



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5-40
<b>Regulation title</b>	Requirements for Product Approval
<b>Action title</b>	Changes to Beer and Wine Product and Label Approval Procedures as a Result of Periodic Review
<b>Document preparation date</b>	August 24, 2004

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*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This action is intended to revise the Alcoholic Beverage Control Board's regulations governing the approval of new alcoholic beverages to be sold in the Commonwealth, to clarify and simplify the process and eliminate obsolete provisions. The action is the result of a recent periodic review of this regulation.

The goals of this regulation are:

1. To determine the nature, form and capacity of all containers used for holding alcoholic beverages, and prescribe the form and content of all labels and seals to be placed thereon.
2. To protect consumers of alcoholic beverages from misleading information concerning the identity or contents of alcoholic beverage products sold in the Commonwealth.

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

Section 4.1-103, subsection 9, of the Code of Virginia, authorizes the Alcoholic Beverage Control Board to "determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon." Section 4.1-111 authorizes the Board to promulgate reasonable regulations which it deems necessary to carry out the provisions of Title 4.1.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

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In 3 VAC 5-40-20, subsections B. 1., B. 3., C. 2., C. 3., and C. 7., which place limits on the content of wine labels, would be repealed, and new provisions, describing the process of assigning a product code and allowing automatic approval of any label which has received federal approval unless the department objects within 30 days of receipt of an application for product registration, would be added. In 3 VAC 5-40-50, subsections D. 9. and D. 10., which place limits on the content of beer labels, would be repealed and new provisions, describing the process of assigning a product code and allowing automatic approval of any label which has received federal approval unless the department objects within 30 days of receipt of an application for product registration, would be added. These amendments will protect the health, safety, or welfare of citizens by maintaining reasonable controls on alcoholic beverage products offered for sale to Virginia consumers, while allowing industry members the ability to efficiently get their lawful products to market.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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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. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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It is not expected that this regulatory action will have any impact on the institution of the family.

**Periodic review**

*If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

Committer	Comment	Agency response
The Country Vintner	Wine label approval process should be repealed or modified to provide a presumption of approval upon submission of a copy of federal approval, subject to withdrawal upon complaint by a Virginia consumer.	Label approval process screens out not only offensive labels, but also products which are not lawful in Virginia, although in compliance with federal regulations. The difficulty involved in removing an illegal product after it has entered the market outweighs the minor delay in getting a product to market caused by label approval processing. The anticipated amendments to 3 VAC 5-40-20 will provide for a presumption of approval for federally-approved products, unless ABC objects to the product within 30 days of receipt of application for product approval.
Virginia Wineries Association	Create a listing scheme, whereby products are deemed "listed" if ABC does not object within 30 days after submission of federal approval. Use UPC codes rather than assigning state product code for tax purposes. Eliminate sample and analysis provisions.	The anticipated amendments to 3 VAC 5-40-20 will provide for a presumption of approval for federally-approved products, unless ABC objects to the product within 30 days of receipt of application for product approval. The use of UPC codes in lieu of state product code numbers is not feasible due to the existence of multiple UPC codes per brand and the cost of converting computer systems to use the additional digits. Sample and analysis provisions are being removed by another action currently at the proposed stage.

This regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.