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Fast-Track Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3-VAC5-70
Regulation title(s)	Other Provisions
Action title	Internet Beer Retailer
Date this document prepared	December 12, 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*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Currently, 3VAC5-70-220 includes the regulations that govern wine or beer shipper's licenses and Internet wine retail licenses. During the 2018 General Assembly session, SB 695 created an Internet beer retailer license, establishing the privileges of and fee for the license, and defining "Internet beer retailer license."

Section 4.1-208(A)(10) of the Code of Virginia ("Code") is the code section that details the privileges of the Internet Beer retailer license. The language of §4.1-208(A)(10) mirrors that language found in §4.1-207(6) for the Internet wine retailer license. As such the regulations that govern the internet beer retailer should mirror the regulations covering the internet wine retailer.

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.

NA

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.

On December 12, 2019, the Alcoholic Beverage Control Board adopted an amendment to 3-VAC5-70 OTHER PROVISIONS, amending the existing regulation 3-VAC5-70-220 "Wine or beer shipper's licenses and Internet wine retailer licenses; application process; common carriers; records and reports" to proceed under the fast track regulatory process.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

Section 4.1-208(A)(10) of the Code of Virginia ("Code") is the code section that details the privileges of the Internet Beer retailer license. The language of §4.1-208(A)(10) mirrors that language found in §4.1-207(6) for the Internet wine retailer license. As such the regulations that govern the internet beer retailer should mirror the regulations covering the internet wine retailer. This rulemaking change should be non-controversial because it is in line with established code and incorporates requirements that have already been in effect.

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 Alcoholic Beverage Control Authority ("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(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.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Virginia ABC has undertaken this action as a measure to establish the regulations that will allow persons located within or outside the Commonwealth to sell and ship beer in closed containers to persons in the Commonwealth to whom beer may be lawfully sold for off-premises consumption.

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.

The substantive changes include changing the language throughout the existing regulation such that "Internet Beer Retailer," or a variation thereof, is added to the text in any and all instances where a variation of "Internet Wine Retailer" appears. These substantive changes include the following:

The current title of 3VAC5-70-220 is changed to: "Wine or beer shipper's licenses, Internet wine retailer licenses, and Internet beer retailer licenses; application process; common carriers; records and reports."

The first sentence of the first paragraph of the current version of 3VAC4-70-220(A) is changed to: "Any person or entity qualified for a wine shipper's license or beer shipper's license pursuant to § 4.1-209.1 of the Code of Virginia, an Internet wine retailer license pursuant to subdivision 6 of § 4.1-207 of the Code of Virginia, or an Internet beer retailer license pursuant to subdivision 10 of § 4.1-208 of the Code of Virginia, must apply for such license by submitting form 805-52, Application for License." The remainder of 3VAC4-70-220(A) is to remain the same.

The first sentence of the current version of 3VAC5-70-220(C) is changed to: "Any holder of a wine or beer shipper's license, Internet wine retailer license, or Internet beer retailer license may add or delete brands to be shipped by letter to the Supervisor, Tax Management Section, designating the brands to be added or deleted." The remainder of 3VAC4-70-220(C) is to remain the same.

The first sentence of the current version of 3VAC5-70-220(D) is changed to: "Any brand owner that consents to a holder of a wine shipper's license, beer shipper's license, Internet wine retailer's license, or Internet beer retailer's license shipping its brand to Virginia consumers may withdraw such consent by a dated letter to the affected wine or beer shipper's license, Internet wine retailer's license, or Internet beer shipper's license." The remainder of 3VAC4-70-220(D) is to remain the same.

The first paragraph, excluding the portions numbered one through five, of the current version of 3VAC5-70-220(E) is changed to: "Wine shipper's licensees, beer shipper's licensees, Internet wine retailer's licensees, and Internet beer shipper's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:" The remainder of 3VAC4-70-220(E) is to remain the same.

The first paragraph, excluding the portions numbered one through two and sections a. through e. therein, of the current version of 3VAC5-70-220(F) is changed to: "On or before the 15th day of each month, each wine shipper's licensee, beer shipper's licensee, Internet wine retailer's licensee, or Internet beer retailer's licensee shall file with the Supervisor, Tax Management Section, either in paper form or electronically as directed by the department, a report of activity for the previous calendar month. Such report shall include." The remainder of 3VAC4-70-220(F) is to remain the same.

The first two sentences of the current version of 3VAC5-70-220(G) are changed to: "All shipments by holders of wine shipper's licenses, beer shipper's licenses, Internet wine retailer's licenses, or Internet beer retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine shipper's licenses, beer shipper's licenses, Internet wine retailer's licenses, or Internet beer retailer's licenses dated by letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section." The remainder of 3VAC4-70-220(G) is to remain the same.

The first paragraph, excluding the portions numbered one through two, of the current version of 3VAC5-70-220(H) is changed to: "When attempting to deliver wine or beer shipped by a wine shipper's licensee, beer shipper's licensee, Internet wine retailer's licensee, or Internet beer retailer's licensee, an approved common carrier shall require:" The remainder of 3VAC4-70-220(H), with the exception of the changes contained herein to the third sentence of the second paragraph, is to remain the same.

The third sentence of the second full paragraph appears after the portions numbered one through two of the current version of 3VAC5-70-220(H) is changed to: "Such notice shall also contain the wine shipper's, beer shipper's, Internet wine retailer's, Internet beer retailer's license number on the shipping license." The remainder of 3VAC4-70-220(H), with the exception of the changes contained herein to the first paragraph, is to remain the same.

The first paragraph, excluding the portions numbered one through five, of the current version of 3VAC5-70-220(I) is changed to: "Approved common carrier shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's licensees, Internet wine retailer's licensees, or Internet beer retailer's licensees, including for each shipment." The remainder of 3VAC4-70-220(I) is to remain the same.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage to this regulation change is that it will provide guidance for Internet Beer retailer licensees. There are no disadvantages to the public or the Commonwealth by promulgating this regulation.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

NA

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	NA
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	NA

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	NA

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	
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. 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.	NA
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	NA
Benefits the regulatory change is designed to produce.	NA

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no other alternatives to this action. The proposed amendments to the regulation represent the least intrusive and least costly approach.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The proposed amendment will not have an impact on small business as they are regulations that are applicable to a newly created license. The amendments do not impact compliance or reporting requirements.

Public Participation

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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
3VAC5-70-220		Currently, 3VAC5-70-220 includes the regulations that govern wine or beer shipper's licenses and Internet wine retail licenses.	The proposed regulation amends 3VAC5-70-220 in order to add "Internet Beer Retailer's License" as a license falling under the purview of the regulation. This addition will supplement the licenses currently in the regulation, which include: wine shipper's license, beer shipper's license, and Internet wine retailer's license. 3VAC5-70-220 is further amended to conform with the changes made to §§ 4.1-100, 4.1-208, and 4.1-231

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			of the Code of Virginia as contemplated in SB 695, Va. Gen. Assembly (Reg. Sess. 2018). The consequence is that any Internet beer retail license holder who does not comply with these regulations could potentially face administrative action.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.