



Fast Track Proposed Regulation Agency Background Document

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| Agency name | Alcoholic Beverage Control Board |
| Virginia Administrative Code (VAC) citation | 3 VAC 5-40 |
| Regulation title | Requirements for Product Approval |
| Action title | Amending label content restrictions and 30-day approval process |
| Date this document prepared | August 11, 2006 |

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*.

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

This action proposes amendments to the Board's regulation governing the approval of new wine and beer products for sale in the Commonwealth. It proposes to eliminate several existing restrictions on the content of wine and beer labels. These restrictions are either obsolete or unnecessary because of other state or federal regulations covering the same subject matter. In addition, new provisions allow the sale of wine or beer for which approval has been applied, if the Board fails to approve or disapprove within 30 days of receipt of the application.

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.

On August 1, 2006, the Alcoholic Beverage Control Board adopted amendments to 3 VAC 5-40, Requirements for Product Approval.

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.

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.

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.

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 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.

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.

The proposed changes do not involve any material change in policy or procedure. They merely unnecessary label restrictions, and create a method to insure that new products can get to market in a timely fashion.

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.)

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 a new provision, allowing the sale of any wine 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 a new provision, allowing the sale of any beer 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.

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.*
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The primary advantages associated with the proposal are the removal of unnecessary restrictions on beer and wine labels, and guaranteeing that new wine and beer products may enter the market within 30 days of submission of an application for new product approval. These provisions will benefit alcoholic beverage manufacturers, wholesalers, and retailers, as well as the consuming public. There are no disadvantages to the public, the agency, or the Commonwealth.

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.

The proposal does not add any restrictions, so none exceed 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 regulation.

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 Alcoholic Beverage Control Board has considered making no changes to the regulation, but believes the changes being considered simplify compliance requirements without endangering the public. The Board considered eliminating state product approval and relying solely on federal approval, however, differences in state and federal law do not make that practicable.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| 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 | None |
| Projected cost of the regulation on localities | None |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | Businesses licensed for the manufacture, distribution, and sale of wine and beer |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses | There are approximately 14,000 establishments licensed by the board. It is estimated that at least 95% of these would meet the definition of small |

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| <p>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>business.</p> |
| <p>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.</p> | <p>The proposed regulation will not add cost for the affected entities, and may have a positive economic impact, since there will be fewer restrictions on product labels, and may enable some products to get to market sooner.</p> |

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 removes burdens and intrusion on regulated businesses, and while not reducing costs, may result in a financial benefit by allowing some products to get to market sooner.

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.

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

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:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|--|---|
| 3 VAC 5-40-20 | | <p>Wines may not be sold until after Board approval.</p> <p>No imitation or substandard wine as defined under federal regulations may be approved.</p> <p>No "wine cocktail" containing any ingredient other than wine may be approved.</p> <p>No wine label may use the name of a state as a designation of the type of wine, if the contents do not conform to the wine standards of that state.</p> <p>No wine label may contain the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine.</p> | <p>If product is not approved within 30 days of receipt of application, it may be sold. If subsequently disapproved, sale must be discontinued. Very few applications are disapproved. This change will let products get to market more quickly during times when application process gets backlogged.</p> <p>Limitation removed. Definitions of "imitation" or "substandard" wine are unclear. Many modern products are technically classified as "other than standard" wine, due to the addition of certain flavoring additives.</p> <p>Limitation removed. A number of current products involve the addition of flavoring ingredients to wine.</p> <p>Limitation removed. This matter is sufficiently covered by federal regulations.</p> <p>Limitation removed. This situation is sufficiently covered by another provision prohibiting labels with any design or statement likely to mislead the consumer.</p> |
| 3 VAC 5-40-50 | | <p>Beer may not be sold until after Board approval.</p> <p>The Board may withhold approval of any label that implies endorsement of the product by any prominent living person.</p> <p>The Board may withhold approval of any label that makes any humorous or</p> | <p>If product is not approved within 30 days of receipt of application, it may be sold. If subsequently disapproved, sale must be discontinued. Very few applications are disapproved. This change will let products get to market more quickly during times when application process gets backlogged.</p> <p>Limitation removed. Other provisions of the label approval and advertising regulations adequately protect the public.</p> <p>Limitation removed. Other provisions of the label approval and advertising regulations adequately protect the public.</p> |

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