



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Alcoholic Beverage Control Board
VAC Chapter Number:	3 VAC 5-40
Regulation Title:	Requirements for Product Approval
Action Title:	Label Approval Revisions
Date:	November 20, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This chapter establishes the standards and procedures for approval of the content, container, and label of alcoholic beverage products to be sold in Virginia.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

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.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

Public comment was received from the Virginia Beer Wholesalers Association, recommending the regulation be amended to allow beer to be sold in growlers, reusable containers, by all retail licensees having the privilege of selling beer for on-and off-premises consumption. The Board intends to implement this suggestion.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

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.

The regulation is effective in achieving the goals. It is essential to protect the health, safety or welfare of citizens, in that it ensures that alcoholic beverage packaging accurately reflects the contents, does not contain misleading information, and does not include obscene matter or representations intended or tending to promote overconsumption of alcoholic beverages.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The current regulation requires the submission to the Board of a certification or a sample for analysis for all wine and beer products prior to their sale in Virginia. Since the formulation of all products approved for sale in the United States is approved by the federal Bureau of Alcohol, Tobacco and Firearms, the Board considered and chose to adopt the alternative of relying on the federal approval rather than requiring a separate analysis for the purposes of the Commonwealth. Other alternatives considered and rejected include removing restrictions on the content of beer and wine labels, and removing restrictions on container sizes or configuration. The Board felt these restrictions were necessary to prevent misleading information or information which would tend to promote over-consumption from appearing on alcoholic beverage labels.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Board recommends that the regulation be amended and retained. Repeal would leave the public without protection from misleading, obscene, or otherwise improper product labeling.

Substance

Please detail any changes that would be implemented.

Changes that would be implemented include:

In 3 VAC 5-40-20, the requirement for certification or analysis of wine products would be removed;

In 3 VAC 5-40-40, the use of growlers would be extended to all licensees with the privilege of selling beer for on-and off-premises consumption;

In 3 VAC 5-40-50, the requirement for certification or analysis of beer products would be removed, and the provision of subsection D.8. referring to the depiction of any athlete, former athlete or athletic team on beer labels would be modified to allow such depictions to the extent they are permitted in point-of-sale advertising under 3 VAC 5-20-10.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 should have no impact on the institution of the family or upon family stability.