



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5 -70
<b>Regulation title</b>	Other Provisions
<b>Action title</b>	Delivery Permit Records and Reports
<b>Date this document prepared</b>	June 2, 2008

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

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

Chapters 99 and 799 of the 2007 Acts of the General Assembly are identical enactments, creating a new delivery permit which may be issued by the Department of Alcoholic Beverage Control to certain alcoholic beverage manufacturers or retailers. Each act provides that the Alcoholic Beverage Control Board shall enact regulations to implement the provisions of the act. The new regulation details the application, record-keeping, and reporting requirements for delivery permittees.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. The Code mandates that the board promulgate regulations, but details are left to the board's discretion. Section 4.1-212.1, which creates the delivery permit, provides that the board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the board.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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By statute, delivery permittees are required to require recipients to demonstrate that they are at least 21 years of age; maintain records of their deliveries; report deliveries monthly to the board; collect wine or beer taxes and state sales taxes on each sale; and forward collected taxes to the appropriate state agency. The goal of the emergency regulation is to provide the administrative framework for carrying out the legislation's requirements. The proposed regulatory action is essential to ensure that alcoholic beverages are only delivered to adults of legal drinking age, and that the appropriate taxes are collected on all such beverages sold in the Commonwealth.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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This action creates a new section, setting forth regulations applicable to holders of permits authorizing the delivery of wine or beer, pursuant to § 4.1-212.1 of the Code of Virginia. The new regulation specifies the application process, record-keeping, and reporting requirements for permit holders.

## 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

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The primary advantages of the proposed regulatory action to the public, the agency, and the Commonwealth the collection of appropriate taxes on alcoholic beverages and the prevention of the delivery of alcoholic beverages to those under the legal age. The primary disadvantage of the proposed regulatory action will be minimal record-keeping and reporting requirements for delivery permit holders. There are no other disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

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There are no applicable federal requirements.

### Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

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There is no locality particularly affected by the proposed regulation.

### Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **Jeffrey L. Painter, Post Office Box 27491, Richmond, Virginia 23261, telephone (804) 213-4621, fax (804) 213-4411, e-mail [jeffrey.painter@abc.virginia.gov](mailto:jeffrey.painter@abc.virginia.gov)**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There will be no additional cost to the state. The implementation and enforcement of the proposed regulation will be accomplished with existing agency resources.
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Any business licensed for the sale of wine or beer for off-premises consumption who choose to obtain a delivery permit would be affected by the regulation.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means 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.	There are currently 241 holders of delivery permits. Over 7,000 additional businesses in Virginia are eligible for a delivery permit, should they choose to apply. Hundreds of thousands of businesses nationwide are eligible for a permit, although few would be expected to undertake deliveries, except in border states. It is estimated that 95% of these eligible businesses would be small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	Based upon the average number of deliveries reported by permit holders, it is estimated that the cost of compliance by affected businesses will be less than \$10 per month.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The board has not identified any viable alternatives to the proposed regulatory action. The proposed regulation closely tracks the language of the related statutes, and appears to be the least restrictive, most cost-effective approach. The board will consider any alternatives identified during the public comment period.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposed regulation closely tracks the minimum requirements of the statutes with respect to record-keeping and reporting. There are no alternative regulatory methods available. The only provision of the regulation not specifically required by statute is the provision for labeling containers to note the content and the requirement of a signature of a person over 21 years of age for delivery. The board feels strongly that the health, safety, and welfare of the public requires this notice, to assist in preventing the delivery of alcoholic beverages to those under the legal age.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Wine Wholesalers Association, Virginia Beer Wholesalers Association, Virginia Retail Merchants Association, and Virginia Hospitality and Travel Association	<p>The proposed regulation should include language specifying that entities qualifying for a delivery permit may be located either within or outside of the Commonwealth.</p> <p>The proposed regulation should contain language requiring applicant for a permit to prove that it is authorized to sell wine or beer for off-premises consumption.</p> <p>The phrase “for alcoholic beverages” should be added after “price charged” to make clear that the information sought is the taxable purchase of the wine or beer delivered.</p> <p>The proposed regulation should contain language clarifying precisely which taxes must be submitted with the monthly report filed by permit holders.</p> <p>The term “farm wine” should be</p>	<p>Such language is unnecessary. The regulation does not determine who qualifies for such a permit, that is specified by the statute, which clearly applies to entities both within and outside the Commonwealth.</p> <p>Language has been included in the proposed regulation.</p> <p>The proposed regulation will refer to “price charged for wine or beer delivered.”</p> <p>The proposed regulation will refer to “beer or wine tax imposed by §§ 4.1-234 or 4.1-236, Code of Virginia.”</p> <p>While the term “farm wine” does appear in § 4.1-212.1 of the Code, it is not defined and</p>

	<p>used throughout the regulation in addition to “wine” and “beer.”</p> <p>No labels should be required on the outside of packages delivered, since deliveries are made by the permittee rather than a common carrier.</p>	<p>does not appear in any other section. We presume that it is intended to mean “wine produced by farm wineries,” but in the context of the statute, it is superfluous. All wine, whether or not produced by farm wineries, is treated the same for tax purposes. To avoid confusion, the proposed regulation will not reference “farm wine.”</p> <p>Pursuant to the statute, deliveries may be made by any “agent” of the permit holder, which may include a commercial delivery service. Since the permit holder himself is not required to make the delivery, the same notice label required for shipments using common carriers will be required.</p>
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**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not expected that this regulatory action will have any impact on the institution of the family.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	3 VAC 5-70-225		Applicant must apply using board form, attaching a copy of its license as a manufacturer or retailer of alcoholic beverages, and a copy of its registration with

			<p>the Department of Taxation for the collection of retail sales and use tax. Only manufacturers and retailers are eligible under the statute for this permit, and they must collect sales tax on their delivery transactions.</p> <p>Permittees must maintain records of their deliveries for two years, and make them available to the board or its agents upon request. Section 4.1-204 requires the maintenance of records by delivery permittees, and the two-year requirement is consistent with the record-maintenance requirement for other licenses.</p> <p>Permittees must file a monthly report for all deliveries during previous month, and pay any wine or beer tax due. No report is due if no deliveries were made, but a report must be made at least once every 12 months. This provision tracks statutory language.</p> <p>No more than four cases of wine or beer may be delivered to any person at one time, unless the permittee gives notice to the agency in writing at least one business day in advance of the delivery. This provision tracks statutory language.</p> <p>All deliveries must be made by the owner of the permit holder or its agent, officer, director, shareholder, or employee; the person making the delivery must require the recipient to demonstrate that he is at least 21; a signature of the recipient must be obtained; and a notice must be affixed to the container identifying the contents as alcohol. These provisions follow statutory language.</p>
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