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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Alcoholic Beverage Control
<b>Virginia Administrative Code (VAC) citation(s)</b>	3 VAC 5 - 70
<b>Regulation title(s)</b>	Other Provisions
<b>Action title</b>	Gifts of Alcoholic Beverages Generally; Exceptions Wine and Beer Tastings; Taxes and Records.
<b>Date this document prepared</b>	October 9, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5 - 70, OTHER PROVISIONS by amending existing regulation 3 VAC 5 -70-100 by including representatives of wineries, farm wineries breweries and importers as being authorized to provide retail licensees a sample of wine or beer products not currently sold by such retailer. The amendment also includes language that such samples must be obtained from wholesalers or retail licensees located in the Commonwealth.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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Sample – as used in 3 VAC 5- 70-100 means a serving or container of wine or beer not currently sold by a retail licensee.

### 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 taking the action; and 3) the title of the regulation.*

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On October 28, 2015, The Alcoholic Beverage Control Board adopted an amendment to 3 VAC 5-70, Other Provisions, amending the existing regulation 3 VAC 5-70-100, Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records, to proceed under the fast track regulatory process.

### 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.*

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Section 4.1-103 authorizes the Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. and § 4.1-111 of the ABC Act. This section of the Code also provides the Board with broad authority to do all acts necessary to carry out the purposes of Title 4.1.

Section 4.1-111. A., further authorizes the Board the authority to amend or repeal regulations adopted by it in accordance with the Administrative Process Act (§ 2.2-4000 et seq)

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.*

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The purpose of this proposal is to amend the current language of 3 VAC 5-70-100 (B)(2) to conform to the language found in §4.1-325 (A)(14) and §4.1-325.2 (A) which authorizes representatives of manufacturers and wholesalers to provide samples to retail licensees. The Current language in 3 VAC 5-70-100 authorizes wholesale licensees as the only entities that can provide samples to retail licensees.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

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This proposal is expected to be noncontroversial as both the wholesale and manufacturing segments of the alcoholic beverage industry are in support of the amendment.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

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The proposed amendment provides that representatives of manufacturers and importers of wine and beer products will be permitted to provide samples of wine and beer to retail licensees in addition to wholesale licensees.

### 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.*

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The primary advantage for the agency and regulated community is to amend the current language of 3 VAC 5- 70-100 (B)( 2) to bring it into compliance with §4.1-325 (A)(14) and §4.1-325.2 (A) of the Code of Virginia. In addition the agency is proactively being responsive to segments of the regulated community which are supportive of this amendment. There are no disadvantages to the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is 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 requirements that are more restrictive than the proposed amendment.

### 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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No locality is affected by this proposed regulatory action.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 proposal has no adverse affect on small businesses. The supplier and wholesale segments of the regulated community are in support of the proposal as it will permit a force multiplier in the promotion their products to retail licensees.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<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>	None
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	None
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Manufacturers, Importers and Wholesalers of wine and beer products.
<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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	1000 plus licensed entities the majority which would be classified as small businesses.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for</b>	There will no additional cost to the agency or industry members affected by this regulation.

<p><b>compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>To bring the existing language in 3 VAC 5-70-100 into conformity with that found in §4.1-325 (A)(14) §4.1-325.2 (A). In addition the agency is being responsive to the wholesale and manufacturing segments of the regulated community which are supportive of this change.</p>

**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.*

There are no other alternatives to amend the language in the regulation.

**Public participation notice**

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

**Periodic review and small business impact review report of findings**

*If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

Commenter	Comment	Agency response
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### Family impact

*Please assess the impact of this 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.*

This regulatory action will have no negative impact on the institution of the family and family stability.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency regulation** and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
3 VAC 5- 70- 100 (B) (2)		This regulation only permits wholesale licensees to provide samples of wine and beer products to retail licensees who do not sell such products.	<p>The proposed amendment would add representatives of wineries, farm wineries, breweries and importers as entities who are authorized to provide samples of wine and beer products to retail licensees.</p> <p>The proposal would also clarify that products provided as samples would have to be obtained for licensed wholesalers or retail licensees in the Commonwealth to insure that the wine and beer taxes on the products provided as samples have been paid.</p> <p>The likely impact would be an increase in the number of authorized entities who can</p>

			promote the sale of wine and beer products to retail licensees.
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If a new regulation is being promulgated, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>

### 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, 4.1-205, 4.1-209, 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 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, ~~which such wholesaler otherwise may sell to such retail licensee which~~ *if the retail 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 the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container. *Samples must be obtained from licensed wholesalers or purchased from retail licensees in the Commonwealth.*

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

a. A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, 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, owned and operated by the licensee or a wholly owned subsidiary.

4. 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.

5. Conditions. Exceptions authorized by subdivisions 3 b and 4 of this subsection are conditioned upon the following:

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