proper discharge of the board's duties.

Purpose: The General Assembly has charged the board with the responsibility for regulating those who engage in the practice of home inspection by requiring that such individuals obtain a license in order to perform home inspections on residential buildings for compensation. Home inspections are a common component of residential real estate transactions. The parties to such transactions rely on the expertise of a home inspector to provide an accurate evaluation of the condition of a home that is the subject of the transaction. The evaluation provided by a home inspector can have a significant effect on the transaction, particularly if there are substantial defects in the condition of the property. Home inspections performed by individuals who lack sufficient training and expertise expose the public to the risk of harm, which can include financial harm to purchasers who may have to assume costs after acquiring the property to remedy defects that were not properly identified during the home inspection. Similarly, home inspections and

home inspection reports that fail to meet certain minimum standards can deprive the parties to a residential real estate transaction of an accurate evaluation of the condition of a home that is the subject of the transaction. In addition, home inspectors who engage in unscrupulous practices may expose the public to the risk of harm. The board protects the public welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession, as well as the minimum requirements for the provision of home inspection services.

Substance: The amendments (i) amend definitions, including adding and removing terms; (ii) clarify that an inspection on a new residential structure includes any course of construction inspection; (iii) clarify that an unlicensed individual who is only conducting inspections of a component or system of a home is not considered to be performing a home inspection; (iv) require that applicants and licensees disclose all misdemeanor convictions, except marijuana-related convictions; (v) clarify the disclosure of prior disciplinary action; (vi) transition qualifications for licensure to a points-based system; (vii) revise provisions pertaining to continuing professional education; (viii) amend procedures for renewal of a license to require submission of a completed renewal application and proof of completing continuing professional education; (ix) amend standards for home inspection contracts and home inspection reports; (x) require minimum provisions of home inspection contracts and home inspection reports; (xi) clarify that a home inspector is prohibited from designing or performing repairs or modifications to a home on which the inspector has performed an inspection within 12 months after the date of inspection; (xii) revise prohibited acts; and (xiii) repeal unnecessary requirements.

Issues: The primary advantages to the public and the regulated community are that the amendments will (i) provide needed updating and clarification, including incorporating the board's previous interpretive guidance; (ii) address concerns regarding barriers to licensure, including to individuals in neighboring states; and (iii) enhance standards for home inspection contracts and home inspection reports, and standards of conduct and practice, that will better serve to protect members of the public.

An anticipated advantage is that the amendments potentially increase the number of individuals who may qualify for licensure, and, therefore, be available to members of the public to provide home inspection services. This may be of particular benefit to members of the public located in more rural areas of the Commonwealth where there are fewer licensed home inspectors available. There are no identifiable disadvantages to the public. The board anticipates no substantial disadvantages to the regulated community. The primary advantage of the amendments to the Commonwealth is that the board will be more able to administer the licensure program, including the process for renewal of licenses, and to more effectively address issues that are the subject of complaints from the public against

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licensees. There are no anticipated disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Virginia board for Asbestos, Lead, and Home Inspectors (board) proposes numerous amendments to Home Inspector Licensing Regulations (18VAC15-40), including requirements for: initial licensure, license renewal, information to be reported to the board, contracts, home inspection reports, licensee's responsibilities, grounds for disciplinary action, prohibited acts, and extensive clarifying language.

Estimated Benefits and Costs. The following are sections of the regulation where proposed amendments are likely to have impact.

18VAC15-40-30: General requirements for licensure. The current regulation requires that each applicant shall disclose all misdemeanor convictions involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury within five years of the date of the application. The proposed regulation would broaden this to require the disclosure of all misdemeanor convictions (except marijuana convictions), while reducing the timeframe to three years (rather than the current five years) from the date of the application. Since the applicant would be required to disclose all misdemeanor convictions (excluding marijuana convictions) during the three-year period prior to application, it potentially covers more varieties of misdemeanors. This additional information may be useful in judging the applicant's fitness for licensure and would make it easier to determine which criminal convictions should or should not be disclosed. On the other hand, it may require some applicants to do some additional reporting. Reducing the timeframe to only require disclosure of misdemeanor convictions within three years of the application, instead of the current five years, would help reduce barriers to licensure for individuals with a prior criminal history. The board believes the most recent three years are the most relevant.²

The current regulation also requires additional reporting pertaining to licensure status, stating, "The applicant shall report any suspension, revocation, or surrender of a license, certification, or registration in connection with a disciplinary action or a license, certification, or registration that has been the subject of discipline in any jurisdiction prior to applying for licensure. The board, in its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of licenses based on disciplinary action by any jurisdiction." The board proposes to also require that the

applicant report when another jurisdiction has imposed a monetary penalty or required the applicant to take remedial education or other corrective action. Additionally, the second quoted sentence would be amended to state that "The board, in its discretion, may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction." The proposed new language provides the board with greater relevant information upon which to make licensure denial decisions.

18VAC15-40-32: Qualifications for licensure. Under the current regulation, an applicant for licensure as a home inspector must pass the National Home Inspector Examination provided by the Examination board of Professional Home Inspectors, and also furnish documentation acceptable to the board that one of the five qualification methods for licensure listed in Table 1 has been met.

Table 1	
Board-approved pre-license education course contact hours	Experience
35	Completion of 100 home inspections prior to July 1, 2017
35	Completion of 50 home inspections under the direct supervision of a home inspector ³
70	Completion of 50 home inspections prior to July 1, 2017
70	Completion of 25 home inspections under the direct supervision of a home inspector ⁴
None	Verification of 10 years' experience as a home inspector prior to July 1, 2017, with a minimum of 250 home inspections completed during such time period

No more than half of the required pre-license education course contact hours may be completed using distance or online education technology.

For the proposed regulation, the applicant for licensure as a home inspector must still pass the National Home Inspector Examination provided by the Examination Board of Professional Home Inspectors; but instead of meeting one of the five qualification methods for licensure listed in Table 1, the applicant must instead acquire a minimum of 15 qualifying points from a combination of the following education and experience categories listed in Tables 2 and 3, with a minimum of five points from each of Tables 2 and 3.

Table 2: Education Qualifying Points		
Points Assigned	Education Description	Max. Allowable Points
5	Successfully completed a three-credit hour minimum class with a passing grade in home inspection from an accredited college or university.	5
1	Successfully completed a three-credit hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate from an accredited college or university.	3
1	Successfully completed a four-hour minimum course specific to home inspection contracts, home inspection reports, or topics covered on the board-approved examination.	3
5	Successfully completed a minimum 35-hour pre-license education course approved by the board.	5
10	Successfully completed a minimum 70-hour pre-license education course approved by the board.	10

Table 3: Experience Qualifying Points		
Points Assigned	Experience Description	Max. Allowable Points
2	One month of full-time qualifying experience. ⁵	12
1	Completion of 5 home inspections under the direct supervision of a home inspector or without supervision if lawfully conducted as authorized under the laws of the applicable jurisdiction.	12
1	Membership in a home inspector trade or professional association. ⁶	2
2	One year teaching at an accredited college or university, trade school, or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or home inspections.	6

2	The qualified individual of a contractor license issued pursuant to the Code of Virginia for one or more of the following classifications or specialty services: 1. Residential Building Contractors, 2. Home Improvement Contracting, 3. Commercial Building Contractors	2
1	The qualified individual of a contractor license issued pursuant to the Code of Virginia for one or more of the following classifications: 1. Electrical Contractors, 2. HVAC Contractors, 3. Plumbing Contractors	3
2	Licensed architect or professional engineer.	2
2	Building code official certified pursuant to the Department of Housing and Community Development Virginia Certification Standards.	2

The proposed regulation does not limit the amount of pre-license education course contact hours that may be completed using distance or online education technology.

According to DPOR, it is the board's intent to increase the variety of methods by which one can qualify for home inspector license. In particular, the proposed regulation includes methods that are less reliant on supervised inspections since there have been reports of difficulties finding licensees willing to provide supervised training. Further, the removal of the limitation on the amount of pre-license education course contact hours that may be completed using distance or online education technology reduces the practical burden on receiving the relevant education.

As can be seen in Table 4, while the variety of methods by which one can qualify for home inspector license increases under the board's proposal, the burden for applicants remains similar to the current system.

Table 4: Comparison of Qualifying with Ed. Contact Hours and Supervised Home Inspections	
Current Regulation	Proposed Regulation
70 education course contact hours;	70 education course contact hours;
Completion of 25 home inspections under the direct supervision of a home inspector.	Completion of 25 home inspections under the direct supervision of a home inspector or without supervision if lawfully conducted as authorized under the laws of the applicable jurisdiction.

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35 education course contact hours;	35 education course contact hours;
Completion of 50 home inspections under the direct supervision of a home inspector.	Completion of 50 home inspections under the direct supervision of a home inspector or without supervision if lawfully conducted as authorized under the laws of the applicable jurisdiction.

18VAC15-40-73: Acceptable topics for continuing professional education. Each licensee must complete 16 contact hours of continuing professional education (CPE) during each two-year license renewal cycle. The board proposes to add the following to the list of topics that are acceptable for continuing professional education: completion of training required to maintain credentials, howsoever denominated, related to home inspection services, including asbestos inspection, lead inspection, and radon testing. There would be a limit of four contact hours of CPE for such training per cycle. This could somewhat reduce burden for licensees and does appear to be relevant to maintaining their professional expertise.

18VAC15-40-80: Procedures for renewal. When renewing a license, the licensee attests to compliance with CPE requirements. However, DPOR audits have shown that some licensees have inaccurately reported compliance. The board proposes to require that as part of the licensure renewal process, the licensee provide proof of completion of CPE. The regulation already requires that each licensee maintain evidence of the satisfactory completion of CPE for at least three years following the end of the license renewal cycle for which the CPE was taken. Thus, the proposal to present this evidence at the time of renewal should not be a substantial additional burden, and would help enable greater assurance of compliance.

18VAC15-40-120: Home inspection contract. The current regulation specifies that for the protection of both the client and the licensee, both parties must sign a legible, written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed. The board proposes to add, "Prior to the commencement of work or acceptance of payments, the contract must be signed by both the client, or the client's authorized representative, and the licensee. The licensee must make prompt delivery to the client, or client's authorized representative, a fully executed copy of the contract in compliance with this section before work begins. Any modification to the contract that changes the cost, scope of work to be performed, or estimated completion date, must be in writing and signed by all parties." This may help minimize potential disputes and misunderstandings.

18VAC15-40-130: Home inspection report. The current regulation requires that the home inspection report contains the licensee's telephone number. The proposal amends the requirement to telephone number, email address, or other contact information, as applicable. This is beneficial in that it

allows the licensee to provide the best means of contact for their situation. The inspection report would be required to note the presence or absence of carbon monoxide detectors, in addition to the current requirement for smoke detectors. This has become a common concern for homeowners and is a beneficial addition.

18VAC15-40-150: Grounds for disciplinary action. The board proposes to add violating provisions of "the regulations of the board" to grounds for disciplinary action. According to the agency, the revised language permits the board to take action against a home inspector licensee in instances where the licensee may have violated regulations related to other disciplines (e.g., asbestos or lead) falling under the board's jurisdiction. This may be beneficial in determining appropriate status for a licensee who participated in misconduct.

18VAC15-40-152: Notice of adverse action. Among other items, this section requires that licensees notify the board of conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or relating to performing a home inspection. Similar to 18VAC15-40-30, the proposal is to require the applicant to notify the board of all misdemeanor convictions except marijuana convictions. Since the applicant would be required to disclose all misdemeanor convictions, excluding marijuana convictions, it would be easier to determine which criminal convictions should or should not be disclosed. On the other hand, it may require some applicants to do some additional reporting. It also potentially covers more varieties of misdemeanors, which may be useful in judging the applicant's fitness for licensure.

18VAC15-40-155: Prohibited acts. The current list of prohibited acts includes "Obtaining or attempting to obtain a license by false or fraudulent representation." The board proposes to add "or maintaining, renewing, or reinstating a license by false or fraudulent representation; or furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license." According to DPOR, the current subdivision is interpreted as being applicable to only the initial obtaining of a license, and would not be applicable to cases where a licensee has renewed or reinstated a license falsely. One area where there have been demonstrated instances of renewal by false representation is in completion of CPE. There have been cases where a licensee has renewed a license by representing that the licensee has completed CPE, when in fact the licensee has not. This revised subdivision would better enable the agency to charge a violation under the prohibited acts for such conduct.

Businesses and Other Entities Affected. The proposed regulation affects the 1,318 licensed home inspectors⁷ in the Commonwealth, as well potential applicants for licensure, clients, and training providers.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined. No adverse impact is indicated.

Small Businesses⁹ Affected.¹⁰ The proposed amendments do not appear to adversely affect small businesses.

Localities¹¹ Affected.¹² The proposed amendments neither appear to disproportionately affect particularly localities, nor substantively affect costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not substantively affect real estate development costs.

¹Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Source: DPOR.

³ The direct supervision of a home inspector must be provided by an individual who was properly licensed or certified by the Board during the applicable time period.

⁴ Ibid.

⁵ In order to be acceptable, qualifying experience must meet all of the following: 1. Experience must be verified by one or more of the following: licensed home inspector; qualified individual or responsible manager of a licensed contractor; or any combination of at least three licensed real estate professionals or clients. 2. An applicant's experience must have been gained by assisting a properly licensed or certified home inspector, as applicable, and under such home inspector's direct supervision; or through the performance of home inspections as authorized under the laws of the applicable jurisdiction. 3. For the purposes of this part, experience requirements are expressed in terms of calendar periods of full-time employment. a. A month of full-time qualifying experience is a minimum of 146 hours during a one-month period or a minimum of 18 workdays in a one-month period. More than 146 hours or 18 workdays during a one-month period will not be considered as more than one month of full-time employment. b. Partial credit may be given for actual hours of qualifying experience if the applicant's experience was gained working less than full time.

⁶ The current membership fee for the International Association of Certified Home Inspectors (InterNACHI) is \$499 per year. The current membership fee for the American Society of Home Inspectors (ASHI) is \$449 per year. The current membership fee for the Virginia Association of Real Estate Inspectors (VAREI) is \$175 per year.

⁷ Source: DPOR

⁸ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities

should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁹ Pursuant to § 2.2-4007.04, small business is defined as "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."

¹⁰ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹¹ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹² Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Board for Asbestos, Lead, and Home Inspectors concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) add new definitions, remove unnecessary definitions, and clarify existing definitions; (ii) revise licensure entry requirements, including establishing a points-based system for education and experience qualifications; (iii) adjust requirements for renewal of a license; (iv) adjust standards for conducting home inspections; (v) update standards of conduct pertaining to conflicts of interest; and (vi) revise prohibited acts in the standards of conduct and practice.

18VAC15-40-10. Definitions.

A. Section 54.1-500 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

- "Board"
- "Home inspection"
- "Home inspector"
- "Person"
- "Residential building"

B. Section 54.1-517.2:1 of the Code of Virginia provides definitions of the following terms and phrases as used in 18VAC15-40-130:

- "Bonding"
- "Corrugated stainless steel tubing"

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"Grounding"

C. The following words and terms when used in this chapter shall have the following meanings unless a different meaning is provided or is plainly required by the context:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Adjacent" means adjoining or within three feet of the residential building and that may affect the residential building.

"Applicant" means an individual who has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Client" means a person who engages the services of a home inspector for a home inspection.

"Compensation" means the receipt of monetary payment or other valuable consideration for services rendered.

~~"Component" means a part of a system.~~

"Contact hour" means 50 minutes of participation in a structured training activity.

"Course of construction inspection" means one or more inspections conducted during the construction of a new residential structure.

"CPE" means continuing professional education.

"Department" means the Department of Professional and Occupational Regulation.

"Describe" means to report a system or component by its type or other observed significant characteristics to distinguish it from other systems or components.

"Direct supervision" means that a licensed home inspector is physically present on the premises at all times and is at all times responsible for compliance with this chapter.

"Financial interest" means financial benefit accruing to an individual or to a member of ~~his~~ that individual's immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed \$1,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, forgiveness of debt, or benefits from the use of property, or any combination of ~~it~~ these, paid or provided by a ~~business person~~ business person that exceeds or may be reasonably expected to exceed \$1,000 annually; (iv) ownership of real or personal property if the interest exceeds \$1,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property; (v) personal liability incurred or assumed on behalf

of a business if the liability exceeds 3.0% of the asset value of the business; or (vi) an option for ownership of a business, real property, or personal property if the ownership interest will consist of clause (i) or (iv) of this definition.

"Fireplace" means an ~~interior fire-resistant masonry permanent or prefabricated fixture that can be used to burn fuel and is either vented or unvented assembly consisting of a~~ hearth and fire chamber of noncombustible material provided with a chimney for use with solid fuel.

"Foundation" means the element of a structure that connects to the ground and transfers loads from the structure to the ground. Foundations may be shallow or deep.

"Licensee" means a home inspector as defined in Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without such license.

"New residential structure" or "NRS" means a residential structure for which the first conveyance of record title to a purchaser has not occurred or the purchaser has not taken possession, whichever occurs later.

"NRS specialty" means a designation granted by the board to a home inspector that authorizes such ~~individual licensee~~ individual licensee to conduct a home ~~inspections inspection~~ inspection on ~~any~~ a new residential structure.

"Outbuilding" means any structure on the property that is more than three feet from the residential building and that may affect the residential building.

~~"Prelicense education course" means an instruction program approved by the board and is one of the requirements for licensure effective July 1, 2017.~~

"Qualifying experience" means the experience used by a home inspector applicant to qualify for licensure.

"Readily accessible" means available for access without requiring moving or removing of any obstacles.

"Reinstatement" means the process and requirements through which an expired license can be made valid without the licensee having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Residential structure" means a structure consisting of no more than two dwelling units or a townhouse.

~~"Solid fuel burning fuel-burning appliances" means a~~ hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney and related

~~factory made parts designed for unit assembly without requiring field construction chimney-connected devices that burn solid fuel for purposes of heating, cooking, or both. Such appliances include wood stoves, fireplace wood-burning inserts, wood pellet-burning appliances, or similar solid fuel-burning devices.~~

~~"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.~~

"Virginia Residential Code" means the provisions of the Virginia Construction Code (Part I (13VAC5-63-10 ~~et seq.~~ through 13VAC5-63-390) of 13VAC5-63) applicable to R-5 residential structures and ~~that~~ includes provisions of the International Residential Code as amended by the Board of Housing and Community Development.

18VAC15-40-20. Necessity for licensure.

A. It shall be unlawful for any individual who does not possess a license as a home inspector issued by the board to perform a home inspection ~~for compensation on a residential building.~~

B. A home inspection on a new residential structure, to include any course of construction inspection, shall only be conducted by a home inspector with the NRS specialty ~~and who has completed a training module on the Virginia Residential Code.~~

C. An individual who does not hold a license as a home inspector and who is only conducting inspections of a component or system of a residential building is not considered to be performing a home inspection.

18VAC15-40-25. Application procedures.

A. All applicants seeking licensure shall must submit an application with the appropriate fee specified in 18VAC15-40-50. Application shall will be made on forms provided by the board or ~~its~~ the board's agent.

1. By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

2. The receipt of an application and the deposit of fees by the board do not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall must be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

C. The applicant will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails to complete the application process within 12 months of receipt of the application in the board's office must submit a new application.

D. The applicant shall must immediately report all changes in information supplied with the application, if applicable, prior to issuance of the license or expiration of the application.

18VAC15-40-30. General requirements for licensure.

A. In addition to the provisions of 18VAC15-40-32, every applicant for a home inspector license shall must meet the requirements provided in this section.

B. The applicant shall must be at least 18 years old.

C. The applicant shall must provide a mailing address, which shall will serve as the address of record. A post office box is only acceptable as the address of record when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall must disclose the following information:

1. All misdemeanor convictions ~~involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, except marijuana convictions,~~ within ~~five~~ three years of the date of the application; and
2. All felony convictions ~~during the applicant's lifetime.~~

~~Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.~~

E. The applicant for licensure shall must be in compliance with the standards of conduct and practice set forth in Part V (18VAC15-40-140 ~~et seq.~~ through 18VAC15-40-180) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

F. The applicant shall must report any ~~suspension, revocation, or surrender of a license, certification, or registration in connection with a disciplinary action or a license, certification, or registration that has been the subject of discipline in any jurisdiction prior to applying for licensure~~ action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration; imposition of a monetary penalty; or requirement to take remedial education or other corrective action. The board, in its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of licenses based on disciplinary action by for any prior action

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taken by any board or administrative body in any jurisdiction. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

G. The applicant for licensure shall must submit evidence satisfactory to the board of having obtained general liability insurance with minimum limits of \$250,000 per occurrence. A business liability insurance policy or a commercial general liability insurance policy with minimum limits of \$250,000 may be considered to meet such requirement, so long as the applicant is listed as an additional insured. If for any reason the board cannot reasonably ensure that the applicant is sufficiently covered in accordance with this subsection, the board may require that requisite coverage be obtained in the name of the applicant. Proof of such insurance policy must be submitted in order to obtain the license.

18VAC15-40-32. Qualifications for licensure.

A. Qualifications for licensure. An applicant for licensure as a home inspector shall must furnish documentation acceptable to the board that one of the qualifications for licensure in Table 1 has been met.

TABLE 1			
	Board-approved prelicense education course contact hours	Experience	Passed the board-approved examination
1.	35	Completion of 100 home inspections prior to July 1, 2017	Yes
2.	35	Completion of 50 home inspections under the direct supervision of a home inspector	Yes
3.	70	Completion of 50 home inspections prior to July 1, 2017	Yes

TABLE 1 Qualifying Points Table: Education Category		
<u>Points Assigned</u>	<u>Education Description</u>	<u>Maximum Allowable Points</u>
<u>5</u>	<u>Successfully completed a three credit-hour minimum class with a passing grade in home inspection from an accredited college or university pursuant to 18VAC15-40-32 C.</u>	<u>5</u>

4.	70	Completion of 25 home inspections under the direct supervision of a home inspector	Yes
5.	None	Verification of 10 years' experience as a home inspector prior to July 1, 2017, with a minimum of 250 home inspections completed during such time period	Yes

~~B. Prelicense education courses must be approved by the board pursuant to Part VI (18VAC15-40-200 et seq.) of this chapter. No more than half of the required hours may be completed using distance or online education technology.~~

~~C. Verification of home inspections completed under the direct supervision of a home inspector must be provided by an individual who was properly licensed or certified by the board during the applicable time period.~~

D. The National Home Inspector Examination provided by the Examination Board of Professional Home Inspectors is the board approved examination pursuant to § 54.1-517.2 A 2 c of the Code of Virginia. of the following:

1. The applicant has passed a board-approved examination. The National Home Inspector Examination provided by the Examination Board of Professional Home Inspectors is the board-approved examination pursuant to § 54.1-517.2 A 2 c of the Code of Virginia.

2. A minimum of 15 qualifying points from a combination of the following education and experience, with a minimum of five points from each category in Tables 1 and 2. An applicant cannot be assigned points from multiple areas in each table for the same activity for which credit is being sought. Except as provided in Tables 1 and 2, an applicant cannot be assigned points multiple times for the same activity for which credit is being sought.

<u>1</u>	<u>Successfully completed a three credit-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate from an accredited college or university pursuant to 18VAC15-40-32 C.</u>	<u>3</u>
<u>1</u>	<u>Successfully completed a four-hour minimum course specific to home inspection contracts, home inspection reports, or topics covered on the board-approved examination.</u>	<u>3</u>
<u>5</u>	<u>Successfully completed a minimum 35-hour prelicense education course approved by the board in accordance with Part VI (18VAC15-40-200 through 18VAC15-40-300) of this chapter.</u>	<u>5</u>
<u>10</u>	<u>Successfully completed a minimum 70-hour prelicense education course approved by the board in accordance with Part VI (18VAC15-40-200 through 18VAC15-40-300) of this chapter.</u>	<u>10</u>

TABLE 2
Qualifying Points Table: Experience Category

<u>Points Assigned</u>	<u>Experience Description</u>	<u>Maximum Allowable Points</u>
<u>2</u>	<u>One month of full-time qualifying experience pursuant to subsection B of this section.</u>	<u>12</u>
<u>1</u>	<u>Completion of five home inspections under the direct supervision of a home inspector or without supervision if lawfully conducted as authorized under the laws of the applicable jurisdiction.</u>	<u>12</u>
<u>1</u>	<u>Membership in a home inspector trade or professional association.</u>	<u>2</u>
<u>2</u>	<u>One year teaching at an accredited college or university, trade school, or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or home inspections.</u>	<u>6</u>
<u>2</u>	<u>The qualified individual of a contractor license issued pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia for one or more of the following classifications or specialty services:</u> <u>1. Residential building contractors (RBC)</u> <u>2. Home improvement contracting (HIC)</u> <u>3. Commercial building contractors (CBC)</u>	<u>2</u>
<u>1</u>	<u>The qualified individual of a contractor license issued pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia for one or more of the following classifications:</u> <u>1. Electrical contractors (ELE)</u> <u>2. HVAC contractors (HVA)</u> <u>3. Plumbing contractors (PLB)</u>	<u>3</u>
<u>2</u>	<u>Architect or professional engineer licensed pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia.</u>	<u>2</u>
<u>2</u>	<u>Building code official certified pursuant to the Department of Housing and Community Development Virginia Certification Standards (13VAC5-21).</u>	<u>2</u>

B. Qualifying experience. In order to be acceptable, qualifying experience must meet all of the following:

1. Experience must be verified by one or more of the following: licensed home inspector; qualified individual or

responsible manager of a licensed contractor; or any combination of at least three licensed real estate professionals or clients.

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2. An applicant's experience must have been gained by assisting a properly licensed or certified home inspector, as applicable, and under such home inspector's direct supervision or through the performance of home inspections as authorized under the laws of the applicable jurisdiction.

3. For the purposes of this part, experience requirements are expressed in terms of calendar periods of full-time employment.

a. A month of full-time qualifying experience is a minimum of 146 hours during a one-month period or a minimum of 18 workdays in a one-month period. More than 146 hours or 18 workdays during a one-month period will not be considered as more than one month of full-time employment.

b. Partial credit may be given for actual hours of qualifying experience if the applicant's experience was gained working less than full time.

C. Accredited colleges or universities and verification procedures. An applicant seeking to qualify for licensure based on completion of a class from an accredited college or university must submit an official transcript from the school where the applicable class was completed. Only classes from an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. An applicant seeking to qualify for licensure based on working or teaching at an accredited college or university must submit evidence satisfactory to the board of employment by the college or university. Only employment with an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered.

18VAC15-40-33. Examination conduct.

Procedures and appropriate conduct established by the board or examination organization administering the examination approved by the board, or both, ~~shall~~ must be followed by the applicant. Such procedures ~~shall~~ include written instructions communicated prior to the examination date and instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the examination organization with regard to conduct at the examination ~~shall~~ will be grounds for denial of the application.

18VAC15-40-35. Qualifications for the new residential structure specialty.

To obtain the NRS specialty, the applicant shall submit the appropriate application form and fee pursuant to 18VAC15-40-50 and meet the following qualifications:

1. Hold a current and valid home inspector license. An applicant who does not hold a current and valid home inspector license shall apply for such licensure and meet the requirements contained in 18VAC15-40-30 and 18VAC15-40-32.

2. Submit proof of successful completion of an NRS training module approved by the board pursuant to Part VI (18VAC15-40-200 ~~et seq.~~ through 18VAC15-40-300) of this chapter and completed no more than two years prior to the date of application.

18VAC15-40-48. General fee requirements.

All fees are nonrefundable and ~~shall~~ will not be prorated. The date on which the fee is received by the department or ~~its~~ the department's agent will determine whether the fee is on time. Checks or money orders ~~shall~~ must be made payable to the Treasurer of Virginia.

18VAC15-40-50. Fees.

A. The following table lists fees:

Fee type	Fee amount	When due
Initial home inspector application	\$80	With application for home inspector
Initial NRS specialty application	\$80	With application for NRS specialty designation
Home inspector renewal	\$45	With renewal application
Home inspector with NRS specialty renewal	\$90	With renewal application
Home inspector reinstatement	\$125	With reinstatement application
Home inspector with NRS specialty reinstatement	\$170	With reinstatement application
Prelicense education course approval	\$250	With prelicense education course approval application
NRS training module approval	\$150	With NRS training module approval application
NRS CPE course approval	\$150	With NRS CPE course approval application

~~For licenses expiring after February 1, 2020, and before February 1, 2022, the renewal fees shall be as follows:~~

Home inspector renewal	\$40
Home inspector with NRS specialty renewal	\$80

For reinstatement applications received after March 1, 2020, and on or before February 28, 2022, the reinstatement fees shall be as follows:

Home inspector reinstatement	\$120
Home inspector with NRS specialty reinstatement	\$160

B. For licenses expiring after February 1, 2022, and before February 1, 2024, the renewal fees shall be as follows:

Home inspector renewal	\$25
Home inspector with NRS specialty renewal	\$50

C. For reinstatement applications received after March 1, 2022, and on or before February 29, 2024, the reinstatement fees shall be as follows:

Home inspector reinstatement	\$105
Home inspector with NRS specialty reinstatement	\$130

18VAC15-40-60. Renewal required.

Licenses issued under this chapter ~~shall will~~ expire two years from the last day of the month in which they were issued.

18VAC15-40-72. Continuing professional education required for home inspector licensure.

A. Each licensee ~~shall have completed~~ must complete 16 contact hours of continuing professional education (CPE) during each license renewal cycle. CPE can be met through classroom instruction, distance learning, or online education technology.

B. Notwithstanding the provisions of 18VAC15-40-75, the subject matter addressed during CPE contact hours ~~shall be is~~ limited to the content areas covered by the board's approved examination and the list of acceptable topics provided in 18VAC15-40-73.

C. The licensee ~~shall will~~ not receive CPE credit for the same training course more than once during a single license renewal cycle.

D. A licensee who completes the initial training module required by 18VAC15-40-35 to obtain an NRS specialty may count completion of the module ~~towards toward~~ the required 16 hours of CPE credit for that renewal cycle.

18VAC15-40-73. Acceptable topics for continuing professional education.

A. The following topics will be accepted for CPE credit, all as related to home inspection services:

1. Site conditions;
2. Exterior components;
3. Roof components;
4. Structural components;
5. Electrical systems;
6. Cooling systems;
7. Heating systems;
8. Insulation, moisture management systems, and ventilation systems;
9. Mechanical exhaust systems;
10. Plumbing systems;
11. Interior components;
12. Fireplaces, fuel-burning appliances, chimney, and vent systems;
13. Common permanently installed kitchen appliances;
14. Home inspection reporting requirements;
15. Responsibilities to the client, including required home inspection contract elements;
16. Laws and regulations applicable to the profession; and
17. Content areas covered by the board's approved examination.

B. In addition to the topics provided in subsection A of this section, a licensee may receive a maximum of four contact hours of CPE credit for completion of training required to maintain credentials related to home inspection services, including asbestos inspection, lead inspection, and radon testing.

C. A licensee may apply completion of the NRS CPE course, as applicable, toward the 16 contact hours of CPE required for license renewal.

18VAC15-40-75. Board-approved new residential structure update continuing professional education course required to maintain new residential structure specialty.

A. In addition to the CPE requirements of 18VAC15-40-72, to maintain the NRS specialty, the licensee shall must submit proof of completion of a ~~four-hour~~ board-approved NRS CPE course, ~~which can be applied toward the 16 contact hours of CPE required for the license renewal.~~

B. A licensee who has taken the initial NRS training module pursuant to subdivision 2 of 18VAC15-40-35 no more than one

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year before the expiration date on the license will not require proof of the NRS CPE course for that renewal. All other requirements for renewal must be met in order to renew the license and the home inspector is still required to have completed all other CPE requirements pursuant to this chapter.

18VAC15-40-76. Continuing professional education for instructors.

A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit ~~shall will~~ not be given for subsequent offerings of a course or activity with the same content within the same licensing cycle. In addition, a licensee may receive two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of a CPE course.

18VAC15-40-78. Maintenance of continuing professional education records.

A. Each licensee ~~shall must~~ maintain evidence of the satisfactory completion of CPE for at least three years following the end of the license renewal cycle for which the CPE was taken. Such documentation ~~shall must~~ be provided to the board or ~~its the board's~~ duly authorized agents upon request. The following ~~shall will~~ be maintained by the licensee to document completion of the hours of CPE specified in 18VAC15-40-72:

1. Evidence of completion that ~~shall contain~~ contains the name, address, and telephone number of the training provider;
2. The dates the ~~applicant licensee~~ participated in the training;
3. Descriptive material of the subject matter presented documenting that ~~it the subject matter~~ covers the content areas covered by the board's examination or the list of acceptable topics provided in 18VAC15-40-73; and
4. A statement from the provider verifying the number of CPE contact hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit ~~shall must~~ provide the necessary documentation stipulated in this section.

C. The licensee may request additional time to meet the CPE requirement; however, CPE hours earned during a license renewal cycle to satisfy the CPE requirement of the preceding license renewal cycle ~~shall will~~ be valid only for that preceding license renewal cycle.

18VAC15-40-80. Procedures for renewal.

A. Prior to the expiration date shown on the license, the board ~~shall will~~ mail a renewal notice to the licensee's address of record.

B. Prior to the expiration date shown on the license, ~~the a~~ licensee desiring to renew ~~his a~~ license ~~shall must~~ return to the board ~~the renewal notice~~ (i) a completed renewal application, (ii) proof of insurance required by 18VAC15-40-30, (iii) proof of completion of CPE, in accordance with 18VAC15-40-72, and (iv) the appropriate fee specified in 18VAC15-40-50.

C. ~~Prior to the expiration date shown on the license~~ In addition to the requirements of subsection B of this section, a licensee with the NRS specialty must submit proof of completion of four hours of board-approved NRS CPE, in accordance with 18VAC15-40-75; ~~along with the renewal notice and the appropriate fee specified in 18VAC15-40-50.~~

D. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee and any other required documentation as an application for renewal. The date on which the renewal application is received by the department or ~~its the department's~~ agent will determine whether the renewal application was received on time.

E. By submitting the renewal application, the licensee is affirming that the CPE requirements of 18VAC15-40-72 have been met; and ~~he the licensee~~ is in continued compliance with this chapter.

18VAC15-40-90. Reinstatement.

A. If the requirements for renewal of a license, as provided in 18VAC15-40-80, are not completed by the licensee within 30 days after the expiration date on the license, reinstatement of the license ~~shall will~~ be required.

B. All applicants for reinstatement ~~shall must~~ meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72, and 18VAC15-40-75, as applicable.

C. A license may be reinstated for up to two years following the expiration date upon submittal of the reinstatement application consisting of (i) payment of the reinstatement fee, (ii) proof of insurance required by 18VAC15-40-30, (iii) proof of CPE in accordance with 18VAC15-40-72, and (iv) proof of CPE to maintain the NRS specialty, if applicable. After two years, the license ~~shall will~~ not be reinstated under any circumstances, and the individual ~~shall must~~ apply as a new applicant and meet entry requirements current at the time of submittal of the new application.

D. By submitting the reinstatement application, the individual is affirming ~~that he is in~~ continued compliance with this chapter.

18VAC15-40-105. Status of licensee during the period prior to reinstatement.

A. A licensee who reinstates ~~his a~~ license ~~shall will~~ be regarded as having been continuously licensed without interruption ~~and shall~~; will remain under the disciplinary

authority of the board during this entire period; and ~~shall~~ will be held accountable for ~~his~~ the licensee's activities during this period.

B. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC15-40-108. License renewal or reinstatement after July 1, 2017. (Repealed.)

~~A license eligible for renewal or reinstatement on or after July 1, 2017, shall be required to meet the requirements of this part as amended effective July 1, 2017, upon submittal of the renewal or reinstatement application, as applicable.~~

18VAC15-40-120. Home inspection contract.

A. For the protection of both the client and the licensee, both parties ~~shall~~ must sign a legible, written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed. Prior to the commencement of work or acceptance of payments, the contract must be signed by both (i) the client or the client's authorized representative and (ii) the licensee. The licensee must make prompt delivery to the client or client's authorized representative a fully executed copy of the contract in compliance with this section before work begins. Any modification to the contract that changes the cost, scope of work to be performed, or estimated completion date must be in writing and signed by all parties.

B. At a minimum, the written contract ~~shall~~ must include:

- ~~1. Name, business name (if applicable), business address, and telephone number of the home inspector.~~ The following information applicable to the home inspector:
 - a. Name;
 - b. Business name, if applicable;
 - c. Address;
 - d. Telephone number, email address, or other contact information, as applicable; and
 - e. License number and notation of NRS specialty, if applicable.
- ~~2. License number of the home inspector, and notation of NRS specialty, if applicable.~~
- ~~3. 2. Name of the clients client.~~
- ~~4. 3. Physical address of the residential property building or NRS to be inspected.~~
- ~~5. 4. Cost of the home inspection.~~
- ~~6. 5. A listing of all areas and systems to be inspected, including those inspections that are either partial or limited in scope.~~

~~7. 6. A statement in the contract that the home inspection does not include a review for compliance with regulatory requirements (Virginia Uniform Statewide Building Code or other codes, regulations, laws, or ordinances, etc.).~~

~~8. To the extent that any of the following categories are not covered by the home inspection, they shall be noted as exclusions in the inspection contract 7. A statement disclosing any exclusions to the home inspection. Such exclusions may include the following:~~

- a. The condition of systems or components that are not readily accessible.
- b. The remaining life of any system or component.
- c. The strength, adequacy, effectiveness, or efficiency of any system or component.
- d. The causes of any condition or deficiency.
- e. The methods, materials, or costs of corrections.
- f. Future conditions, including failure of systems and components.
- g. The suitability of the property for any specialized use.
- h. The market value of the property or its marketability.
- i. The advisability of the purchase of the property.
- j. The presence of diseases harmful to humans or potentially hazardous plants or animals, including ~~wood destroying~~ wood-destroying organisms and mold.
- k. The presence of any environmental hazards, including toxins, carcinogens, noise, asbestos, lead-based paint, mold, radon, and contaminates in soil, water, and air.
- l. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.
- m. The operating costs of systems or components.
- n. The acoustical properties of any system or component.
- o. The presence of components involved in manufacturer's recalls.
- p. The inspection of outbuildings.

~~To the extent any other items are not specifically included in the home inspection by agreement of the parties, they shall also be noted as exclusions in the home inspection contract.~~

- ~~9. 8. Estimated delivery date of the home inspection report to the client of the home inspection report.~~
- ~~10. 9. Dated signatures of both the home inspector and the client or the client's authorized representative.~~
10. A statement providing that any modification to the contract that changes the cost, scope of work to be performed, or estimated completion date must be in writing and signed by all parties.
11. Disclosure of the cancellation rights of the parties.

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12. A general statement on the limits of the home inspector's liability.

C. The home inspection contract ~~shall~~ must make written disclosure that the home inspection report is (i) based upon visual observation of existing conditions of the inspected ~~property residential building or NRS~~ at the time of the inspection, and is (ii) not intended to be, or to be construed as, a guarantee, warranty, or any form of insurance. This provision does not prevent a home inspector from offering a separate guarantee, warranty, or any form of insurance if ~~he~~ the home inspector so chooses.

D. ~~If the home inspector recommends a person to the client for repairs or modifications to the inspected property, the home inspector shall disclose to the client all financial interests that the home inspector has with the recommended person. The disclosure shall be written within the home inspection contract.~~ The home inspection contract must disclose any financial interest that the licensee has or reasonably expects to have with any person whom the licensee recommends to the client for the repairs or modifications to the residential building or NRS.

E. If the home inspector has designed or performed repairs or modifications to, or has inspected, the residential building or NRS to be inspected within the preceding 12 months, the home inspection contract must disclose to the client the specifics of the repairs or modifications the home inspector designed or performed or any inspection the home inspector performed.

18VAC15-40-130. Home inspection report.

A. A home inspection report is a written evaluation of the readily accessible components of a residential building or NRS, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components.

B. Home inspection reports ~~shall~~ must contain:

1. Information pertaining to the licensee, including:

- a. ~~Licensee's name~~ Name;
- b. ~~Business address~~ Address;
- c. Telephone number, email address, or other contact information, as applicable; and
- d. License number and expiration date, to be followed by "NRS" if so designated and performing a home inspection on a new residential structure;

2. ~~The name, address, and telephone number~~ contact information of the client or the client's authorized representative, ~~if available at the time of the inspection~~;

3. The physical address of the residential ~~property building~~ building or NRS inspected; and

4. The date, ~~time~~ time to include both start and finish times of the home inspection, ~~and weather conditions at the time of the home inspection.~~

~~B.~~ C. In conducting a home inspection and reporting its findings, the home inspector, ~~at a minimum, shall~~ must inspect the condition of and ~~shall~~ must describe in writing the composition ~~or~~ and characteristics of the following readily accessible components and readily observable defects of the residential building or NRS, except as may be limited ~~in~~ by the home inspection contract ~~agreement~~:

1. Structural system.

- a. Foundation.
- b. Framing.
- c. Stairs.
- d. Crawl space, ~~the~~ The method of inspecting the crawl space ~~shall~~ must be noted and explained ~~in the home inspection report. If the crawl space cannot be inspected, the licensee shall explain in the home inspection report why this component was not inspected.~~
- e. Crawl space ventilation and vapor barriers.
- f. Slab floor, ~~when present.~~
- g. Floors, ceilings, and walls.
- h. Ceilings.
- i. Walls.

2. Roof structure, attic, and insulation systems and components.

- a. Roof covering. The method of inspecting the roof covering ~~shall~~ must be noted and explained ~~in the home inspection report. If the roof covering cannot be inspected, the licensee shall explain in the home inspection report why this component was not inspected.~~
- b. Roof ventilation.
- c. Roof drainage system, to include gutters and downspouts.
- d. Roof flashings, if readily visible.
- e. Skylights, chimneys, and roof penetrations, but not antennae or other roof attachments.
- f. Roof framing and sheathing.
- g. Attic, ~~unless area is not readily accessible.~~
- h. Attic insulation.

3. ~~Exterior of residential building or NRS~~ systems or components.

- a. Wall covering, flashing, and trim.
- b. ~~Readily accessible doors~~ Doors and windows, but. This does not include the operation of associated security locks, devices, or systems.
- c. Decks, balconies, stoops, steps, porches, attached garages, carports, and any associated railings that are

- adjacent to the residential building or NRS and on the same property ~~but. This does not include~~ associated screening, shutters, awnings, storm windows, detached garages, or storm doors.
- d. Eaves, soffits, and fascias where readily accessible from ground level.
 - e. Walkways, grade steps, patios, and driveways, ~~but. This does not include~~ fences or privacy walls.
 - f. Vegetation, trees, grading, drainage, and ~~any~~ retaining walls adjacent to the residential building or NRS.
 - g. Visible exterior portions of chimneys.
4. Interior of residential building or NRS systems and components.
- a. Interior walls, ceilings, and floors of the residential building or NRS and any adjacent garage.
 - b. Steps, stairways, railings, and balconies and associated railings.
 - c. Countertops and installed cabinets, including hardware.
 - d. Doors and windows, ~~but. This does not include~~ the operation of associated security locks, devices, or systems.
 - e. Garage doors and permanently mounted and installed garage door operators. The automatic safety reverse function of garage door openers ~~shall must~~ be tested, either by physical obstruction as specified by the manufacturer, or by breaking the beam of the electronic photo eye but only when the test can be safely performed and will not risk damage to the door, the opener, any nearby structure, or any stored items.
 - f. Fireplaces, venting systems, hearths, dampers, and fireboxes, ~~but. This does not include~~ mantles, fire screens and doors, or seals and gaskets.
 - g. Solid ~~fuel-burning~~ fuel-burning appliances, ~~if applicable.~~
5. Plumbing system.
- a. Interior water supply and distribution systems, including water supply lines and all fixtures and faucets; ~~but. This does not include~~ water conditioning systems or fire sprinkler systems.
 - b. Water drainage, waste, and vent systems, including all associated fixtures.
 - c. Drainage sumps, sump pumps, and related piping.
 - d. Water heating equipment, including energy source and related vent systems, flues, and chimneys, ~~but. This does not include~~ solar water heating systems.
 - e. Fuel storage and distribution systems ~~for visible leaks.~~
6. Electrical system.
- a. Service drop.
 - b. Service entrance conductors, cables, and raceways.
 - c. Service equipment and main disconnects.
 - d. Service grounding.
 - e. Interior components of service panels and sub panels, including feeders.
 - f. Conductors.
 - g. Overcurrent protection devices.
 - h. ~~Readily accessible installed~~ Installed lighting fixtures, switches, and receptacles.
 - i. Ground fault circuit interrupters.
 - j. Presence or absence of smoke or carbon monoxide detectors.
 - k. Presence of solid conductor aluminum branch circuit wiring.
 - l. Arc fault interrupters ~~shall must~~ be noted if installed but not tested if equipment is attached to them.
7. Heating system.
- a. Heating equipment, including operating controls, ~~but. This does not include~~ heat exchangers, gas logs, built-in gas burning appliances, grills, stoves, space heaters, solar heating devices, or heating system accessories such as humidifiers, air purifiers, motorized dampers, and heat reclaimers.
 - b. Energy source.
 - c. Heating distribution system.
 - d. Vent systems, flues, and chimneys, including dampers.
8. Air conditioning system.
- a. Central and installed wall air conditioning equipment.
 - b. Operating controls, access panels, and covers.
 - c. Energy source.
 - d. Cooling distribution system.
- ~~C. D.~~ To the extent that a component or system cannot be inspected, the home inspection report must identify such component or system and provide an explanation for why the component or system was not inspected.
- ~~E.~~ Systems in the home that are turned off, winterized, or otherwise secured so that they do not respond to normal activation using standard operating controls need not be put into operating condition. The home inspector shall inspection report must state, in writing, the reason these systems or components were not inspected.
- ~~D. F.~~ In accordance with § 54.1-517.2:1 of the Code of Virginia, if a home inspector observes the presence of any shade of yellow corrugated stainless steel tubing during a home inspection in a home that was built prior to the adoption of the 2006 Virginia Construction Code, effective May 1, 2008, the home inspector shall include that observation in the report along with the following statement: "Manufacturers believe that this product is safer if properly bonded and grounded as required by the manufacturer's installation instructions. Proper bonding and grounding of the product should be determined by

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a contractor licensed to perform the work in the Commonwealth of Virginia."

18VAC15-40-140. Conflict of interest.

A. The licensee ~~shall will~~ not:

1. Design or perform repairs or modifications to a residential building or NRS on which ~~he the licensee~~ has performed a home inspection ~~as a result of the findings of the home inspection~~ within 12 months after the date ~~he the licensee~~ performed the home inspection, except in cases where the home inspector purchased the residence after ~~he performed~~ the home inspection was performed;

2. Perform a home inspection of a residential building or NRS upon which ~~he the licensee~~ has designed or performed repairs or modifications within the preceding 12 months without disclosing to the client in the home inspection contract the specifics of the repairs or modifications ~~he the licensee~~ designed or performed;

3. Refer ~~his the licensee's~~ client to another person to make repairs or modifications to a residential building or NRS on which ~~he the licensee~~ has performed a home inspection unless, in accordance with 18VAC15-40-120 D, ~~he the licensee~~ provides written documentation to ~~his the licensee's~~ client that clearly discloses ~~all any financial interests interest~~ that the licensee has or reasonably expects to have with the person who is recommended for the repairs or modifications;

4. Represent the ~~financial~~ interests, either personally or through ~~his~~ employment, of any of the parties to the transfer or sale of a residential building or NRS on which ~~he the licensee~~ has performed a home inspection without disclosing such fact to the client; or

5. Perform a home inspection of a residential building or NRS under a contingent agreement whereby any compensation or future referrals are dependent on the reported findings or on the sale of the property.

B. ~~The Notwithstanding the provisions of 18VAC15-40-180,~~ the licensee ~~shall must~~ not disclose any information concerning the results of the home inspection without the approval of the client for whom the home inspection was performed. However, the licensee may disclose information in situations where there is an imminent endangerment to life or health.

C. The licensee ~~shall must~~ not accept compensation from more than one interested party for the ~~same service home inspection~~ on the same property without the consent of all interested parties.

D. The licensee ~~shall must~~ not accept nor offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with ~~work for which the licensee is responsible the home inspection~~. Additionally, the licensee ~~shall must~~ not enter into any financial relationship with any

party that may compromise the licensee's commitment to the best interest of ~~his the licensee's~~ client.

E. A home inspector may provide services to a client in addition to a home inspection. The home inspector must disclose to the client the additional services to be performed and how such services may conflict with the home inspection. The disclosure must be in writing and may be incorporated into the home inspection contract or contained in a separate written agreement with the client. Any additional services performed pursuant to this subsection must be performed in accordance with applicable laws and regulations.

F. The home inspection ~~shall must~~ not be used as a pretext by the licensee to solicit or obtain work in another field, except for additional diagnostic inspections or testing.

18VAC15-40-145. Competency for assignments.

A. The licensee ~~shall must~~ undertake to perform professional assignments only when qualified by education or experience, or both.

B. A licensee ~~shall must~~ not misrepresent to a prospective or existing client or employer ~~his the licensee's~~ qualifications ~~and~~ or the scope of ~~his the licensee's~~ responsibility in connection with a home inspection.

18VAC15-40-150. Grounds for disciplinary action.

The board ~~has the power to place a licensee on probation,~~ may impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia; or revoke, suspend, or refuse to renew a license when the licensee has been found to have violated or cooperated with others in violating any provision of the regulations of the board or Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia ~~or this chapter~~.

18VAC15-40-152. Notice of adverse action.

A. A licensee ~~shall must~~ notify the board of the following actions against the licensee:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any (i) reprimand; (ii) license or certificate revocation, suspension, or denial; (iii) monetary penalty; (iv) requirement for remedial education; or (v) other corrective action.

2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any ~~(i) misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury or relating to performing a home inspection, except marijuana convictions,~~ or ~~(ii)~~

felony; ~~for which there being is~~ no appeal pending ~~therefrom~~ or the time for appeal ~~having has~~ lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. ~~Any plea of nolo contendere shall be considered a conviction for the purpose of this section.~~

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. ~~The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.~~

18VAC15-40-155. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. ~~Violating, including inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or any of the regulations of the board.~~

2. ~~Obtaining or attempting to obtain a license by false or fraudulent representation; maintaining, renewing, or reinstating a license by false or fraudulent representation; or furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining of a license.~~

2. ~~Performing improvements or repairs to a residential building as a result of the findings of the home inspection within 12 months before or after performing a home inspection on it, except in cases where the home inspector purchased the residential building after he performed the home inspection.~~

3. ~~Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia or this chapter.~~

4. ~~A licensee having~~ 3. Failing to maintain the insurance policy required pursuant to 18VAC15-40-30 G.

4. ~~Failing to report a change or maintain records pursuant to 18VAC15-40-160.~~

5. ~~Having been convicted, or found guilty, in any jurisdiction or disciplined by any jurisdiction, board, or administrative body in any jurisdiction of any offense or violation enumerated in 18VAC15-40-152. Review of convictions shall will be subject to the requirements of § 54.1-204 of the Code of Virginia.~~

5- 6. Failing to inform the board in writing within 30 days that the licensee was convicted, ~~or found guilty, in any jurisdiction~~ or disciplined ~~in~~ by any jurisdiction, board, or

administrative body of any offense or violation enumerated in 18VAC15-40-152.

6. ~~Failing to act as a licensee in such a manner as to safeguard the interests of the public.~~

7. ~~Engaging~~ Failing to use a contract that complies with 18VAC15-40-120.

8. ~~Failing to produce a home inspection report that complies with 18VAC15-40-130.~~

9. ~~Failing to comply with the requirements of 18VAC15-40-140.~~

10. ~~Committing an action that constitutes negligence, incompetence, or misconduct in the practice of the profession, including:~~

a. ~~Having performed a home inspection when not qualified by training or experience to competently perform any part of the home inspection.~~

b. ~~Failing to demonstrate reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.~~

c. ~~Conducting a home inspection on any new residential structure without the NRS specialty issued by the board.~~

d. ~~Having cited, stated, or represented that there exists a violation of the Virginia Uniform Statewide Building Code (13VAC5-63) in a home inspection report or other document prepared relative to a home inspection.~~

e. ~~Advising a client as to whether the client should or should not engage in a real estate transaction or providing an opinion of value regarding the residential building or NRS that is the subject of the home inspection.~~

f. ~~Failing to adequately supervise and review work by unlicensed individuals who are gaining experience under the direct supervision of the licensee.~~

11. ~~Committing an action that constitutes engaging in improper, fraudulent, or dishonest conduct in conducting a home inspection~~

8. ~~Having performed a home inspection when not qualified by training or experience to competently perform any part of the home inspection.~~

9. ~~Failing to maintain, through training, the proficiency to perform Virginia home inspections.~~

10. ~~Conducting a home inspection on any new residential structure without the NRS specialty issued by the board.~~

11. ~~Failing to maintain the insurance policy required pursuant to 18VAC15-40-30 G.~~

12. ~~Failing to report a change pursuant to 18VAC15-40-160.~~

13. ~~Having cited, stated, or represented that there exists a violation of the Virginia Uniform Statewide Building Code (13VAC5-63) in a home inspection report or other document prepared relative to a home inspection, including:~~

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a. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

b. Knowingly misrepresenting factual information in expressing a professional opinion.

c. Intentionally and without justification failing to complete work contracted for or to comply with the terms in the contract.

d. Retaining or misapplying funds paid for which work is either not performed or performed only in part.

12. Allowing a license issued by the board to be used by another.

13. Failing to comply with the requirements of 18VAC15-40-180.

18VAC15-40-160. Maintenance of licenses, reports, and documentation.

A. The licensee ~~shall~~ **must** at all times keep the board informed of ~~his~~ the licensee's current address of record, to include the physical address, as applicable. Changes of address ~~shall~~ **must** be reported to the board in writing within 30 calendar days after such change. A post office box is acceptable as the address of record only when a physical address is also provided. The board ~~shall~~ **will** not be responsible for the licensee's failure to receive notices, communications, and correspondence caused by the licensee's failure to promptly notify the board of any change of address.

B. The licensee ~~shall~~ **must** notify the board in writing of a name change within 30 calendar days of any change in the licensee's legal name. Such notification ~~shall~~ **must** be accompanied by a copy of a marriage license, divorce decree, court order, or other documentation that verifies the name change.

C. The licensee ~~shall~~ **must** retain all records pertaining to home inspections performed to include written reports and supporting documentation for a period of three years from the date of the related home inspection.

D. The licensee ~~shall~~ **must** report the cancellation, amendment, expiration, or any other change of the insurance policy submitted in accordance with 18VAC15-40-30 G within 30 days of the change.

18VAC15-40-180. Response to inquiry of the board.

A. A licensee must respond within 10 days to a request by the board or any of ~~its~~ the board's agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board ~~shall~~ **must** produce to the board or any of ~~its~~ the board's agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend

such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee ~~shall~~ **must** not provide a false, misleading, or incomplete response to the board or any of ~~its~~ the board's agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a licensee must respond to an inquiry by the board or ~~its~~ the board's agent within 21 days.

18VAC15-40-210. Approval of prelicense education courses.

A training provider seeking approval of a prelicense education course ~~shall~~ **must** submit an application for prelicense education course approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC15-40-50, the application ~~shall~~ **must** include:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Course contact hours;
4. Schedule of prelicense education courses if established, including dates, times, and locations;
5. Method of delivery;
6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject matter knowledge and qualifications acceptable to the board;
7. Materials to be provided to students;
8. Fees for prelicense education course and materials; and
9. Training module syllabus.

18VAC15-40-220. Prelicense education course requirements.

A prelicense education course must be a minimum of 35 hours. The syllabus for each type of prelicense education course ~~shall~~ **must** encompass the following subject areas and include methods for identification and inspection, safety and maintenance, and standards for material selection and installation procedures, as applicable:

1. Site conditions;
2. Exterior components of the residential building;
3. Structural system elements;
4. Electrical system elements;
5. Heating and cooling systems;
6. Insulation, moisture management systems, and ventilation systems;

7. Plumbing systems;
8. Interior components;
9. Fireplace and chimney systems;
10. Common permanently installed appliances;
11. Inspection report requirements;
12. Responsibilities to the client, including required contract elements; and
13. Overview of the board's regulations.

18VAC15-40-230. Approval of new residential structures training modules and new residential structures continuing professional education.

A training provider seeking approval of an NRS training module or NRS CPE course ~~shall~~ must submit an application for NRS training module or NRS CPE course approval on a form provided by the board. NRS training modules and NRS CPE can be provided in a classroom environment, online, or through distance learning. In addition to the appropriate fee provided in 18VAC15-40-50, the application ~~shall~~ must include:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Module or CPE course contact hours;
4. Schedule of training module or CPE course if established, including dates, times, and locations;
5. Method of delivery;
6. Instructor information, including name, license number, if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject matter knowledge and qualifications acceptable to the board;
7. Materials to be provided to students;
8. Fees for NRS training module or NRS CPE course and materials; and
9. Training module syllabus.

18VAC15-40-240. New residential structures training module requirements.

A. In order to qualify as an NRS training module under 18VAC15-40-35, the training module must include a minimum of eight contact hours, and the syllabus ~~shall~~ must encompass all of the subject areas set forth in subsection B of this section.

B. The following subject areas as they relate to the Virginia Residential Code ~~shall~~ must be included in all NRS training modules. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Origin of the Virginia Residential Code.
 - a. Overview of Title 36 of the Code of Virginia.
 - b. Roles and responsibilities of the Board of Housing and Community Development and the Department of Housing and Community Development.
 - c. Virginia Uniform Statewide Building Code, Part I (13VAC5-63-10 through 13VAC5-63-390) of 13VAC5-63.
2. Scope of the Virginia Residential Code.
 - a. Purpose of the Virginia Residential Code.
 - b. Exemptions from the Virginia Residential Code.
 - c. Compliance alternatives.
 - d. Code official discretion in administration and enforcement of the Virginia Residential Code.
 - e. Process for amending the Virginia Residential Code.
 - f. Code violations and enforcement.
 - (1) Statute of limitations.
 - (2) Effect of violations.
 - g. Examples of code and non-code violations.
3. Roles of the building code official and the home inspector, including an overview of § 36-105 of the Code of Virginia.

18VAC15-40-250. New residential structures training modules and new residential structures continuing professional education requirements.

In order to qualify for NRS CPE for the renewal of home inspector licenses with the NRS specialty, the NRS CPE must include a minimum of four contact hours and the syllabus ~~shall~~ must encompass all of the topic areas listed in 18VAC15-40-240 for an NRS training module.

18VAC15-40-260. Documentation of prelicense education courses, new residential structures training modules, and new residential structures continuing professional education completion requirements.

All prelicense education course, NRS training module, and NRS CPE providers must provide each student who successfully completes the course or training module with a certificate of completion or other documentation that the student may use as proof of course or training module completion. Such documentation ~~shall~~ must contain the contact hours completed, the date of training, and the course identification number assigned by the board.

18VAC15-40-270. Maintenance of records.

All providers of approved prelicense education courses, NRS training modules, or NRS CPE courses must establish and maintain a record for each student. The record ~~shall~~ must include the student's name and address, the training module or course name and hours attended, the training module or course syllabus or outline, the ~~name of~~ names of the instructors, the

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date of successful completion, and the board's approved training module or course identification number. Records ~~shall~~ must be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (18VAC15-40)

~~Home Inspector License Application, A506-3380LIC-v4 (eff. 12/2021)~~

~~Home Inspector NRS Specialty Designation Application, A506-3380NRS-v1 (eff. 7/2017)~~

~~Home Inspector Experience Verification Form, A506-3380EXP-v7 (eff. 9/2017)~~

~~Home Inspectors - Inspection Log, A506-3380ILOG-v1 (eff. 9/2017)~~

~~Home Inspector Reinstatement Application, A506-3380REI-v4 (eff. 2/2022)~~

~~Home Inspector - Course Approval Application, Prelicense Education Course/NRS Training Module/NRS CPE, A506-3331HICRS-v3 (eff. 2/2020)~~

[Home Inspector License Application, A506-3380LIC-v4 \(eff. 7/2022\)](#)

[Home Inspector Qualifying Experience Verification Form, A506-3380EXP-v8 \(eff. 7/2022\)](#)

[Home Inspectors - Inspection Log, A506-3380ILOG-v2 \(eff. 7/2022\)](#)

[Home Inspector NRS Specialty Designation Application, A506-3380NRS-v2 \(eff. 7/2022\)](#)

[Home Inspector Renewal/Reinstatement Application, A506-3380REN_REI-v1 \(eff. 7/2022\)](#)

[Home Inspector - Course Approval Application, Prelicense Education Course, NRS Training Module, or NRS CPE, A506-3331HICRS-vs4 \(eff. 7/2022\)](#)

VA.R. Doc. No. R21-6496; Filed June 27, 2024, 5:17 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program.

Agency Contact: Erin Barrett, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC76-20)

~~Request for a Waiver or an Exemption from Reporting (rev. 10/2019)~~

~~Request for a Waiver or an Exemption from Reporting: Veterinarian (rev. 10/2019)~~

~~Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 9/2021)~~

~~Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Application to Register as a Virginia Medicaid Managed Care Authorized Agent Clinical Designee to Receive Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Application to Register as a Virginia Medicaid Managed Care Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Account Development Form for Reporting to Virginia's Prescription Monitoring Program (rev. 7/2018)~~

~~Request to Register as an Authorized Parole or Probation Officer to Receive Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Request to Register as an Authorized Drug Diversion Investigator to Receive Information from the Prescription Monitoring Program (rev. 4/2018)~~

~~Request to Register as an Authorized Investigator for the Department of Corrections to Receive Information from the Prescription Monitoring Program (eff. 8/2019)~~

[Recipient Request Form \(rev. 6/2023\)](#)

[Dispenser Registration Form for Prescription Monitoring Program Reporting Account \(rev. 1/2022\)](#)

[Request for a Waiver or an Exemption from Reporting \(rev. 2/2022\)](#)

[Request for a Waiver or an Exemption from Reporting for Veterinarians \(rev. 7/2024\)](#)

VA.R. Doc. No. R24-7990; Filed July 8, 2024, 8:11 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD FOR BARBERS AND COSMETOLOGY

Titles of Documents: [Cosmetology Licensees Completing Training Prior to Straight Razor Requirement.](#)

[Implementation of 1,000-Hour Cosmetology Curriculum.](#)

[Non-Traditional Classroom Instruction.](#)

Public Comment Deadline: August 28, 2024.

Effective Date: September 1, 2024.

Agency Contact: Kelley Smith, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, or email barbercosmo@dpor.virginia.gov.

VIRGINIA FIRE SERVICES BOARD

Title of Document: [Aid to Localities Grant Policy.](#)

Public Comment Deadline: August 28, 2024.

Effective Date: August 29, 2024.

Agency Contact: Spencer Willett, Government Affairs Manager, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen 23059, or email spencer.willett@vdfp.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: [Virginia Private Activity Bond Local Housing Authority Guidelines.](#)

Public Comment Deadline: August 28, 2024.

Effective Date: August 29, 2024.

Agency Contact: Chase Sawyer, Policy and Legislative Services Manager, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 310-5872, or email chase.sawyer@dhcd.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF CONSERVATION AND RECREATION

Public Comment Opportunity for the 2024 Virginia Outdoor Plan - Recreation for All

The Virginia Outdoors Plan (VOP) fulfills the Commonwealth's obligation to the Land and Water Conservation Fund (LWCF) Act administered by the National Park Service. It is the statewide conservation and outdoor recreation plan (SCORP) for all levels of government and other recreation interests across the state. The contents of the VOP help guide funding prioritization and distribution in outdoor recreation planning. Successful VOP publication every five years provides the Commonwealth access to significant LWCF funding for outdoor public recreation across the state, including for local and regional parks. This drafted 2024 Virginia Outdoors Plan - Recreation for All (VOP 2024-2029) must be reviewed and approved by the National Park Service (NPS) to ensure it meets all the LWCF requirements for a SCORP. This 30-day public comment period is part of the NPS review process.

Public Comment Deadline: July 31, 2024.

Contact Information: Allison Tillett, Virginia Outdoors Program Coordinator, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 238-8620, or email allison.tillett@dcr.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Residential Resources Limited Partnership - Charles City County

The Department of Environmental Quality proposes to issue a consent special order to Residential Resources Limited Partnership for alleged violation of the State Water Control Law at the Sign Post Estates wastewater treatment plant located in Charles City County, Virginia. A description of the proposed action is available at the DEQ contact listed or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. DEQ will accept comments by email or postal mail from July 29, 2024, through August 28, 2024.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality Piedmont Regional Office, 4949A Cox Road, Glen Allen, Virginia 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for the Town of Wytheville

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for the Town of Wytheville for violations of the State Water Control Law and regulations at the Wytheville wastewater treatment plant in Wythe County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-orders>. The DEQ contact will accept comments by email or postal mail from July 29, 2024, through August 28, 2024.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Sedge Hill Solar LLC Notice of Intent for a Small Renewable Energy Project (Energy Storage) - Halifax County

Sedge Hill Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (energy storage) in Halifax County, Virginia, pursuant to 9VAC15-100. The project name is Sedge Hill Solar; the owner is Sedge Hill Solar LLC; and the project developer is Birch Creek Renewables. The DEQ project number is RE0000318.

The location of the project is near Chaffin Trail in Halifax County with a centroid of Latitude 36.7926780°, Longitude - 78.9220490°. The proposed project will have a maximum rated capacity of 80 megawatts alternating current on approximately 812 disturbed acres. The project will include the utilization of approximately 224,800 photovoltaic panels.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

High Bridge Solar LLC Notice of Intent for a Small Renewable Energy Project (Energy Storage) - Town of Farmville

High Bridge Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project in the Town of Farmville, Virginia, pursuant to 9VAC15-100. The project name is High Bridge Solar; the owner is High Bridge Solar LLC; and the project developer is Inovateus Solar. The DEQ project number is RE0000321.

The location of the project is near Cedar Avenue in the Town of Farmville with a centroid of Latitude 37.302096°, Longitude

General Notices

-78.374746°. The proposed project will have a maximum rated capacity of 12 megawatts alternating current on one parcel totaling 131 acres. The project will include the utilization of approximately 27,600 photovoltaic panels and will sit on a fixed tilt racking system.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 718-9569, or email matthew.a.snow@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Study of Greendale Creek and Unnamed Tributary to Fleenor Branch in Washington County

Purpose of Notice: The Department of Environmental Quality (DEQ) seeks public comment on to the development of a draft cleanup study, also known as a total maximum daily (TDML) report, for Greendale Creek and Unnamed Tributary to Fleenor Branch in Washington County.

Greendale Creek and the Unnamed Tributary to Fleenor Branch are listed as impaired waters and require a cleanup study since monitoring data indicates that the waters do not meet Virginia's general water quality standard for aquatic life. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for any future adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. The adoption of the WLA may require new or additional requirements for entities holding a Virginia Pollutant Discharge Elimination System (VPDES) permit in the Greendale Creek or Unnamed Tributary to Fleenor Branch watersheds.

A study has been completed for Greendale Creek and the Unnamed Tributary to Fleenor Branch to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. At the meeting, DEQ will present the results of the study and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Cleanup Study Location: The cleanup study addresses the following impaired stream segments. Greendale Creek is in Washington County and flows approximately 5.03 miles in length. It begins at its headwaters and continues to the confluence of the North Fork of the Holston River. The Unnamed Tributary to Fleenor Branch is in Washington County and flows approximately 0.85 miles in length. It begins at its headwaters and continues to its confluence with Fleenor Branch.

Public Meeting: The final public meeting on the development of the cleanup study will be held at the Virginia Department of Environmental Quality Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, August 13, 2024, at 6:30 p.m. In the event of inclement weather, the meeting will be held on August 14, 2024, at the same time and location.

Public Comment Period: August 13, 2024, to September 12, 2024.

How to Comment: DEQ accepts written comments by email or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact Information: Landon Jenkins, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 608-8643, or email landon.jenkins@deq.virginia.gov.

VIRGINIA CODE COMMISSION Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.