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## Fast-Track Regulation Agency Background Document

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| <b>Agency name</b>                                    | Virginia Department of Alcoholic Beverage Control  |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 3VAC 5- 50   |
| <b>Regulation title(s)</b>                            | Retail Operations  |
| <b>Action title</b>                                   | Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers. |
| <b>Date this document prepared</b>                    | October 20, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 5-50, Retail Operations, by the amendment of existing regulation 3 VAC 5-50-60 allowing mixed beverage retail licensees to conduct the following additional practices. Retail mixed beverage licensees will be permitted to sell flights of not more than five distilled spirit samples, each not exceeding one-half of one ounce by volume; increase the size of containers used for infusion of spirits to twenty (20) liters in volume; premix containers of sangria and other mixed beverages in pitchers subject to limitations.

### 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.*

Board – The Virginia Alcoholic Beverage Control Board

Sample – a serving that shall not exceed two ounces for wine, four ounces for beer and one-half ounce for spirits.

Pitcher – for mixed beverages shall mean a container with a maximum capacity of 32 fluid ounces or one liter if in metric size containing a premixed drink consisting of spirits product(s) mixed with nonalcoholic beverage(s).

Flight – consists of sample servings of not more than five wine or beer or mixed beverages products sold to a patron for one price.

### 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 October 28, 2015, the Alcoholic Beverage Control Board adopted an amendment to 3 VAC 5-50, Retail Operations, amending the existing section 3 VAC 5-50-60, retail mixed beverage licensee practices, 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.*

Section 4.1-111 (B) (20) of the Code of Virginia requires that the Alcoholic Beverage Control Board shall promulgate a regulation that: (1) prescribes the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits, including a provision that limits infusion containers to a maximum of 20 liters; (2) permits mixed beverage licensees to premix containers of sangria and other mixed alcoholic beverages and to serve such alcoholic beverages in pitchers, subject to size and quantity limitations established by the Board.

Additionally, the Code of Virginia section 4.1-201 (A) (14) was amended to allow a mixed beverage licensee, his agent or employee to offer for sale or sell for one price to any person to whom alcoholic beverages may be lawfully sold a flight of distilled spirits consisting of samples of not more than five different spirits products. Pursuant to the general authority outlined in 4.1-111 (A) that allows the Board to promulgate regulations as deemed necessary, this portion of the suggested regulatory action is intended to implement the statutory language.

### 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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These amendments are intended to respond to specific statutory directive to modernize business practices by the retail mixed beverage licensee sector of the regulated community.

### 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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The rulemaking process is expected to be noncontroversial because the proposal closely follows the statutory requirement. The agency has minimal discretion.

### 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 proposal gives the retail mixed beverage licensees the authority to sell up to five samples of spirits each no more than one-half ounce in size; increasing the container size for infused spirits to twenty (20) liters; and permitting the sale of premixed containers of sangria and other mixed beverages in pitchers with limitations.

### 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 of the proposal is to meet the legislative mandate to promulgate regulations that provide guidance to the regulated community. The proposed regulation enhances public safety by placing limitations on the outlined practices in order to prevent over consumption by consumers. There are no disadvantages.

### 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.*

There are no 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.*

No locality is particularly affected by the proposed regulation amendments.

### 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 statutory mandate requires the Board to adopt regulations that permit retail mixed beverage licensees to engage in the prescribed practices which reduce current regulatory burdens on businesses.

### 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.*

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| <b>Projected cost to the state to implement and enforce the proposed regulation, including:<br/>a) fund source / fund detail; and<br/>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>   | Retail mixed beverage restaurant licensees                             |
| <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:<br>a) is independently owned and operated and;<br>b) employs fewer than 500 full-time employees or | 6600 (approximately), 75% of which are presumed to be small businesses |

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| has gross annual sales of less than \$6 million.   |  |
| <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:</b><br><b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b><br><b>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> | Only the ordinary cost of doing business in the permitted ways.    |
| <b>Beneficial impact the regulation is designed to produce.</b>  | Reduce regulatory requirements for retail mixed beverage licensees |

### 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 viable alternatives to the proposal. The proposal appears to be the least burdensome alternative that enables meeting the statutory mandate.

### 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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N/A

### 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 impact on the institution of the family and family stability. These practices fall under the same controls as all other alcoholic beverage consumption.

### 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:

| Current section number | Proposed new section number, if applicable | Current requirement  | Proposed change, intent, rationale, and likely impact of proposed requirements  |
|------------------------|--|--|---|
| 3 VAC<br>5-50-60       |  | Currently patrons are not allowed to possess more than two drinks at any one time. | Changes would allow the possession of five samples of spirits but would limit the volume to one half ounce each thereby not being any more than two and one half ounces at any one time. Many current mixed beverage drinks exceed that volume of spirits. The proposal also put spirits proportionately on par with wine |

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|  |  | <p>Infused spirits are limited to two liters in alternate containers.</p> <p>Current regulations do not allow for sales of sangria and other mixed beverages in pitchers to patrons.</p> | <p>and beer offerings. Sample of wine and beer would be limited to no more than two ounces for wine and four ounces for beer.</p> <p>The proposal allows for infusion of spirits in larger containers of up to twenty (20) liters.</p> <p>The proposal will allow for the sales of pitchers to patrons with prescribed limitations:</p> <ol style="list-style-type: none"> <li>1. <i>Pitchers of mixed beverages may only be sold in containers with a maximum capacity of 32 fluid ounces or one liter if the container is in metric size.</i></li> <li>2. <i>A pitcher of mixed beverages may only be served to two or more patrons. A licensee shall not allow any two patrons to possess more than one pitcher at any one time.</i></li> <li>3. <i>Containers of premixed sangria and other mixed beverages must be labeled as to the type of mixed beverage and the quantities of the products used to produce the mixed beverage.</i></li> </ol> |
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If a new regulation is being promulgated, use this chart:

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
|----------------|-----------------------|--------------------------------------|---|
|                |                       |                                      |   |