



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC5-70
<b>Regulation title</b>	Other Provisions
<b>Action title</b>	Internet Wine Retailer Records and Reports
<b>Date this document prepared</b>	October 5, 2007

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Chapter 558 of the 2007 Acts of Assembly created a new internet wine retailer license, which authorizes the licensee to take orders and ship wine directly to consumers, in accordance with § 4.1-112.1 of the Code of Virginia (now § 4.1-209.1), the section which sets forth the process for direct shipments to consumers by holders of wine or beer shipper's licenses. The purpose of this action is to amend 3 VAC 5-70-220, dealing with record-keeping and reporting requirements for wine or beer shippers, to acknowledge that these procedures must now also be followed by internet wine retailers. In addition, the proposed amendments would conform the regulation to amendments made by the General Assembly to the wine and beer shipper's license statute, changing the section number reference to its new designation and allowing non-brand owner applicants to obtain authorization for direct shipment of a brand of wine or beer from any wholesale distributor authorized to distribute the brand.

### 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 29, 2007, the Alcoholic Beverage Control Board adopted amendments to chapter 3 VAC 5-70, Other Provisions.

### 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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Section 4.1-209.1 of the Code of Virginia provides that the Alcoholic Beverage Control Board may promulgate such regulations as it deems necessary to implement the provisions of the section, which sets forth the requirements for shipments of wine or beer to consumers by wine or beer shipper licensees.

### 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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The proposed amendments to 3 VAC 5-70-220 are necessary to conform the regulation with amendments to the Code of Virginia made by the 2007 General Assembly. This action promotes the health, safety or welfare of citizens by insuring the proper collection of the public revenue and helping to insure that alcoholic beverages are not shipped and delivered to those under the legal age, intoxicated persons, or interdicted persons.

### 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.*

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The proposed action makes no substantive changes to the current regulation, except those mandated by action of the General Assembly.

**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.)*

Throughout Section 3 VAC 5-70-220, any record-keeping or reporting requirements presently applied to wine or beer shippers will be amended by the addition of a reference to internet wine retailers, who are also subject to these requirements. Paragraph A of the section will also be amended to change a code section reference for a statute re-numbered by action of the General Assembly, and to allow any wholesale distributor authorized to distribute a brand to provide a letter consenting to a wine or beer shipper or an internet wine retailer shipping the brand to Virginia consumers.

**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.*

There are no disadvantages to the public or the Commonwealth associated with the proposed action. The primary advantage to the public, the agency and the Commonwealth is that the agency's regulations will come into conformity with the new Code provisions.

**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 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 regulatory change.

**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 regulatory change will have no adverse impact on small business. There are no alternative methods available of compliance with statutory provisions.

**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>	Wine or Beer Shipper’s licensees, internet wine retailers
<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.	There are currently 630 affected entities. It is estimated that 95% of these would meet the definition of 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 amendments will add no costs for affected businesses.

**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.*

This proposal merely adds language mandated by recent amendments to the Code of Virginia, it does not impose any additional burden on anyone, and there are no other viable alternatives.

**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.*

The proposed regulatory action will not impact the institution of the family or family stability.

**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 5-70-220		Wine or Beer shippers must provide certain information in connection with their application for a license; they must keep certain records; they must follow specified shipping procedures; and must periodically report their shipments and pay taxes.  A non-brand owner shipper must obtain written consent	Internet wine retailers must follow the same application, record-keeping, shipping, and reporting requirements. Required by Chapter 558 of the 2007 Acts of Assembly.  A non-brand owner shipper may obtain written consent to ship a brand to Virginia

		from the brand owner to the shipment of a brand to Virginia consumers.	consumers from either the brand owner or any wholesale distributor authorized to distribute the brand. Required by Section 4.1-209.1, Code of Virginia.
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