



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC5-60
<b>Regulation title</b>	Manufacturers and Wholesalers Operations
<b>Action title</b>	Updating Manufacturers and Wholesalers Operations Regulations as a Result of Periodic Review
<b>Date this document prepared</b>	November 6, 2012

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

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 show. These proposals were made by various segments of the regulated community.

### 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.*

There are no acronyms or technical terms used in the document.

## 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.*

---

§ 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of this title or the general laws of the Commonwealth.

## 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.*

---

The purpose of this review is to 1) extend the due date for wholesalers to provide copies of monthly purchase orders and tax-exempt sales (from the 5<sup>th</sup> of the month to the 15<sup>th</sup>), 2) remove the prohibition to the "peddling" (sell without a preorder) of wine, 3) allow for the filing of required reports electronically, 4) create a mechanism for wineries and farm wineries to report sales and remit taxes and 5) allow distilled spirits representatives greater flexibility in marketing their products at retail trade show.

## Substance

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

---

It is anticipated that Chapter 60 will be 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 ABC Board and allow wine wholesalers to engage in the limited peddling of their product. Lastly, distilled spirits 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

---

Extending the time for providing monthly purchase orders and tax-exempt sale 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. Clarifies that wineries, farm wineries and breweries report sales and remit taxes. The regulated community will benefit from greater flexibility in marketing their products at retail trade shows.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.*

There are no parallel federal requirements for some provisions. To the extent there are federal requirements, the proposal is not more restrictive than 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.*

This will not have any impact on any particular locality.

**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.*

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 via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov), telephone (804) 213-4409, facsimile (804) 213-4411.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

**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 requirements creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	None
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	Manufacturers, wholesalers and retailers of alcoholic beverages.
<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.	15,000 businesses of which approximately 70% are small businesses.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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>	None
<b>Beneficial impact the regulation is designed to produce.</b>	Streamlining and clarifying the business practices of manufacturers and wholesalers of alcoholic beverages.

**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 is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

**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 board has not identified any alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law. The proposed regulatory change has no reporting or additional record keeping requirements.

**Small business impact review result**

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2007. The proposals are a result of industry suggestions. Neither technology, economic conditions, or other factors have changed significantly in the area affected by the regulation. The proposal imposes no additional reporting or record keeping requirements. The regulation should be amended rather than repealed, since there is a continuing need to regulate alcoholic beverage manufacturers and wholesalers to maintain an orderly marketplace and insure tax collection.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Wine Institute	3VAC5-60-20 Support proposal to allow “peddling” of wine.	The agency incorporated this.
Virginia Wine Council	3VAC5-60-20 Support proposal to allow “peddling” of wine.	The agency incorporated this.

	3VAC5-60-25 Support clarification that wineries and farm wineries report sales and remit taxes.	The agency incorporated this.
Distilled Spirits Council of United States	3VAC5-60-50 Support amending Va. Code Section 4.1-219.	The agency took this action.
Virginia Wineries Assoc.	3VAC5-60-80 Suggest increase size of product samples that may be furnished to mixed beverage licensees.	The agency rejected this because it undermines public safety.
	3VAC5-60-20 Support proposal to allow “peddling” of wine.	The agency incorporated this.
Virginia Beer Wholesalers	3VAC5-60-25 Support clarification that wineries and farm wineries report sales and remit taxes.	The agency incorporated this.
	3VAC5-60-50 Support amending Va. Code Section 4.1-219.	The agency took this action.
Virginia Wine Wholesalers	3VAC5-60-80 (D) (5) Object to expanded authority of distilled spirits solicitor salesmen.	The agency incorporated this suggestion.
Virginia Wine Wholesalers	3VAC5-60-110 Support provisions governing contract brewing.	The agency took this action.
Virginia Hospitality and Travel Assoc.	3VAC5-60-20 Oppose proposal to allow “peddling” of wine.	The agency rejected this because it promotes flexibility to the industry in marketing of products.
	3VAC5-60-20 Support proposal to allow “peddling” of wine.	The agency incorporated this.
Diageo North America	3VAC5-60-110 Support provisions governing contract brewing.	The agency took this action.
	3VAC5-60-80 (D) (5) Support expanded authority of distilled spirits solicitor salesmen.	The agency rejected this because the language was too broad and allowed too much authority.

Twenty four comments were made on the Town Hall website concerning this regulation. In examining these comments, it is readily apparent that none are directed to the changes proposed in this Chapter and many comments are addressing an issue (nudity in licensed establishments) that resides in Chapter 50 and is not under review. Comments relevant to topics that are under review in other Chapters are predominately against expanding happy hour advertising and/or eliminating happy hours altogether. One comment supported the expansion of the happy hour regulation.

**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.*

This action is not anticipated to have any impact on the institution of the family or family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. 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>
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 <sup>th</sup> of Month.	Extends date from 5 <sup>th</sup> of month to 15 <sup>th</sup> of month for providing copies of purchase orders to the Board. This lessens burden on regulated community.
3VAC5-60-25		None.	Provides legal framework for breweries, wineries and farm wineries report sales and remit taxes.
3VAC5-60		Does not allow electronic filing.	Allow electronic filing to lessen burden on regulated community.
3VAC5-60-80		Allows specified practices of distilled spirits solicitor salesmen.	Expands authority of distilled spirits solicitor salesmen promote flexibility to the industry in marketing of products.

--	--	--	--

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>

Enter any other statement here