



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

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| Agency name | Alcoholic Beverage Control Board |
| Virginia Administrative Code (VAC) citation | 3 VAC5-40 |
| Regulation title | Requirements for Product Approval |
| Action title | Updating Product Approval Regulations as a Result of Periodic Review |
| Date this document prepared | November 6, 2012 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The purpose of this review is to 1) consolidate the container and labeling requirements for wine and beer approval from four sections to two and standardize the requirements for each; 2) remove vague and unenforceable language relating to "lewd or indecent" labels on wine or beer; 3) allow for combining previously approved items into a gift package; and 4) provide guidance and definition for certain beer containers.

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.

There are no acronyms or technical terms used in the document.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

§ 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of this title or the general laws of the Commonwealth. §4.1-103.9 of the Code of Virginia also compels the Alcoholic Beverage Control Board to “(d)etermine 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.”

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed regulatory action is necessary to streamline and consolidate the label and container requirements for wine and beer and to remove vague and unenforceable language pertaining to lewd or indecent labels.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

It is anticipated that Chapter 40 will be amended to consolidate existing provisions for approval of wine and beer labels and containers, eliminate antiquated, unenforceable language, and provide for previously approved individual items to be offered in a combination pack.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The removal of vague and unenforceable provisions will ease the burden on the regulated community. The streamlining and clarification of the provisions of this regulation should help promote the welfare of the citizens by providing more definitive and reliable guidance on the labeling and product approval of alcoholic beverages.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 proposals do not conflict with other state or federal laws or regulations.

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.

This will not have any impact on any locality.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, curtis.coleburn@abc.virginia.gov, telephone (804) 213-4409, facsimile (804) 213-4411.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures. | None |
| Projected cost of the new regulations or changes to existing regulations on localities. | None |
| Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations. | Manufacturers, wholesalers, importers of alcoholic beverages |
| Agency's best estimate of the number of such entities that will be affected. Please include an | Approximately 1,000 businesses, of which 60% are small businesses. |

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| <p>estimate of the number of small businesses affected. 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.</p> | |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | None |
| <p>Beneficial impact the regulation is designed to produce.</p> | Streamlining and clarifying the labeling and product approval of alcoholic beverages. |

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.

There is no viable alternative to affect the proposed changes. Circular Letters and other memoranda of interpretation do not carry the consequences prescribed by the regulations if a reluctant licensee fails or refuses to comply with the standard. Some of the proposals lessen the burden on the regulated community.

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 board has not identified any alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law. The proposed regulatory change has no reporting or additional record keeping requirements.

Small business impact review result

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2007. The proposals are a result of industry suggestions. Neither technology, economic conditions, or other factors have changed significantly in the area affected by the regulation. The proposal imposes no reporting or additional record keeping requirements.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

| Commenter | Comment | Agency response |
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| Bold Rock Cidery and Brewpub | 5VAC40-30 Amend to allow the sale of cider in “growlers” or reusable containers for off premises consumption. | The agency incorporated the suggestion. |
| Virginia Hospitality and Travel Assoc. | 5VAC40-30 (D) Oppose 60-fluid ounce limit for pitcher of beer and proposed 64-fluid ounces | The agency incorporated the suggestion. |
| Wine Institute | 5VAC40-20 Support change that permits sale of wine products with gift packaging where label approval has been granted previously. | The agency incorporated the suggestion. |
| Virginia Wine Council | 5VAC40-20 Support proposed changes. | The agency made the changes. |
| | 5VAC40-20 (A) (2) Remove “certified” before copy of the approval of label. | The agency made the changes. |
| | 5VAC40-30 (A) Support allowing the practice of “barrel tasting”. | The agency amended to allow for this practice. |
| | 5VAC40-30 (B) Request consistency in use of growlers for wine and beer. | The agency incorporated the suggestion. |

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| Virginia Wineries Assoc. | 5VAC40-20 (A) (2) Remove “certified” before copy of the approval of label. 5VAC40-30 (A) Support allowing the practice of “barrel tasting”. 5VAC40-30 (B) Request use of “growlers” for cidery. | The agency made the changes. The agency amended to allow for this practice. The agency incorporated the suggestion. |
| Virginia Beer Wholesalers Assoc. | 5VAC40-20 (A) (2) Add language that permits sale of beer or wine products with gift packaging where label approval has been granted previously. 5VAC40-30 (D) Oppose 60-fluid ounce limit for pitcher of beer. | The agency incorporated the suggestion. The agency incorporated this by raising the limit to 64 ounces – the standard pitcher size. |

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.

This action is not anticipated to have any impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is 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 action.

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

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|------------------------------|--|
| 5VAC40- | | Additional approval step for | Eliminate the additional approval step. |

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| 20 (A) (2) | | gift packages for wine or beer. | |
| 5VAC40-30 (A) | | "Barrel tasting" is not allowed. | Allow the practice of "barrel tasting". |
| 5VAC40-30 (B) | | Term "growler" used for beer only. | Expand "growler" to include wine and cider. |
| 5VAC40-30 (D) | | No ounce limit for pitcher of beer. | Create 64-fluid ounce limit for pitcher of beer. |

If a new regulation is being promulgated, use this chart:

| Section number | Proposed requirements | Other regulations and law that apply | Intent and likely impact of proposed requirements |
|----------------|-----------------------|--------------------------------------|---|
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Enter any other statement here