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## Final Regulation Agency Background Document

<b>Agency name</b>	The Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	3 VAC 5-60
<b>VAC Chapter title(s)</b>	Manufacturers and Wholesalers Operations
<b>Action title</b>	Chapter 60 Reform
<b>Date this document prepared</b>	11/27/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*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.*

A comprehensive review and amendment of the full chapter. The intent is to remove any redundancies or language that contradicts the Code of Virginia, modernize some of the regulations and make sure they comport with current practices within the industry.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

NA

## Statement of Final Agency Action

*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.*

1. December 3, 2024 – Board approval of final stage
2. Virginia Alcoholic Beverage Control Authority
3. Manufacturers and Wholesalers Operations

## Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

## Legal Basis

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

- 1) The promulgating agency is the Virginia Alcoholic Beverage Control Authority.
- 2) 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 has the authority to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised, and its duties performed.

Section 4.1-103(14) states the Board has the authority to control the possession, sale, transportation, and delivery of alcoholic beverages.

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) of the Code 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.

Section 4.1-111 (B)(3) of the Code provides that the Board shall promulgate regulations that maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

### Purpose

*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 is intended to solve.*

This regulation is essential to protect the health, safety, and welfare of citizens because it provides comprehensive guidance for manufacturers and wholesalers on numerous issues that help to enforce the Tied House laws that maintain the reasonable separation between the interests of the different tiers in the alcohol industry in order to prevent undue competitive domination.

### Substance

*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.*

New substantive provisions:

Substantive changes of existing regulations:

3VAC5-60-10 – Added subsections C-F that were previously listed in 3VAC5-60-60. Added subsections G-L that were previously in 3VAC5-60-80. Also revised 3VAC5-60-10(J)(2) to allow for a sample to go up to 750 milliliters if it is not available in 375 milliliter size. The language was also cleaned up to clarify that neither bottle may be sold and both must be purchased from an ABC store and bear the label "sample".

Also revised 3VAC5-60-25 so that it is a violation of the Board regulations if a brewery fails to pay the monthly taxes and/or submit the monthly reports.

3VAC5-60-30 – Removed the reference to "retail off-premises" wineries since all now have off-premises privileges.

3VAC5-60-40 - Increased the amount of the indemnifying bond required of wholesale wine licensees to \$10,000. See Section 4.1-223(4): The Board shall refuse to grant any wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board.

3VAC5-60-50 - Added "readily calculable" to Subsection (A)(1)(e)(3).

Repealed 3VAC5-60-90.

### 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.

*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.*

- 1) The primary advantage to the public is that regulations that were in a different chapter and hard to locate, have been moved to Chapter 60 where it makes more sense for them to be included.
- 2) The primary advantage to the Commonwealth is that the regulations were amended to more closely align with the Code.

There are no disadvantages to the public or Commonwealth.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response
Don Tierney – Virginia Spirits Association	<p>3VAC5-60-10 Solicitor salespersons</p> <p>In this vein, VSA requests a change in the proposed text to 3-VAC-5-60-10, which regulates how spirits salespersons may obtain sample products for use in conducting a sample serving to a mixed beverage licensee. At the present time, Chapter 60, Section 5-60-10, paragraph J.2 requires a mixed beverage solicitor salesperson to purchase any spirits product at an ABC government store and limits the purchase to a container of 375 milliliters. This current regulatory burden means that :</p> <ul style="list-style-type: none"> <li>•On-premises salespersons in the Virginia control-state environment are effectively salespersons for ABC. Unlike beer and wine representatives who can pull samples from their own inventory remitting only taxes on the sample to the Commonwealth, spirits salespersons are required to purchase their product at full retail price at an ABC retail store plus associated taxes.</li> <li>•VSA estimates that approximately \$100,000 has been spent by industry representatives from ABC at retail cost to buy these samples in the last 12 months.</li> <li>•The process of purchasing product at full retail price at an ABC store is not only inconsistent with the taxes only practice experienced by other beverage salespersons but is also not competitive with other states.</li> <li>•The process for obtaining spirits samples is also time consuming and product limiting. VSA members cannot currently obtain product samples from ABC’s warehouse and cannot obtain sample product that is not bottled in 375 milliliter containers . This limits our members ability to expose licenses to premium brands.</li> </ul>	<p>The Authority reviewed this comment and revised the sample size in the event that a 375-milliliter size is not available. However, purchases will still have to be made from the Authority.</p>

Commenter	Comment	Agency response
	<p>VSA requests minor language changes that will not only reduce the regulatory and financial burden on VSA member company salespersons but will also create opportunities to increase revenue for the Authority thus the Commonwealth of Virginia. These changes would:</p> <ul style="list-style-type: none"> <li>•Provide opportunities for the Authority to sell more premium+ spirits with broader exposure to licensees of these products. VSA estimates that at least 8-10 new placements could be made from sampling one - 750ml.</li> <li>•Place Virginia in a competitive posture within among the 17 Control States and Northern Virginia's neighboring Montgomery County, MD:               <ul style="list-style-type: none"> <li>o 12 markets are permitted to pull samples from bailment or a warehouse at cost.</li> <li>o Open states can pull samples from their distributors.</li> </ul> </li> </ul> <p>VSA requests that the proposed language to 50-60-10, be amended to permit:</p> <ul style="list-style-type: none"> <li>•A requested sample brand not packaged in a 375-milliliter container to then be made accessible in next available size not to exceed 1 liter. This modification will allow products that are not currently exposed to licensees through sample servings to have equal sampling benefits.</li> <li>•The salesperson to request sample containers twice per month (or at a schedule set forth by ABC) from bailment inventory of a supplier housed at the Authority's wholesale spirits provider's warehouse or at a government store using a discount code equal to the cost of bailment inventory price.</li> </ul>	
<p>Kevin McNally – Counsel for the Virginia Beer</p>	<p>3VAC5-60-90. Sunday deliveries by wholesalers prohibited; exceptions.</p>	<p>The Authority will not make any changes to its proposed amendments to this regulation based on this comment. The changes do not</p>

Commenter	Comment	Agency response
Wholesalers Association	<p>The Virginia Beer Wholesalers Association and its members strongly oppose the proposed repeal of the prohibition on Sunday deliveries. The prohibition on Sunday deliveries (with exceptions) has been in place for more than forty years, in response to which Virginia wholesalers have organized their business hours, staffing, and transportation needs. The existing prohibition places no administrative burden on the Authority, but greatly impacts the independent businesses the Authority regulates. Indeed, the Authority has provided no rationale at all for the elimination of the current restrictions on wholesaler Sunday deliveries.</p> <p>Virginia's beer wholesalers are family-owned and operated businesses with strong ties to their communities, and VBWA members believe that their employees' Sundays are meant to be spent with their families. That ABC stores keep only abbreviated Sunday store hours indicates that the Authority at least acknowledges the same needs for its own employees.</p> <p>The entire burden of the proposed repeal of the ban on Sunday deliveries falls squarely on Virginia's beer wholesalers. As the Authority has failed to express any benefit to the consuming public or the Authority resulting from the proposed change in such a long-standing policy, VBWA and its members must strongly oppose the measure .</p>	<p>compel wholesalers to deliver on Sundays. They may choose not to if that so desire.</p>

**Detail of Changes Made Since the Previous Stage**

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
3VAC5-60-10(J)(2)			<p><u>2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, sample container no larger than 375 milliliters (or 750 milliliters if the product is not marketed in a 375 milliliter container) of each brand being promoted by the permittee and not sold by the licensee. Both the sample container used for serving and the unopened furnished container shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container. Further, the spirits container used for serving shall remain the property of the permittee and may not be left with the licensee. Any unopened container left with the licensee pursuant to this subsection shall not be sold by the licensee.</u></p>	<p>The change will address public comment regarding the limitation on solicitors to be able to sell product that is not available in a 375 milliliter size.</p>
3VAC5-60-25			<p><u>A. On or before the 15th day of each month, each winery, and farm winery licensee, or on or before the 10th day of each month each brewery licensee shall, on forms or an electronic system prescribed by the board Virginia Alcoholic Beverage Control Authority (authority) and in accordance with the instructions set forth therein in this chapter, file a report with the board authority of sales made in the previous</u></p>	<p>The revision is necessary for the Authority to be able to penalize licensees that fail to meet their monthly tax obligations.</p>



			<p>calendar month. Tax payment in accordance with § 4.1-234 or 4.1-236 of the Code of Virginia shall be made with the submission of this report.</p> <p>B. On or before the 10th day of each month, each brewery licensee shall, on forms or an electronic system prescribed by the authority and in accordance with the instructions set forth in this chapter, file a report with the authority of sales made in the previous calendar month. Tax payment in accordance with §§ 4.1-236 or 4.1-239 of the Code of Virginia shall be made with the submission of this report.</p>	
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Changes were made from the previous stage.

### Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *\* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-60-10		Provides guidance on the employment of solicitor salesman	<ul style="list-style-type: none"> <li>Added Subsections C—F from 3 VAC 5-60-60 (Repealed). Impact is positive because it puts all of these regulations into one location minimizing confusion.</li> <li>Added Subsections G—L from 3 VAC 5-60-80 (Repealed). Impact is positive because it puts all of these regulations into one location minimizing confusion.</li> <li>Also revised 3VAC5-60-10(J)(2) to allow for a sample to go up to 750 milliliters if it is not available in 375 milliliter size. The language was also cleaned up to</li> </ul>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>clarify that neither bottle may be sold, and both must be purchased from an ABC store and bear the label "sample".</p> <ul style="list-style-type: none"> <li>Also revised 3VAC5-60-25 so that it is a violation of the Board regulations if a brewery fails to pay the monthly taxes and/or submit the monthly reports.</li> <li>Changed "board" to "Authority". No impact.</li> </ul>
3VAC5-60-20		Provides guidance on wine purchase orders	<ul style="list-style-type: none"> <li>Changed "board" to "Authority". No impact.</li> </ul>
3VAC5-60-25		Provides guidance on reports for wineries, farm wineries, and breweries.	<ul style="list-style-type: none"> <li>Changed "board" to "Authority". No impact.</li> </ul>
3VAC5-60-30			<ul style="list-style-type: none"> <li>Removed "retail off-premises" so that the section applies to all winery licensees. This change was made to comport with the Code. There should not be an impact on licensees because this should already be applicable per the Code.</li> <li>Changed "board" to "Authority". No impact.</li> </ul>
3VAC5-60-40		Provides guidance to wholesalers regarding the indemnification bonds that they must secure.	<ul style="list-style-type: none"> <li>Increased the amount of the indemnifying bond required of wholesale wine licenses to \$10,000. Licensees will be impacted as the bond amount has increase but remains within Code limits. Licensees may also get this requirement waived.</li> <li>Added a provision clarifying that waiver requests must have good cause shown.</li> <li>Changed "board" to "Authority". No impact.</li> </ul>
3VAC5-60-50		Provides guidance for recordkeeping for manufacturers.	<ul style="list-style-type: none"> <li>Added "readily calculable" to Subsection (A)(1)(e)(3). This should be a positive impact on licensees as they do not have to make this calculation prior to or at the time of purchase.</li> <li>Changed "board" to "Authority". No impact</li> </ul>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-60-60		Provides guidance for wine and beer importers.	Repealed and combined with 3VAC5-60-10 (no impact).
3VAC5-60-70		Provides guidance on excise taxes for beer and wine coolers.	<ul style="list-style-type: none"> <li>• Changed “board” to “Authority”.</li> <li>No impact.</li> </ul>
3VAC5-60-80		Provides guidance for mixed beverage solicitors.	Repealed and combined with 3VAC5-60-10 (no impact).
3VAC5-60-90		Provides guidance on Sunday deliveries.	Repealed.
3VAC5-60-100		Provides guidance on applying for approval for certain employees working with a manufacturer or wholesaler.	<ul style="list-style-type: none"> <li>• Changed section title to reflect its limited applicability.</li> <li>• Changed “board” to “Authority”</li> <li>No impact.</li> </ul>