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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 5-70
<b>VAC Chapter title(s)</b>	Other Provisions
<b>Action title</b>	Chapter 70 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.*

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1. December 3, 2024 – Board approval of final stage
  2. Virginia Alcoholic Beverage Control Authority
  3. Other Provisions

### 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 4.1-103(25) states the Board has the authority to assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations

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.

### 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:

3VAC5-70-10(D)(8): Creates an exception that allows for the transporting of lawfully acquired samples of alcoholic beverages not meant for consumption or resale within, into, or through the Commonwealth to federally or state certified laboratories.

3VAC5-70-20: Removed subsections B, C, and F because they are redundant restatements of Virginia Code.

3VAC5-70-90: Removed subsection E because it is redundant; added "any time the licensee is open to the public" as a time period where records must be made available to special agents.

3VAC5-70-130: Revised the definition of "meals" so that it is consistent with the definition in another regulation.

3VAC5-70-140: Repealed because it is redundant language that appears in the Code.

3VAC5-70-170: Removed language that is redundant language that appears in the Code.

3VAC5-70-170: Removed commercial and culinary as permitted uses for obtaining a grain alcohol permit; added language that the medical use requires the request come from a federal or state board licensed medical professional or hospital; added language that the alcohol cannot be used in the manufacture of products intended for human consumption.

3VAC5-70-210: Raised penalties for sale to underage and intoxicated to \$2000 with training; raised suspension periods to a minimum of 10 days; raised other penalties to a minimum of \$750; revised the address and email address for Education and Prevention; deleted the last textual portion of Subsection A.

3VAC5-70-225: Revised the title to include "delivery requirements"; changed "Form 805-52" to "an application for a permit" in Subsection A; added Code references to Subsections B, C, and D; added third party delivery licensee to Subsection D as well and clarified that this subsection is referencing licensees

with delivery privileges pursuant to 4.1-212.1; added Code references and third party delivery licensee to Subsection F; added an exception to signature requirement in Subsection (F)(2); added “or license number of the delivering licensee” to the end of Subsection F, also that third party delivery licensees shall not deliver any alcoholic beverages that do not bear the required label.

3VAC5-70-230: Added definitions for “designer” and “vintage” as well as requirements for bottles sold at auction.

3VAC5-70-250: Changed reference from E4 to E5 in Subsection A so that it is correct with the Code reference; changed “shall” to “may” in Subsection A to maintain consistency with the Code; removed Subsections A (2), (3), and (20) for being violations too significant to allow a waiver of penalties.

**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.**

*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 with these revisions is to remove redundant text; more clearly define when records should be available; simplifying the granting of a grain alcohol permit; and incorporating guidance regarding designer and vintage bottles. The public in general is not disadvantaged, but licensees may see higher penalties and suspension periods for violations.
- 2) The Commonwealth is benefitted because there is a reduction in regulations as well as more clarity to the remaining regulations making them more easily accessible. There are no disadvantages to the 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
Mary Beth Williams – Virginia Wineries Association	<p><b>3-VAC-5-70-220 J Comment</b></p> <p>The VWA has no substantive objection to the changes to the filing frequency and additional requirement of including package weight in the common carrier report. However, for the record, at a time when margins are already very thin, we'd note that these increased regulatory requirements will come with additional costs, which will be passed on to the wineries and other suppliers utilizing the services of those common carriers.</p>	<p>The Authority will not make any revisions based on this comment. Common carriers have been submitting these reports for some time now. The revisions are made so the regulations comport with the current practice.</p>
Kevin McNally – Counsel for Virginia Beer Wholesalers Association	<p><b>3VAC5-70 – Other Provisions.</b></p> <p>The Virginia Beer Wholesalers Association fully supports the proposed amendments to 3VAC5-70-210 to increase the civil penalties for first-offence violations. In particular, VBWA and its member wholesalers believe that the enhanced penalties for underage sale or possession provides the regulated community with renewed notice that the underage consumption of alcohol is not, and will not be tolerated.</p>	<p>The Authority appreciates the support for the increase in civil penalties.</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
3VAC5-70-10(D)(8)			8. Persons transporting lawfully acquired samples of alcoholic beverages not meant for consumption or resale within, into, or through the Commonwealth to federally or state certified laboratories.	This will allow persons transporting alcohol to federal and state laboratories from having to obtain a permit prior to transportation.

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
3VAC5-70-10		Provides guidance for transportation of alcoholic beverages.	<ul style="list-style-type: none"> <li>• Created an exception that allows for the transporting of lawfully acquired samples of alcoholic beverages not meant for consumption or resale within, into, or through the Commonwealth to federally or state certified laboratories.</li> <li>• Removed the one-gallon limitation that was removed by Senate Bill 325</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
			<ul style="list-style-type: none"> <li>• Removed the language about conversion to liters that was taken out of the Code by Senate Bill 325</li> <li>• Revised the language in Subsection C so that it says the transportation permit may be suspended or revoked for the same reasons that a license may be suspended or revoked.</li> <li>• Rewrote the language in Subsection D so that it reads with clarity. Also added “spirits” to (D)(2), and removed “and sold” from (D)(3).</li> <li>• Revised Subsection E to reference the correct code section.</li> <li>• Changed “board” to “Authority”.</li> </ul> <p>The impact should be minimal because these changes were done to comport with the Code and practices licensees have already been subject to following.</p>
3VAC5-70-20		Provides guidance regarding the procedures for handling cider.	<ul style="list-style-type: none"> <li>• Removed the language about age limits because; it is unnecessary to state that you have to be 21 to purchase alcohol. There is no impact because that is the law and people should be aware of that without having to include it in the regulations.</li> <li>• Removed Subsection B for some of the same reasons.</li> <li>• Removed Subsection C because it is redundant.</li> <li>• Changed “board” to “Authority”</li> </ul> <p>There are no substantive changes so there should not be any impact.</p>
3VAC5-70-30		Provides guidance on the purchase and use of sacramental wine.	<ul style="list-style-type: none"> <li>• Combined Subsections C and D to minimize words.</li> <li>• Changed “board” to “Authority”.</li> </ul> <p>There are no substantive changes so there should not be any impact.</p>
3VAC5-70-40		Provides guidance for purchase of alcohol used for culinary purposes.	<ul style="list-style-type: none"> <li>• Removed the on/off premises distinctions because they are no longer necessary.</li> <li>• Changed “board” to “Authority”.</li> </ul> <p>There are no substantive changes so there should not be any impact.</p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-70-60		Provides guidance for alcohol used for hospital use and industrial purposes.	<ul style="list-style-type: none"> <li>• Included a reference call out to 5-60-200 in Subsection (A)(1).</li> <li>• Changed “board” to “Authority”.</li> </ul> Little to no impact as these are mostly stylistic changes.
3VAC5-70-70		Provides guidance for persons who contract with distillers.	<ul style="list-style-type: none"> <li>• Changed “board” to “Authority”.</li> </ul> There are no substantive changes so there should not be any impact.
3VAC5-70-90		Provides guidance on recordkeeping.	<ul style="list-style-type: none"> <li>• Removed the technology references and replaced with “any” available storage technologies.</li> <li>• Added “any time the licensee is open to the public” as a time period where records must be made available to special agents.</li> <li>• Removed E because it is redundant.</li> <li>• Added language to clarify applicability of Subsection F (formerly Subsection G).</li> <li>• Changed “board” to “Authority”</li> </ul> There should be a positive impact for licensees since it clarifies that “reasonable hours” includes hours the licensee is open.
3VAC5-70-95		Provides guidance for proration of taxes when the business is destroyed by natural disaster.	<ul style="list-style-type: none"> <li>• Changed “board” to “Authority”.</li> </ul> There are no substantive changes so there should not be any impact.
3VAC5-70-100			<ul style="list-style-type: none"> <li>• Revised Subsection C to expand eligible retail licensee sponsors.</li> <li>• Includes gender neutral language.</li> <li>• Changed “board” to “Authority”</li> </ul> Little to no impact as changes are mostly stylistic.
3VAC5-70-110		Provides guidance related to the release of alcoholic beverages from customs and bonded warehouses.	<ul style="list-style-type: none"> <li>• Changed “board” to “Authority”.</li> </ul> There are no substantive changes so there should not be any impact.
3VAC5-70-120		Provides guidance on the approval of warehouses for storage of alcohol.	<ul style="list-style-type: none"> <li>• Revised Subsection C to update language.</li> <li>• Changed “board” to “Authority”.</li> </ul> Little to no impact as changes are mostly stylistic.
3VAC5-70-130		Provides guidance regarding Special Mixed Beverage Licensees.	<ul style="list-style-type: none"> <li>• Updated the statutory reference.</li> <li>• Revised Subsection B so that the definition for “meals” is consistent with 3VAC5-50-110.</li> <li>• Changed “board” to “authority”</li> </ul>



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			The impact should be minimal and positive. The change brings consistency to the definition of meals and updates the statutory reference which was incorrect previously.
3VAC5-70-140		Provides definitions for wine licensees and wine coolers.	Repealed because it is redundant to the Code.
3VAC5-70-150		Provides guidance regarding wholesale alcoholic beverage sales and winery/brewery discounts, inducements and price discrimination.	<ul style="list-style-type: none"> <li>• Changed “postmarked” to “delivered.”</li> <li>• Changed “board” to “Authority”</li> </ul> Impact should be positive because it allows for more time before a price increase can go into effect.
3VAC5-70-160		Provides guidance for farm wineries.	<ul style="list-style-type: none"> <li>• Combined Subsections A and B.</li> <li>• Deleted the first portion of Subsection C because it is redundant to the code and revised the last sentence so that it is understandable alone.</li> </ul> Little to no impact as changes are mostly stylistic.
3VAC5-70-170		Provides guidance on the use of credit or debit cards in government stores.	<ul style="list-style-type: none"> <li>• Deleted the second sentence because it is redundant with the Code.</li> </ul> Little to no impact as changes are mostly stylistic.
3VAC5-70-180		Provides guidance on the sale of kegs.	<ul style="list-style-type: none"> <li>• Changed “board” to “Authority”.</li> </ul> There are no substantive changes so there should not be any impact.
3VAC5-70-190		Provides guidance regarding waivers for banquet license taxes.	<ul style="list-style-type: none"> <li>• Removed the language that says “Pursuant to the Code.”</li> <li>• Changed “board” to “Authority”.</li> </ul> There are no substantive changes so there should not be any impact.
3VAC5-50-200		Provides guidance on securing a grain alcohol permit.	<ul style="list-style-type: none"> <li>• Removed the sunset provision in Subsection A.</li> <li>• Removed commercial and culinary as permitted uses for obtaining a grain alcohol permit.</li> <li>• Added language that the medical use requires the request come from a doctor, veterinarian, pharmacist, or hospital.</li> <li>• Added language that the alcohol cannot be used in the manufacture of products intended for human consumption.</li> <li>• Changed “board” to “Authority”</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>There should be little impact as most of the revisions are made to comport with Code. Licensees that previously obtained these permits for culinary or commercial purposes will be impacted as that is no longer permitted. Licensees also cannot use grain alcohol to prepare items meant for human consumption.</p>
3VAC5-70-210		<p>Provides schedule of penalties for first offense violations if the licensee decides to enter into an agreement with the Authority in lieu of going to a hearing.</p>	<ul style="list-style-type: none"> <li>• Raised penalties for sale to underage and intoxicated to \$2000.</li> <li>• Raised suspension periods to a minimum 10 days.</li> <li>• Raised other penalties to a minimum of \$750.</li> <li>• Revised the address and email address for Education and Prevention.</li> <li>• Deleted the last textual portion of Subsection A.</li> <li>• Changed “board” to “Authority”.</li> </ul> <p>Licensees that settle disputes with the Authority will be impacted by a 20%-25% increase in penalties. This process is voluntary, so the licensee can choose not to accept the penalty.</p>
3VAC5-70-220		<p>Provides guidance for wine and beer shippers and internet retail licensees.</p>	<ul style="list-style-type: none"> <li>• Changed “Tax Management Supervisor” to VA ABC. Minimal impact, just in case the supervisor is not available.</li> <li>• Changed Subsection J to 15th of each month.</li> <li>• Added weight of items shipped and delivered to be included in the report referenced in Subsection J.</li> <li>• Changed “board” to “Authority”</li> </ul>
3VAC5-70-225		<p>Provides guidance for delivery permits.</p>	<ul style="list-style-type: none"> <li>• Changed “Form 805-52” to “an application for a permit” in Subsection A. Minimal impact, as VA ABC no longer uses that form.</li> <li>• Added Code references to Subsections B and C.</li> <li>• Added third party delivery licensee to Subsection D as well and clarified that this subsection is referencing licensees with</li> </ul>

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			<p>delivery privileges pursuant to 4.1-212.1. Minimal impact, language is added to comport with the Code.</p> <ul style="list-style-type: none"> <li>• Revised “Tax Management Supervisor” to VA ABC in Subsection E. Minimal impact, just in case the supervisor is not available.</li> <li>• Added third party delivery licensee to Subsection F. Minimal impact, language is added to comport with the Code.</li> <li>• Added an exception to signature requirement in Subsection (F)(2). Minimal impact, language is added to comport with the Code.</li> <li>• Added “or license number of the delivering licensee” to the end of Subsection F. Added to bring clarity to this requirement.</li> <li>• Changed “board” to “Authority”. No impact.</li> </ul>
3VAC5-70-230		Provides guidance regarding the auction of designer or vintage spirit bottles.	<ul style="list-style-type: none"> <li>• Added the definitions and requirements from the circular letters to Subsection A.</li> <li>• Changed ‘board” to “Authority”</li> </ul> <p>Little to no impact as this incorporates into regulation the policies that VA ABC has already provided guidance for and have been utilizing for years.</p>
3VAC5-70-240		Provides guidance for marketing portals and fulfillment warehouse approvals.	<ul style="list-style-type: none"> <li>• Changed “Supervisor, Tax Management Section” to “Virginia” ABC. Minimal impact, just in case the supervisor is not available.</li> <li>• Changed “board” to “Authority”. No impact</li> </ul>
3VAC5-70-250		Provides guidance regarding when the Authority may waive first offense penalties.	<ul style="list-style-type: none"> <li>• Changed reference from E4 to E4—5 in Subsection A so that it is correct with the Code reference.</li> <li>• Changed “shall” to “may” in Subsection A to maintain consistency with the Code.</li> <li>• Removed Subsections A (2), (3), and (20) for being too significant of violations to allow a waiver of penalties. Licensees who may have gotten those penalties</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
			waived will no longer have that option. • Changed “board” to “Authority”. No impact.