

Vermont Department of Liquor and Lottery
Administrative Rules Update
Final Proposed Rule 22-P37
Responsiveness Summary

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Administrative Procedure Act Requirement

This Responsiveness Summary meets the Department of Liquor and Lottery’s (DLL) obligations under the Vermont Administrative Procedure Act to consider fully all written and oral submissions concerning the proposed rule and issue an explanation on why the agency overruled the arguments and considerations against the rule. Specifically, "[w]hen an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision." 3 V.S.A. §841(b)(2).

Background and Opportunities for Public Comment

Title 7 VSA § 108 gives statutory authority to the Board of Liquor and Lottery to adopt rules as necessary to carry out to provisions of Title 7. As such, one Administrative Rule is kept under the Vermont Code of Rules, which includes several groups of regulations to ensure public safety by preventing the misuse of alcohol and tobacco through controlled distribution, providing for applicable enforcement, and establishing robust education requirements.

These Regulations have been updated periodically over the years to reflect changes in statute and realities in the regulatory landscape, with the most recent update having occurred in late 2016. An effort was undertaken in late 2019, but that work was not codified in an Administrative Rule update. Since then, several Acts as enacted by the Vermont Legislature have amended significant portions of Title 7, including the consolidation of the Departments of Liquor and Lottery. The Department is highly motivated to engage in this work again to align the regulatory framework with best practices, with state law, and with common sense.

The Board of Liquor and Lottery voted to adopt with minor changes the results of DLL's process to modernize and deconflict our current regulatory model at its duly warned public meeting on November 9, 2022. That work product was the result of a series of 11 public working meetings to look at subsets of the Administrative Rule.

On November 23, 2022, DLL filed the Proposed Rules with the Secretary of State's office. Following the filing, DLL hosted a public hearing on January 20th, 2023, pursuant to its own public input maximization strategy and under obligations set forth under the Administrative Procedures Act, 3 V.S.A. §840. Verbal comments were made and recorded at all the above events and hearings. Audio files of the recordings of the above public events are available from DLL upon request. Written comments were solicited and collected via email, mail, and fax. Written comments were collected from a total of 9 individuals and entities and are included in this filing. Written and verbal comments received are categorized below into sections that represent the subject area of the comment received.

Note that some of the public comments received are considered "out of scope" of the regulation. However, DLL has responded to these comments in this summary recognizing that they reflect important voices of individuals in the state and are due consideration regardless of the direct implications of this filing.

Comments and Responses

Advertising Related Comments

Comment-AD1: The Department did receive 1 written comment in opposition to updates to Advertising Regulations under Section 4. The opposition came from the Vermont Wholesale Beverage Association and was generally focused on removing additional sections of the Advertising Regulations that required obtaining Liquor Control Board Approval prior to using point of sale advertising at retail locations.

Response-AD1: The Department agreed with the comment and believed that that section of the Regulation was overlooked in error. Based on this public feedback, Advertising Regulation 6 was removed in the final proposed rule filing.

Alcohol Related Comments

Comment-AL1: The Department did receive 1 written comment in opposition to updates to several General Regulations under Section 3. The opposition came from the Vermont Wholesale Beverage Association and raised some concerns about lack of clarity around some of the proposed updates. In particular, the comments centered upon General Regulation 4 and General Regulation 17.

Response-AL1: The Department understood some of the lack of clarity and updated the proposed language around General Regulation 4 and based on public feedback, expanded the Regulation to include an exemption for ALL permitted events. The Department did not agree with the Vermont Wholesale Beverage Association on its assertion that the updates to General Regulation 17 somehow allowed for cross state importation of products between locations owned by the same business entity. Unless authorized by Title 7, importation is a crime and the Department did not believe that the regulation somehow provided for it, nor would the regulation benefit by any addition of prohibited activity already prohibited by state law. The Department made no updates or changes to the proposed language of General Regulation 17.

Comment-AL2: The Department did receive 1 written comment in support of updates to General Regulation 25. The support came from the Vermont Wholesale Beverage Association and agreed that requiring a licensee who is suspended to post a notice of their suspension would be helpful to ensure that no deliveries are made to a suspended licensee.

Response-AL2: DLL acknowledges this comment and agrees that the proposed rule will assist wholesalers and all licensees with compliance.

Comment-AL3: The Department did receive 1 written comment in support of updates to General Regulation 43. The support came from the Vermont Chamber of Commerce and agreed that allowing for infusion of beverage alcohol so long as certain steps to protect public health were made.

Response-AL3: DLL acknowledges this comment and agrees that the proposed rule will protect public health while allowing for innovation within the craft beverage industry.

Break-Open Ticket Related Comments

Comment-B1: The Department did receive 1 written comment in support of proposed changes to regulations that deal with Break-Open Tickets.

Response-B1: DLL acknowledges this comment and believes that the proposed rule will have a significant positive impact by protecting vulnerable non-profit organizations who have a high susceptibility to becoming victims of fraud.

Credit Related Comments

Comment-C1: The Department did receive 1 written comment in opposition to updates to the Credit Regulation under Section 6. The opposition came from the Vermont Wholesale Beverage Association and raised some concerns about lack of clarity around the added language to the regulation.

Response-C1: The Department agreed that the original proposed update lacked some clarity and therefore amended it to further define that the regulation should be read to ONLY consider the use of debit/credit cards used by on-premise licensees to purchase Spirits at State Agency Stores to NOT be considered credit.

Tobacco Related Comments

Comment-T1: The Department received 5 written comments in support of the proposed regulations that brought parity between regulations dealing with beverage alcohol and tobacco products and established a price floor for retail tobacco products.

Comment-T2: The Department received comments from 2 individuals at the public hearing, as well as 2 written comments opposed to establishing a price floor for retail tobacco products.

Response-T1 & T2: The Department did ultimately decide after hearing comments that establishing a price floor would have a significant impact on the small and independently owned and operated retail establishments. Therefore, General Regulation 28, based on public feedback, removed the prior inclusion of the prohibition of selling tobacco and tobacco products at a price lower than purchased wholesale. Regulatory parity between beverage alcohol and tobacco products was maintained in all other areas of the proposed regulation, including the prohibition on tobacco retailers also holding a tobacco wholesale dealers license issued by the Vermont Tax Department.

Comment-T3: The Department received comment from 2 individuals at the public hearing seeking the Department to make it permissible for underage individuals to possess tobacco related products when part of a cultural or ceremonial use as members of the Abenaki indigenous peoples.

Response-T3: The Department acknowledges the importance of tobacco to the Abenaki people; however, the prohibition exists in Title 7 law and not in regulation. Therefore, there was no way to incorporate this comment into the Department's regulation update.

Wholesale Dealer Related Comments

Comment-W1: The Department did receive 1 written comment in opposition to updates to several Wholesale Dealer and Certificate Approval Holders and Vermont Manufacturers Regulations under Section 7. The opposition came from the Vermont Wholesale Beverage Association and raised some concerns about the prohibition of cross-tier employment interests. The Wholesaler stakeholders commented that individuals should be able to work for more than one licensee if they do not hold solicitors' permits and do not exercise control over or participate in the management of any licensee's business, and the employment at both licensees will not result in the exclusion of any competitor's brand of beverage alcohol.

Response-W1: The Department does not object in principle to the position of the Wholesale industry. However, this prohibition exists in Title 7 law and not in regulation. Therefore, there was no way to incorporate this comment into the Department's regulation update.

Comment-W2: The Department did receive 1 written comment in opposition to updates to several Wholesale Dealer and Certificate Approval Holders and Vermont Manufacturers Regulations under Section 7. The opposition came from the Vermont Wholesale Beverage Association and raised some concerns about the ability to utilize electronic copies of invoices in the place of hard copies of paper invoices.

Response-W2: The Department agreed that the inclusion of this type of electronic invoicing was in the best interest of the industry and therefore, Regulation 8 under Section 7 was further clarified that electronic invoices can be maintained to comply with the regulation.