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Fast-Track Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3VAC5-50-20
Regulation title(s)	Determination of legal age of purchaser
Action title	Biometric Identification Amendment
Date this document prepared	11/20/2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

The Virginia Alcoholic Beverage Control Authority is amending 3VAC5-50-20 to allow licensed retailers of alcoholic beverages to utilize biometric identification software to make a determination of the legal age of a purchaser of alcoholic beverages.

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.

NA

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.

- 1) The action is the result of a petition to the Board. It was considered at the Board meeting held on October 15, 2019. The Board agreed to take regulatory action pursuant to the suggestions made in the petition.
- 2) The Virginia Alcoholic Beverage Control Authority is the agency that is taking action.
- 3) The title of the regulation is **3VAC5-50-20 Determination of legal age of purchaser.**

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus that prompted the initiation of this regulatory process was a petition for rulemaking. The petition was posted to the Town Hall website for public comment. It received two comments in favor of the amendment. One comment was from the Washington Regional Alcohol Program in Falls Church, Virginia and the other comment was from the Chief Government Affairs Officer for Mothers against Drunk Driving. Based on the support from two organizations dedicated to public safety and awareness related to alcohol use and the minimal change that will result from this amendment, VA ABC is of the position that the changes are non-controversial and appropriate for the fast-track process.

Legal Basis

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

Virginia ABC Board is granted the authority to promulgate such action pursuant to:

Section 4.1-101 of the Code of Virginia (Code) establishes the Department of Alcoholic Beverage Control (ABC Board.)

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

Please 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's intended to solve.

- 1) Biometric verification processes offer an updated and reliable method of identification and age verification available by using an individual's own biometrics, in the form of their fingerprint or iris.
- 2) The change is essential to protecting the health, safety, or welfare of citizens as it provides an additional line of defense to prevent underage individuals from being able to purchase alcohol.
- 3) The change will give licensees an opportunity to use a modern and dependable means of identifying an individual's age with the goal of further minimizing access to alcohol by underage individuals.

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.

The change will include adding an additional subsection (3VAC5-50-20 A.3) that provides for age verification using a biometric device in determining whether or not a licensee, or his employee, or agent, has reason to believe the purchaser is not of legal age.

Issues

Please 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.

The primary advantage to the public is that biometric age verification processes are reliable and cannot be faked. VA ABC is benefited in that biometric age verification will ensure fewer sales to underage buyers, which is an integral part of alcohol regulation. The change will give licensees further insurance against inadvertent sales to underage buyers.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

NA

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>This regulatory change will not cost the agency anything to implement. The change will most likely result in fewer charges for sale to an underage buyer and most likely save the agency on costs for those investigations and subsequent proceedings. This regulation will not result in increased revenues for the agency.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-</p>	<p>NA</p>

time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	NA

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	NA
Benefits the regulatory change is designed to produce.	Fewer sales to underage buyers

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	VA ABC licensees that sell alcohol direct to consumers are the only individuals, businesses, or entities impacted by this regulation change and only those that choose to utilize biometric age verification processes.
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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	VA ABC currently has 20,101 retail licensees. The majority of those licensees are small businesses. The only entities that will be affected by this are those entities that choose to voluntarily utilize biometric age verification software as a means of identifying the age of a purchaser of alcohol.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The proposed changes do not include any mandatory obligations for any VA ABC licensees. The proposed changes provide an option for age verification, and only those licensees that opt to utilize that software will incur any costs. VA ABC cannot project what those costs will be to those licensees, because there are various factors involved that do not pertain to VA ABC (i.e. the company the licensee contracts with to provide the software, the number of locations the licensee will have that use biometric age verification software, the costs for maintaining the software/databases). There are no additional reporting, recordkeeping, or administrative costs associated with compliance to this amendment. There are no costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change. There are no fees associated with this regulatory change. The purchase of equipment or services will depend on whether or not the licensee decides to utilize biometric age verification software and the company the licensee contracts with to provide the service. There is not time obligation for a licensee to get in compliance with this change as it is not a mandatory requirement.
Benefits the regulatory change is designed to produce.	The change is designed to provide an additional safeguard against sales of alcohol to underage individuals.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

NA

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

NA

Public Participation

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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
3VAC5-50-20.		<p>3VAC5-50-20. Determination of Legal Age of Purchaser.</p> <p>A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:</p> <ol style="list-style-type: none"> 1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; 2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser <p>B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such</p>	<p>3VAC5-50-20. Determination of Legal Age of Purchaser.</p> <p>A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:</p> <ol style="list-style-type: none"> 1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and 2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser; and <u>3. Whether the seller verified the age of the purchaser through the use of a biometric identity verification device approved by the Authority where the biometric is referenced against a record described in paragraph B.</u> <p>B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, with the subject's height and date of birth.</p> <p>C. It shall be incumbent upon the licensee, or his employee or agent, to</p>

		<p>identification shall contain a photograph and signature of the subject, with the subject's height and date of birth.</p> <p>C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.</p>	<p>scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.</p> <p>The intent is to offer an updated, convenient, and reliable method of identification and age verification using an individual's own biometrics, in the form of their fingerprint or iris that will be both beneficial to the licensee and the patron. The rationale for the change is that it allows the agency to keep pace with the increase in modern technologies of ID verification that give licensees an option for more secure method of age verification. The impact will be fewer sales to underage buyers resulting from failed age verification.</p>

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart: proliferation

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case "current section number" or "current chapter-section number" would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: "Changes from the Emergency Regulation." In this

case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.