



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5-60
<b>Regulation title</b>	Manufacturers and Wholesalers Operations
<b>Action title</b>	Wine wholesaler reporting and bond and giving of novelty items by spirits solicitors
<b>Date this document prepared</b>	August 11, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This action amends 3 sections of the Board's regulations governing wine wholesalers and solicitors for distilled spirits manufacturers. Changes to 3 VAC 5-60-20 are designed to make reporting of purchases and sales by wine wholesalers easier by allowing reports in lieu of the submission of actual copies of certain purchase orders and invoices currently required to be submitted to the Board. It is proposed that 3 VAC 5-60-40 be amended to increase the penalty of the indemnifying bond required of wine wholesalers from \$1,000 to \$2,500. 3 VAC 5-60-80 is proposed to be amended by modifying language to conform to a statute enacted by the 2006 General Assembly, and to allow the display on licensed retail premises of advertising specialty items provided by solicitors for distilled spirits manufacturers. In addition, a new section 3 VAC 5-60-100 is added, providing a process for manufacturers, wholesalers, or importers to seek approval from the Board for the employment of persons with certain criminal convictions.

### 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.*

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On August 1, 2006, the Alcoholic Beverage Control Board adopted amendments to 3 VAC 5-60, Manufacturers and Wholesalers Operations.

### 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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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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

### 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 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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This action is intended to revise the Alcoholic Beverage Control Board's regulations governing manufacturers' and wholesalers' operations, to simplify sales report filing requirements, increase the amount of the indemnifying bond required of wholesale wine licensees from \$1,000 to \$2,500, revise rules for giving away novelty and specialty items bearing spirits advertising, and provide a process for industry members to seek permission to employ persons with certain criminal convictions.

The goals of this regulation are:

1. To maintain reasonable controls on the sales and promotion of alcoholic beverages in the Commonwealth by wholesalers and manufacturers through a permit procedure for solicitor salesmen and mixed beverage solicitors; and
2. To require manufacturer and wholesale licensees of the Board to maintain sufficient records of purchases and sales of alcoholic beverages to ensure regulatory compliance and excise tax collection without unreasonable burden.

## 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?*

*Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The proposed changes simplify reporting for wine wholesalers. The bond increase has a minimal impact. The remaining provisions are mandated by recent statutory amendments.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

In 3 VAC 5-60-20, subsections B. 1., B. 2., and B. 3. would be amended to allow wholesale wine licensees to submit reports in lieu of actual copies of purchase orders and invoices. 3 VAC 5-60-40 would be amended to increase the penalty of the indemnifying bond required of wine wholesalers from the current \$1,000 to \$2,500. In 3 VAC 5-60-80, current provisions in subsection D. 1. would be amended to track language included in a bill recently enacted on the quantity of novelty and specialty items which may be given by a mixed beverage solicitor to a retailer, and to allow their display on the licensed premises. A new section 3 VAC 5-60-100 would be added to provide a process for manufacturers, wholesalers, or importers to seek permission to employ persons with criminal convictions. These amendments will protect the health, safety, or welfare of citizens by providing greater protection to wine tax revenues, and by maintaining reasonable restrictions on alcoholic beverage promotion, while allowing industry members additional ability to market their products.

## 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.*

This proposal has advantages for wine wholesalers, who would be able to file reports in lieu of submission of actual copies of purchase orders and invoices. Wholesalers can process hundreds of purchases and sales each week, and compiling and submitting copies of each paper representing the transactions is labor-intensive. The information contained on the documents is captured by most

wholesaler's accounting systems, so preparing and filing a report is less of a burden. The primary disadvantage is the increased cost of a higher bond for wine wholesalers, although the amount of the bond is so low that it will be within the range of the minimum premium for a number of bonding companies, resulting in no additional cost for the wholesaler.

The primary advantage to the Commonwealth is added security in its tax collections, through the increased bond requirement for wholesalers who collect and remit the wine liter tax.

The action poses no disadvantages to the public or the Commonwealth.

**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.*

The proposal does not add any requirement or restriction 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.*

There are no localities particularly affected by the proposed regulation.

**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.*

Except for the part of the proposal to increase the bond penalty for wine wholesalers, this proposal lessens compliance or reporting requirements. The Board could, as an alternative to increasing the wholesaler's bond penalty, audit wholesale licensees on a more frequent basis, or adopt other, more stringent compliance or reporting requirements. The Board believes that the cost and disruption to

licensees' business which would result from such alternatives outweigh the relatively small increase in cost of the bond premium. Wholesalers with a track record of compliance and timely tax remission are able to request a waiver of the bond.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Businesses licensed for the sale of wine at wholesale, solicitors representing distilled spirits manufacturers, and mixed beverage 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 (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.	Approximately 11,000 businesses and individuals are affected. At least 90% of these are small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	The proposed regulation will add a cost of approximately \$100 for approximately 200 affected entities, for additional bond premium.

**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.*

The Alcoholic Beverage Control Board has considered making no changes to the regulation, but believes the changes being considered can be made without endangering the public.

**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.

**Detail of changes**

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

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
3 VAC 5-60-20		Wholesale wine licensees must submit copies of each purchase order to the Board.	A report in a format approved by the Board may be submitted in lieu of submission of actual copies of purchase orders. A report will give the Board the information necessary to process tax returns, and licensees must retain purchase orders under current record-keeping rules, so they will be available if needed for audit purposes.
		Wholesale wine licensees must submit copies of invoices for non-taxed or out-of-state wine sales to the Board.	A report in a format approved by the Board may be submitted in lieu of submission of actual copies of invoices. A report will give the Board the information necessary to process tax returns, and licensees must retain invoices under current record-keeping rules, so they will be available if needed for audit purposes.
3 VAC 5-60-40		Wine wholesalers must post a bond in the penalty of \$1,000.	Increase bond penalty to \$2,500. Current amount is not sufficient to secure the Commonwealth in the event a wholesale licensee fails to remit wine taxes.
3 VAC 5-60-80		Spirits solicitors may distribute one novelty and specialty item per retailer and one item per employee,	Items may be distributed “in quantities equal to the number of employees of the retail establishment present at the time the items are delivered.” This conforms the language

	<p>3 VAC 5-60-100</p>	<p>per visit to a retail establishment.</p> <p>Novelty and specialty items bearing alcoholic beverage advertising may not be displayed on retail premises.</p>	<p>of the regulation to legislation passed during the 2006 General Assembly.</p> <p>Restriction removed. The display of t-shirts or other advertising specialties does not present a danger to the public.</p> <p>Manufacturer, importer, or wholesaler may apply to the board for approval of employment of persons with criminal records. Under current regulations, there is no method of seeking such approval.</p>
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Enter any other statement here