



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**3 VAC 5-70 – Other Provisions**  
**Department of Alcoholic Beverage Control**  
December 23, 2010

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### **Summary of the Proposed Amendments to Regulation**

Chapters 317 and 561 of the 2010 *Acts of Assembly* creates fulfillment warehouse licenses which are licenses that authorize agricultural cooperative associations operating in the Commonwealth to solicit, receive orders, and pack or ship wine or beer. In addition, the bill permits the formation of marketing portals which would allow authorized agricultural cooperative associations to solicit and receive orders for wine or beer from individuals located in Virginia through the use of the internet. The marketing portals would function on behalf of wine or beer shipper licensees.

Pursuant to Chapters 317 and 561 of the 2010 Acts of Assembly the Alcoholic Beverage Control Board (Board) proposes to add a new section to these regulations, 3 VAC 5-70-240, providing the application process for marketing portals or fulfillment warehouses as defined in § 4.1-209.1 of the Code of Virginia to seek approval to provide services to holders of wine or beer shipper's license. The new section will require marketing portals to demonstrate that that they are appropriately organized as an agricultural cooperative. It will require both marketing portals and fulfillment warehouses to demonstrate that they are licensed by the state in which they are located to provide the intended services. Both will be required to enter into a written contract with the wine or beer shipper to which services are to be rendered, designating the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with applicable regulations and statutes. Approved fulfillment warehouses will be required to maintain certain shipment records.

## **Result of Analysis**

The benefits likely exceed the costs for all proposed changes.

## **Estimated Economic Impact**

Since 2003, Virginia has allowed the direct shipment of limited quantities of wine and beer to consumers in the Commonwealth by licensed shippers. These shippers have indicated a desire to use third-party service providers to facilitate such sales and shipments to consumers. “Marketing portals” are third-party companies which solicit and accept orders for alcoholic beverages and accept and process payment for such orders. For example, a marketing portal might be a website that allows consumers to place orders for wine. The website operator forwards the order and payment to the winery, which ships the product to the consumer under its shipper’s license. “Fulfillment warehouses” are third-party facilities that provide logistic services to producers. They warehouse the winery’s product, and provide picking, packing, and shipping services at the winery’s direction. Amendments to §§ 4.1-209 and 4.1-209.1 of the Code of Virginia adopted by the 2010 General Assembly make such arrangements legal in Virginia, and require the Board’s proposed regulatory action. This regulation, coupled with the existing regulation of direct shippers, is necessary to protect the health, safety, and welfare of citizens, to ensure that only licensed shippers are shipping approved products on which the appropriate taxes have been paid.

The Department of Alcoholic Beverage Control (Department) is not aware of any current marketing portals in Virginia. Since prior to July 1, 2010 such activities have been illegal, and the Department has not been approached by any agricultural cooperative; though the Department has heard that Virginia wineries are considering setting up a cooperative, which might attempt to offer both marketing and warehouse services. The marketing portal would have to show proof of its status as an agricultural coop, since that status is statutorily required to qualify to conduct such business in Virginia, and the warehouse would have to maintain records of shipments (the marketing portal would not, since it never touches the wine). The other requirements would be the same. The use of fulfillment warehouses may allow manufacturers and retailers to reduce expenses by sharing logistical services. The use of marketing portals could increase sales for direct shippers of wine and beer.

## **Businesses and Entities Affected**

The Department anticipates that Virginia wineries will likely set up a cooperative, which might attempt to offer both marketing and warehouse services. The Department is not currently aware of any other entities which are likely to seek fulfillment warehouse licenses.

## **Localities Particularly Affected**

The proposed amendments could affect all localities, but may particularly affect localities with wineries.

## **Projected Impact on Employment**

The proposal amendments are unlikely to significantly affect employment.

## **Effects on the Use and Value of Private Property**

The use of fulfillment warehouses may allow manufacturers and retailers to reduce expenses by sharing logistical services. The use of marketing portals could increase sales for direct shippers of wine and beer.

## **Small Businesses: Costs and Other Effects**

The proposed amendments will not increase costs for small businesses.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed amendments do not adversely affect small businesses.

## **Real Estate Development Costs**

The proposed amendments are unlikely to significantly affect real estate development costs.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to

be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.