



townhall.virginia.gov

Periodic Review Report of Findings

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation	3VAC5-70
Regulation title	Other Provisions
Date this document prepared	04/19/2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 4.1-101 of the Code of Virginia (Code) establishes the Virginia Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of

the Code (ABC Act). Section 4.1-103(7) states the Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority.

Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

Section 4.1-111 (A) provides the Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

VA ABC is considering changing the regulation after a public comment included consideration of an amendment to provide a mechanism whereby wine shipper licensees could adopt a policy regarding returns. In addition to the public comments, the Regulatory Review Committee, based on an internal review, will also consider broader and more global issues with regard to this regulation, including the adequacy and frequency of reporting by common carriers, inclusion of tracking numbers on packaging and other factors to address the current issues associated with shipping generally and adequate tax dollar collections.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
The Wine Institute	<ul style="list-style-type: none"> • Wine Institute proposes one change to the direct wine shippers program that would expressly allow wine shipper licensees to adopt an internal policy of accepting, or not accepting, returns of wine shipments, and would create a process for shippers to request a credit toward wine excise taxes already paid for that shipment. • Delete unnecessary language governing shipping labels on direct wine shipments currently in 3VAC5-70-220(H)(2) • A recommendation to require 	The Agency will consider possible amendments to the regulation based on some of the public comments.

Commenter	Comment	Agency response
	inclusion on wine shipping reports from both the shipper and the common carrier, the common carrier’s package “tracking number.” <ul style="list-style-type: none"> • ABC accept digital reports, and put common carrier and shipper’s licensees on the same quarterly reporting schedule. • New regulation expressly prohibiting the retail sale of wine in Virginia at a price below the wholesale cost of acquisition. 	

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

3VAC5-70 continues to meet the criteria of Executive Order 14 in that it provides guidance to many of the unique and nuanced areas of alcohol beverage control. The regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The rule making entity found there was value in the comments submitted that warranted possible amendments to the regulation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, 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. Also, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be needed because it provides guidance to many of the unique and nuanced areas of alcohol beverage control. The regulation is clearly written and easily understandable. The agency received comments regarding revising some of the language, allowing direct shippers to develop internal policies regarding returns, including tracking numbers for common carriers on reports, and new regulations prohibiting retail wine sales below the wholesale

costs of acquisition. The regulation is not redundant nor does it conflict with other federal or state regulations. The regulation is not complex. The last periodic review was completed in 2012 and there have not been any significant changes in technology, economic conditions, or other factors in the area affected by the regulation.