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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 VA5-40-10
Regulation title(s)	Requirements for Product Approval
Action title	Spirits; labels, definitions and standards of identity
Date this document prepared	August 6, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 3 VAC 5-40, Product Approval by amending the existing regulation 3 VAC 5-40-10, deleting the requirement to submit a copy of the federal certificate of label approval to have products sold in ABC stores. The amended language would give the Board the option of asking for a Certificate of Label Approval before approving a product for sale in its stores.

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

Certificate of Label Approval - is a document issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB) for an approved alcoholic beverage label.

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 3 VAC 5-40. Product Approval, amending existing section 3 VAC 5-40-10 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.

Sections 4.1-103 (13) and 4.1-111 (A) gives the Alcoholic Beverage Control Board the authority to adopt reasonable regulations and do all acts necessary and reasonable and advisable 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. 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 amendment removes the requirement that any person wishing to have products sold in ABC Stores to provide a Certificate of Label Approval. The amendment permits the Board to require a copy of the Certificate of Label Approval before approving it for sale in those cases in which there are questions about the label or the product. The amendment follows the practice currently followed by the Board.

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 regulation is expected to be noncontroversial because it makes the process for product approved for sale in ABC Stores less burdensome on businesses and follows the current practice.

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.

There are no substantive changes associated with this amendment.

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 advantage to the agency is the proposed amendment is consistent with current practice and removes a requirement from the approval process. There are no disadvantages.

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.

No federal requirements are affected by this change.

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.

This proposed amendment has no effect of localities.

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 proposed amendment has no negative impact on businesses or the public.

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.	None
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
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.	Follows the agency’s current practice of not requiring entities to provide a Certificate of Label Approvals before their products are approved for sale in ABC stores.

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 viable alternatives to the proposed amendment.

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 of 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 5-40-10	N/A	The current regulation makes submitting a Certificate of Label approval mandatory to have a product sold in ABC Stores.	The Amendment eliminates the mandatory requirement to provide a Certificate of Label Approval but allows the Board to require a Certificate if there is a question about a product of label. This proposal will have no impact on the affected entities.

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

Eliminate the requirement that a Certificate of Label Approval must be furnished before a spirits product can be sold in the Commonwealth.

3VAC5-40-10. Spirits; Labels, Definitions and Standards Of Identity.

Spirits sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions, standards of identity, and standards of fill. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. ~~Applicants shall furnish the board a certified copy of the approval of the label by such federal agency.~~ *The Board may request a copy of the Certificate of Label Approval before a product is approved for sale.*

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.