



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Alcoholic Beverage Control
Virginia Administrative Code (VAC) citation(s)	3VAC 5-40
Regulation title(s)	Requirements for Product Approval
Action title	Wine and Beer Containers; Sizes and Types; On-premises and Off Premises Limitations Cooler Dispensers; Novel Containers; Carafes and Decanters.
Date this document prepared	August 30, 2015

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 3VAC 5-30, REQUIREMENTS FOR PRODUCT APPROVAL by amending existing regulation 3VAC 5-40-30 (B) to redefine the term "growler" to mean a resealable container made of glass, ceramic, metal or other resealable containers approved by the Board. This proposal amends the limitations on growlers: (1) to allow retailers licensed to sell beer and cider for off premises consumption, to sell beer and cider in growlers with a maximum capacity of 128 ounces or for metric sizes four liters; (2) to allow retail licensees, licensed to sell wine for both on and off premises consumption and gourmet shops licensed to sell wine for off premises consumption, to sell wine in growlers with a maximum capacity of 64 fluid ounces or for metric size containers two liters; wine sold by gourmet shops in growlers shall be labeled with (i) the manufacturers name or trade name,(ii) the

place of production, (iii) the net contents in fluid ounces and (iv) the name and address of the retailer. This amendment permits retailers licensed to sell wine and beer for both on and off premises consumption and gourmet shops to sell, wine and beer in sealed containers made of metal, or other materials approved by the Board with a maximum capacity of 32 fluid ounces or if in metric size containers one liter, provided that the alcoholic beverages are placed in the container following an order from the consumer.

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

"Growler" – A resealable container made of glass, ceramic, metal or other materials approved by the 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 October 28, 2015, the Alcoholic Beverage Control Board adopted an amendment to 3VAC 5-40 Requirements for Product Approval, amending the existing regulation 3VAC5-40-30 Wine and Beer Containers; Sizes and Types; On Premises and Off Premises Limitations, Cooler Dispensers; Novel Containers; Carafes and Decanters; 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(9) provides that the Board shall have the power to determine the nature, the 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.

Section 4.1-111 B (17), (18) and (19) of the Code of Virginia mandates that the Board promulgate regulations to incorporate the proposed amendment into existing regulation 3VAC 5-40-30.

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.

These amendments are intended to meet specific statutory directives to modernize regulations on business practices by retail on and off premises licensees and gourmet shop licensees of the regulated community.

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?

The rulemaking process is expected to be non controversial because the agency is responding to specific statutory mandates. The agency has minimal discretion.

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 redefines a growler as a resealable container made of glass, metal, ceramic or other materials approved by the Board and also provides for:

- Beer and cider sold for off premises consumption by persons licensed to sell beer and cider for off premises consumption may be sold in growlers with a maximum capacity of 128 fluid ounces or for metric sizes four liters.
- Wine may sold for off premises consumption in growlers with a maximum capacity of 64 fluid ounces or two liters if metric sizes. Wine may be sold in growlers only by persons licensed to sell wine for both on and off premises consumption or gourmet shop licensees; wine sold by gourmet shop licensees in growlers shall be labeled with (i) the manufacturer's name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces and (iv) the name and address of the retailer.
- Retail licensees authorized to sell wine and beer for both on and off premises consumption and gourmet shop licensees may sell wine and beer in sealable containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or one liter if in metric size, provided the alcoholic beverages are placed in the container following an order from the consumer.

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 of the proposal is to meet the legislative mandate. The proposal modernizes the Board's regulations and permits certain licensees to sell wine, beer and cider in growlers and in sealable containers with limitations. There are no disadvantages to 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 proposed amendment is less restrictive than federal regulations related to growlers.

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.

Localities are not affected by the proposed regulatory amendments.

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 statutory mandate requires the Board to adopt regulations that permit the identified retail licensees to sell wine, beer and cider as prescribed.

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.	Retail on and off premises licensees and gourmet shop licensees.
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.	Approximately 8,000, the vast majority of which are small businesses.
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.	None
Beneficial impact the regulation is designed to produce.	To afford certain retail licensees expanded options for selling wine, beer and cider for off premises consumption.

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 alternative means available to the agency to meet this statutory directive. The Code of Virginia dictates that the Board shall adopt regulations to implement the changes as contained in the proposal.

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

N/A

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 impact on the institution of the family and family stability. These practices fall under the same controls as all other alcoholic beverage sales.

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
3VAC 5-40-30		<p>Growler(s) are currently defined as a reusable glass, ceramic or metal container having a capacity of not more than 64 fluid ounces or two liter if metric size.</p> <p>Growlers currently may only be sold by persons licensed to sell wine and beer for on and off premises consumption and gourmet shop licensees, for off premises consumption.</p>	<p>The proposal will redefine “growler” to mean a resealable container made of glass, ceramic, metal or other materials approved by the Board.</p> <p>Under this proposal beer and cider may be sold in growlers for off premises consumption by persons licensed to sell beer and cider for off premises consumption with a maximum capacity of 128 fluid ounces, or four liters if metric size.</p> <p>Wine and beer on and off premises and gourmet shop licensees may sell wine in growlers, with a maximum capacity of 64 fluid ounces or two liters if metric size for off premises consumption. Wine sold by gourmet shop licensees shall be labeled with (i) the manufacturers name or trade name, (ii) the place of production, (iii) the net contents in fluid ounces and (iv) the name and address of the retailer.</p> <p>The proposal also permits retail licensees licensed to sell wine and beer for both on and off premises consumption and gourmet shop licensees to sell wine and beer in sealed containers made of metal or other materials approved by the Board with a maximum capacity of 32 fluid ounces or one liter if metric size provided the alcoholic beverages are placed in the container following an order from the consumer.</p>

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