



Final 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 | August 13, 2013 |

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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The amendments (i) consolidate and standardize product approval requirements for wine and beer; (ii) remove vague and unenforceable language relating to lewd or indecent labels on wine or beer; (iii) allow for combining previously approved items into a gift package; and (iv) provide standards and definition for certain beer containers.

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 or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to amend 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 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.

Section 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 Title 4.1 of the Code of Virginia or the general laws of the Commonwealth. Section 4.1-103 of the Code of Virginia also compels 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 Title 4.1 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

The 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.

Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The amendments consolidate existing provisions for approval of wine and beer labels and containers; allow for the use of growlers by gourmet shop licensees; define the lawful size of growlers and pitchers; 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 there are 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 citizens by providing more definitive and reliable guidance on the labeling and product approval of alcoholic beverages. There are no disadvantages to the public, the agency, or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

| Section number | Requirement at proposed stage | What has changed | Rationale for change |
|----------------|---|---|--|
| 3 VAC 5-40-30 | Growlers could not exceed a capacity of 64 fluid ounces, and must be labeled. | Growler may not exceed 64 fluid ounces, or 2 liters if a metric-sized container, and only growlers sold by gourmet shops must be labeled. | This change will allow more flexibility in growler selection, and lessen restrictions on on-premises licensees selling growlers. |
| | Beer pitchers may not exceed 64 fluid ounces. | Beer pitchers may not exceed 80 fluid ounces. | Industry commenters indicate the larger size more appropriately describes the upper end of standard pitcher sizes. |

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

| Commenter | Comment | Agency response |
|--|---|---|
| Jeremy Meyers, BadWolf Brewing Company | 3 VAC 5-40-30—Allow breweries or retailers with off-premises licenses to be allowed to fill growlers from other establishments. | Proposal has been modified to only require labels on growlers sold by gourmet shop licensees. |
| Virginia Beer Wholesalers Association | 3 VAC 5-40-30—Supports growler proposal. | |

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| <p>Virginia Hospitality and Travel Association</p> | <p>3 VAC 5-40-30—In paragraph B, growlers should be allowed up to 2 liters, and labels be required to only provide the brand name beer. Non-adhesive labels should allowed on growlers.</p> <p>In paragraph D, opposes 64 ounce limit on beer pitcher size.</p> | <p>Proposal has been modified to allow growlers up to 64 ounces or up to 2 liters if metric-sized, and to only require labels on growlers sold by gourmet shop licensees.</p> <p>Proposal has been modified to allow pitchers up to 80 ounces.</p> |
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Enter any other statement here

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|---|---|
| 3 VAC 5-40-10 | | Spirits sold in the Commonwealth must conform with federal regulations relating to labels, definitions and standards of identity. | Add requirement that spirits must comply with federal regulations relating to standards of fill. Clarifies that products which meet the federal standards will be qualified for sale in Virginia. |
| 3 VAC 5-40-20 | | Wines have to be approved as to content, container, and label, prior to being sold in the Commonwealth. | Section has been changed to apply to both wine and beer, and the separate section for beer, 3 VAC 5-40-50, is repealed. This standardizes the treatment of the two varieties of alcoholic beverage products, and reduces the volume of regulations. |
| | | Gift packages must obtain separate label approval prior to sale. | Gift packages containing wine or beer for which label approval has been granted do not require additional approval. Duplicate consideration is unnecessary. |
| 3 VAC 5-40-30 | | Wine may not be sold in growlers. Barrel tastings are not allowed at wineries. Growlers may only be sold by retailers holding both on- and off-premises privileges. Beer pitchers are allowed, but undefined. | Section has been changed to apply to both wine and beer, and the separate section for beer, 3 VAC 5-40-40, is repealed. Both wine and beer may be sold in growlers, by on- and off-premises retailers and gourmet shops. Barrel tastings are allowed. Beer pitchers are defined as not exceeding 80 ounces. |
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