



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-70
Regulation title	Other Provisions
Action title	Delivery Permit Records and Reports
Date this document prepared	June 26, 2009

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

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Section 4.1-212.1 of the Code of Virginia provides for a delivery permit which may be issued by the Department of Alcoholic Beverage Control to certain alcoholic beverage manufacturers or retailers. The new regulation details the application, record-keeping, and reporting requirements for delivery permittees.

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 June 23, 2009, the Alcoholic Beverage Control Board took final action to adopt amendments to 3 VAC 5-70, Other Provisions, adding a new section 3 VAC 5-70-225.

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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

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 new section is to provide the administrative framework for carrying out the legislation's requirements. The new section 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages of the 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 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Thomas A. Lisk, on behalf of Virginia Retail Merchants Association, and Dennis P. Gallagher, on behalf of Virginia Beer Wholesalers Association	Applicants for delivery permits should not have to provide evidence of the applicant’s registration with the Department of Taxation if such evidence is already on file with the Board. No labels should be required on the outside of packages delivered, since deliveries are made by the permittee rather than a common carrier.	Almost all of the applicants for delivery permits with evidence of registration with the Department of Taxation already on file with the Board would be in-state Virginia licensees, while almost all of those without such evidence on file with the Board would be out-of-state applicants. The Board is concerned that providing an exemption for primarily in-state applicants could make the regulation subject to challenge under the Commerce Clause of the United States Constitution. 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.

Enter any other statement here

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	3 VAC 5-70-225		<p>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 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</p>

			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.
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Enter any other statement here

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.

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.