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Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3VAC5-50-160
Regulation title(s)	Happy Hour and Related Promotions; Definition; Exceptions
Action title	Happy Hour Advertising Amendments
Date this document prepared	November 29, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Section 3VAC5-50-160 of the Virginia Administrative Code governs "Happy Hour" and related promotions. The proposed amendments change 3VAC5-50-160 such that advertising of happy hour is permitted so long as the advertisement does not advertise pricing and does not tend to induce minors or other interdicted individuals to drink, or encourage excessive drinking. Additionally, the proposed changes to 3VAC5-50-160 delete superfluous provisions that appear in other sections of Title 3 of the Virginia Administrative Code. The amendments add a new subsection (3VAC5-50-160[E]) to include a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

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.

NA

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

There is no mandate from the General Assembly, federal government, or court that requires promulgation of this regulation. The changes to this regulation are the result of an internal review.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Virginia ABC Board is granted the authority to promulgate such action pursuant to:

Section 4.1-101 of the Code of Virginia (Code) establishes the Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-111 (A) of the Code provides the Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Section 4.1-111(B)(15) states that the Board shall promulgate regulations that shall prescribe the terms for any "happy hour" conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Virginia ABC has undertaken this action as a measure to allow its licensees to engage in responsible advertising for happy hour events. These changes will provide the public with a regulation that is condensed and easily accessible and understandable by eliminating some redundancies and clarifying the rules relating to happy hour advertising all of which lends itself to the ongoing protection of the health, safety, and welfare of citizens. Virginia ABC does not anticipate any potential issues that would have to be addressed as this regulation is developed. Virginia ABC hopes that the change will afford licensees more discretion in the language that they choose to use in their advertising while still maintaining compliance with the Code.

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 substantive changes to the existing regulation include adding a new regulation numbered as 3VAC5-50-160(B) that permits happy hour advertising so long as the advertisement does not induce minors or interdicted individuals to consume alcohol or encourage people to consume in excess.

The current 3VAC5-50-160(B) is changed to 3VAC5-50-160(C) to compensate for the aforementioned addition of the regulation permitting happy hour advertising.

The current sections 3VAC5-50-160(B)(2), 3VAC5-50-160(B)(5), and 3VAC5-50-160(B)(6) are deleted because they are addressed in other sections of Title 3 of the Virginia Administrative Code.

3VAC5-50-160(C)(5) (currently 3VAC5-50-160[B][8]) is amended to the extent that all the text relating to where a licensee may advertise its happy hour, the wording a licensee may use in the advertisement, lists of available alcoholic beverages featured during happy hours, and the period in which alcoholic beverages are being sold at reduced prices is removed and replaced with a prohibition against advertising pricing related to happy hour.

The current 3VAC5-50-160(C) is changed to 3VAC5-50-160(D) to account for the additional regulation that was added.

3VAC5-50-160(E) is added and includes a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

A cross reference is included to direct the reader to 3VAC5-20-10 for a definition of advertising.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage to the public is that licensees will have more discretion in advertising their happy hour events, provided they do so responsibly and according to the provisions of the Code. The primary advantage to the agency is that the regulation changes maintain compliance the Code and removes some redundant text. There are no disadvantages to the public or Commonwealth associated with this regulatory change.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by this change to the regulation.

Localities Particularly Affected

There are no other localities particularly affected by this change to the regulation.

Other Entities Particularly Affected

There are no other entities particularly affected by this change to the regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no projected costs, savings, fees, or revenues to ABC resulting from this change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues to other state agencies resulting from this change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefits of this regulatory change are strictly limited to ABC licensees that host happy hour. The benefit for ABC licensees is that they are afforded more discretion in the language they use in their happy hour advertising.</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues to localities resulting from this change.
Benefits the regulatory change is designed to produce.	The benefits of this regulatory change are strictly limited to ABC licensees that host happy hour events. The benefit for ABC licensees is that they are afforded more discretion in the language they use in their happy hour advertising.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No other entities will likely be affected by this regulatory change.
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.	Virginia ABC has 7579 licensees classified as on-premises licensees potentially affected by this regulatory change; however, there is no way to find out which ones have happy hours. Additionally, ABC does not track the number of licensees that qualify as small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	a) There are no projected costs associated with regulatory change relating to projected reporting, recordkeeping, or other administrative costs. b) There are no costs related to the development of real estate for commercial or residential purposes. c) There are no fees associated with this regulatory change. d) There are no associated purchases for equipment or services associated with this change. e) There is no time required to comply with the regulation requirements.
Benefits the regulatory change is designed to produce.	The benefits of this regulatory change are strictly limited to ABC licensees that host happy hour events. The benefit for ABC licensees is that they are afforded more discretion in the language they use in their happy hour advertising.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no other alternatives

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There is a substantial state interest in ensuring responsible alcohol advertising and discouraging excessive consumption. In consideration of revising this regulation, the Virginia Alcoholic Beverage Control Authority considered what changes could be made that would uphold that state interest and Code provisions while providing less restrictive rules for advertising happy hour events. There are no reporting requirements or schedules/deadlines for the compliance with this regulatory change.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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.

This change is not the result of a periodic review or a small business impact review. There is still a continued need for this regulation because the Section 4.1-111(B)(15) of the Code mandates that ABC prescribe the terms for any "happy hour conducted by on-premises licensees. This regulation did not receive any public comment during the NOIRA stage. The regulation includes the definition of "happy hour" and "drink" as well as clearly outlining the rules governing happy hour events. The proposed changes permit advertising of happy hour events so long as the advertisement does not advertise prices, does not tend to induce minors or other interdicted individuals to drink, and does not encourage people to drink in excess. Additionally, the proposed changes to 3VAC5-50-160 delete superfluous provisions that appear in other sections of Title 3 of the Virginia Administrative Code. The regulation does not overlap, duplicate, or conflict with any other federal or state law or regulation. The regulation was reviewed in 2011 when ABC conducted a comprehensive regulatory review which resulted in a change to the regulation that allowed restaurants to advertise happy hour and the time span of their drink specials in any media (prior to the change happy hour advertising was only permitted on the licensee's premises).

The Governor approved the changes in January 2014. In 2016, the regulation was further amended to include a provision that allowed happy hour advertisements to include a list of the alcoholic beverages featured during happy hour events.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

There were no public comments submitted to Town Hall, in a public hearing, or submitted directly to the Board.

Commenter	Comment	Agency response

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
3VAC5-50-160(B)	3VAC5-50-160(B)	Currently, 3VAC5-50-160(B) enumerates prohibited happy hour practices.	The change inserts a new 3VAC5-50-160(B) that states happy hour advertising is permitted so long as the advertisement does not minors or interdicted individual to consume alcohol or encourages people to consume in excess.
3VAC5-	3VAC5-50-	Currently, 3VAC5-50-160(B)	The subsection is changed from (B) to (C)

50-160(B)	160(C)	enumerates prohibited happy hour practices.	to compensate for the addition of the aforementioned new subsection.
3VAC5-50-160(B)(2)	NA	The subsection is deleted because it is addressed in a different section of Title 3 of the VAC.	Deleted to remove superfluous text.
3VAC5-50-160(B)(5)	NA	The subsection is deleted because it is addressed in a different section of Title 3 of the VAC.	Deleted to remove superfluous text.
3VAC5-50-160(B)(6)	NA	The subsection is deleted because it is addressed in a different section of Title 3 of the VAC.	Deleted to remove superfluous text.
3VAC5-50-160(B)(8)	3VAC5-50-160(C)(5)	Currently, this section states advertising happy hour anywhere other than within the interior of the licensed premises, except that a licensee may use the term "Happy Hour" or "Drink Specials," a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement	The changes to this subsection remove all text relating to where a licensee may advertise its happy hour, the wording a licensee may use in the advertisement, lists of available alcoholic beverages featured during happy hours, and the period in which alcoholic beverages are being sold at reduced prices is removed and replaced with a prohibition against advertising pricing related to happy hour.
3VAC5-50-160(C)	3VAC5-50-160(D)	Currently, the regulation states it shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.	The text is the same. The change in numbering is made to account for the additional regulation that was added.
NA	3VAC5-50-160(E)	This is a new subsection	The new subsection includes a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.