



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-60
Regulation title	Manufacturers and Wholesalers Operations
Action title	Updating Manufacturers and Wholesalers Operations Regulations as a Result of Periodic Review
Date this document prepared	August 14, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed amendments (i) allow required reports of sales to be filed monthly rather than weekly; (ii) allow up to two cases of wine to be peddled to retailers during a scheduled delivery of other wine products that were preordered by the retailers; (iii) add provisions governing situations in which a brewery may manufacture beer bearing the brand name of another pursuant to a contract brewing arrangement; (iv) allow electronic filing of required reports; (v) increase the size of spirits samples that may be given to mixed beverage licensees from 50 milliliters to 375 milliliters; and (vi) allow spirits manufacturers to rent booths, provide hospitality events, and pay for advertising in brochures made for conventions, trade association meetings, and similar gatherings.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to amend 3 VAC 5-60, Manufacturers and Wholesalers Operations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of the Code of Virginia. Section 4.1-111 authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulatory action is necessary to allow for the filing of electronic reports, as well as creating a legal basis for wineries and farm wineries to file required reports and remit appropriate taxes. The proposal also allows more time for wholesalers to file copies of purchase orders and tax-exempt sales, as well as permits the peddling of wine, which is currently allowed for beer. Finally, it provides greater latitude for distilled spirits representatives to market their products at retail trade shows. These proposals were made by various segments of the regulated community. Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance

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

This regulation is amended to allow for the filing of electronic reports by wholesalers, wineries, and farm wineries. This proposal will also extend the time that wholesalers have to file purchase orders and tax-exempt invoices with the board and allow wine wholesalers to engage in the limited peddling of their product. Lastly, distilled spirits manufacturers will be allowed additional leeway in marketing their products at retail trade shows.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

Extending the time for providing monthly purchase orders and tax-exempt sales will benefit wholesalers. Removing the prohibition to the peddling (sell without a preorder) of wine benefits the regulated community by providing greater flexibility in marketing of products. Farm wineries, wineries, breweries, and wholesalers will benefit from the allowance of electronic filing of required reports. The amendments clarify that wineries, farm wineries, and breweries report sales and remit taxes. The regulated community will benefit from greater flexibility in marketing products at retail trade shows.

There are no known disadvantages to the public, the agency, or the Commonwealth.

Changes made since the proposed stage

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

None

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

Public comment

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

Commenter	Comment	Agency response
Virginia Wine Wholesalers Association	3 VAC 5-60-20—Opposed to allowing the peddling of wine.	The agency can find no public policy purpose to treat wine differently from beer, which can already peddle.
Virginia Beer Wholesalers Association	3 VAC 5-60-110—Support contract brewing proposal.	
Sten Sellier, Beltway Brewing	3 VAC 5-60-110—Supports contract brewing proposal.	

Company		
Justin Blau	3 VAC 5-60-110—Supports contract brewing proposal.	
Elizabeth Taylor	3 VAC 5-60-110—Supports contract brewing proposal	
Distilled Spirits Council of the United States	3 VAC 5-60-80—Suggest increase allowable sample size to 3 liters.	The agency continues to believe that a large sample size is unnecessary and is contrary to public safety interests.
Virginia Hospitality and Travel Association	Supports proposals.	

Enter any other statement here

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3VAC5-60-20		Does not allow the allow “peddling” of wine.	Allow “peddling” of wine to promote flexibility to the industry in marketing of products.
3VAC5-60-20		Requires copies of purchase orders to the Board on 5 th of Month.	Extends date from 5 th of month to 15 th of month for providing copies of purchase orders to the Board. This lessens burden on regulated community.
		Does not allow electronic filing.	Allow electronic filing to lessen burden on regulated community.
	3VAC5-60-25	None.	Provides legal framework for breweries, wineries and farm wineries report sales and remit taxes.
3VAC5-60-50		At least 51% of the fresh fruits or agricultural products used by a farm winery to manufacture wine must be grown or produced on the farm.	Each farm winery must comply with § 4.1-219. The statute governing a farm winery’s source of fruit was amended, so the regulation needs amendment accordingly.

3VAC5-60-80		Allows specified practices of distilled spirits solicitor salesmen.	Expands authority of distilled spirits solicitor salesmen. The amendments provide flexibility for the industry in marketing of products.
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Enter any other statement here