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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Alcoholic Beverage Control
<b>Virginia Administrative Code (VAC) citation(s)</b>	3 VAC 5-50
<b>Regulation title(s)</b>	Retail Operations
<b>Action title</b>	Happy Hours and Related Promotions; Definitions; Exceptions
<b>Date this document prepared</b>	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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 -50 (Chapter 50,) Retail Operations by the amendment of 3 VAC 5-50-160 to allow mixed beverage retail licensees to permit patrons to possess a flight of wine, beer or mixed beverages consisting of no more than five sample products. In the case of spirits each sample shall contain no more than one half ounce of distilled spirits and to sell pitchers of mixed beverages during a happy hour in accordance with limitations established by the Board. In addition, the proposed amendment will permit mixed beverage licensees to list the alcoholic beverage products featured during a happy hour in any lawful advertisement.

### 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.*

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Board – The Alcoholic Beverage Control Board

Happy Hour – A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

Sample – A sample serving of alcoholic beverages shall mean for beer four ounces, wine two ounces and for mixed beverages no more than one-half ounce of spirits.

Flight - Consists of five samples of wine or beer or mixed beverages sold by a licensee for one price.

Pitcher – for mixed beverages shall mean a container with a maximum capacity of 32 fluid ounces or one liter if in metric size containing a premixed drink consisting of spirits product(s) mixed with nonalcoholic beverage(s).

### 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.*

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On October 28, 2015, the Alcoholic Beverage Control Board adopted an amendment to 3 VAC 5-50 (Chapter 50,) Retail Operations; amending existing section 3 VAC 5-50-160 Happy Hour and related promotions; definitions; exceptions; 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.*

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Section 4.1-111 B (15) of the Code of Virginia requires the Alcoholic Beverage Control Board to promulgate regulations that permit a mixed beverage licensee to advertise the products featured during a happy hour promotion and to serve pitchers and flights of mixed beverages to patrons.

Section 4.1-103 (13) and (18) of the Code of Virginia authorizes the Virginia Alcoholic Beverage Control Board to promulgate regulations and to do all acts necessary 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.*

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These amendments respond to specific statutory requirements.

**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?*

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The rulemaking process is expected to be noncontroversial because the proposed amendments closely follow the statutory requirements. 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.*

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The proposed amendment provides for retail on premises licensees to have the option of listing the alcoholic beverage products featured during a happy hour promotion in any lawful advertisement. In addition, retail on premises licensees may serve a flight of five samples of wine or beer to a patron. Mixed beverage licensees may also serve a flight of five mixed beverage samples and pitchers of mixed beverages to patrons during a happy hour in accordance with Board Regulations.

**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.*

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The primary advantage of the public is accomplishing the legislature's stated goal to permit the activities identified above. These amendments include safeguards to prevent overconsumption by placing limitations on the amounts of alcoholic beverages that can be served. 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.*

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There are no federal requirements

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### 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 particularly affected by the proposed regulations.

### 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 activities described above for retail licensees.

### 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.*

<b>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</b>	None
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	None
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Retail on premises licensees.
<b>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.</b> 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	6000 (approximately), 75% of which are presumed to be small businesses.

<p><b>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:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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.</b></p>	<p>There are no additional anticipated costs expected to be incurred by the affected licensees.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Reduced regulatory restrictions on certain activities of retail on premise licensees.</p>

### 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.*

No viable alternatives are available to meet the statutory mandate.

### 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 should have no impact on the institution of the family and family stability. These practices fall under the same controls as all other alcoholic beverages including limitations on the quantity of alcohol that can be served to a patron at one time.

### 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 5-50-160		<p>Retail licensees may only have advertisements outside of the licensed establishment that are limited to the terms “Happy Hour” or “Drink Specials” when any advertisement is in reference to a happy hour promotion.</p> <p>Licensees may not allow patrons to possess more than two drinks during a happy hour.</p> <p>Licensees may not sell a pitcher of mixed beverages during a happy hour.</p>	<p>The change would allow on premises licensees to advertise the products featured without prices during a happy hour promotion.</p> <p>The proposed change would permit patrons of on premise licensees to possess a flight of five samples of wine or beer; or a flight of five mixed beverage samples during a happy hour.</p> <p>This change would permit a mixed beverage licensee to sell a pitcher of mixed beverages (with limitations) to</p>

			patrons during a happy hour promotion.
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If a new regulation is being promulgated, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>