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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Alcoholic Beverage Control
Virginia Administrative Code (VAC) citation(s)	3 VAC 5-70
Regulation title(s)	Other Provisions
Action title	Procedures for handling cider; authorized licensees; containers, labels; markup; age limits.
Date this document prepared	April 5, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-70, OTHER PROVISIONS by amending existing regulation 3 VAC 5-70-20, Procedures for handling cider; authorized licensees; containers; labels; markup; age limits, to bring it into conformity with §4.1-213 of the Code. §4.1-213 was amended in 2014 to expand the sizes of containers of cider permitted to be sold in the Commonwealth.

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.

Board – The Virginia Alcoholic Beverage Control Board.

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 April 20, 2016, The Alcoholic Beverage Control Board adopted an amendment to 3 VAC 5-70, Other Provisions, amending the existing regulation 3 VAC 5-70-20, Procedures for handling cider; authorized licensees; labels; markup; age limits to proceed under the fast track regulatory process.

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 4.1-103 authorizes the Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. and § 4.1-111 of the ABC Act. This section of the Code also provides the Board with broad authority to do all acts necessary to carry out the purposes of Title 4.1.

Section 4.1-111. A., further authorizes the Board the authority to amend or repeal regulations adopted by it in accordance with the Administrative Process Act (§ 2.2-4000 et seq)

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

The purpose of this proposal is to amend the current language of 3 VAC 5-70-20 to conform to the language found in §4.1-213 which was amended in 2014 to eliminate the minimum size and one gallon maximum limitations on the size of cider containers.

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?

This proposal is expected to be noncontroversial as the proposed amendment is merely bringing the regulation into conformity with the language of §4.1-213 of the Code related to the permitted sizes of containers of cider. The change in this statute was promulgated at the request of members of the regulated community.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The proposed amendment will update the language in the current regulation to conform to that found in §4.1-213 of the code. The amendment will remove the minimum container size of 375 ml and the maximum size limitation of one gallon and add language consistent with that found in §4.1-213 (D) related to the container sizes of cider.

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 primary advantage for the agency and regulated community is to update the language of this regulation to conform to that found in §4.1-213 (D) of the Code.

There are no disadvantages to the public 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.

There are no requirements that are more restrictive than the proposed amendment.

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.

No locality is affected by this proposed regulatory action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 proposal has no adverse effect on small businesses or the citizens of the Commonwealth.

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 requirement creates the anticipated economic impact.

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 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, Importers and Wholesalers of wine, beer and cider products.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None as the proposed amendment is merely updating the regulation to conform to practices currently permitted by statute.
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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	There will no additional cost to the agency or industry members affected by this regulation.

Beneficial impact the regulation is designed to produce.	To bring the existing language in 3 VAC 5-70-20 into conformity with that found in §4.1-213 (D) of the Code.
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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 are no other alternatives to amend the language in the regulation.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

Commenter	Comment	Agency response

The proposed amendment is not a result of a periodic review.

Family impact

Please assess the impact of this 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 regulatory action will have no negative impact on the institution of the family and family stability.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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
3 VAC 5- 70-20 (D)		The language of this regulation currently conflicts with §4.1-213 (D) of the Code which establishes a minimum size of 375ml and a maximum size of one gallon for containers of cider.	The proposed amendment would add language that mirrors §4.1-213 (D) of the Code which will state that containers of cider containing less than seven percent of alcohol by volume may be sold in containers that conform to federal regulations for wine or beer provided such containers are labeled in accordance with Board Regulations. Containers of cider containing seven percent of more alcohol by volume may be sold provided such containers comply with federal regulations for wine, provided such containers are labeled in accordance with Board Regulations.

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