



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-20
Regulation title	Advertising
Action title	Updating Advertising Regulations as a Result of Periodic Review
Date this document prepared	May 29, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to amend the board's regulation governing alcoholic beverage advertising to implement changes suggested by a recent periodic review. The action is intended to 1) allow for instantly redeemable coupons, 2) establish specific parameters for use of coupons, 3) remove vague and unenforceable language, 4) prevent the distribution of novelty and specialty items bearing alcoholic beverage advertising to individuals less than 21 years of age, and 5) increase the value of novelty and specialty items that may be given to eligible persons.

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 of the Code of Virginia provides that the board has the power to control the possession, transportation, sale and delivery of alcoholic beverages within the Commonwealth, while § 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of the Alcoholic Beverage Control Act. Section 4.1-320 of the Code provides that there shall be no alcoholic beverage advertising in Virginia except as allowed by board regulations.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is necessary to clarify and expand the use of coupons and to remove provisions of the advertising regulations that are vague and unenforceable. The streamlining and clarification of the provisions of this regulation should help promote the welfare of the citizens by providing more definitive and reliable guidance on the advertising of alcoholic beverages.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

It is anticipated that Chapter 20 will be amended to eliminate antiquated, unenforceable language, establish parameters for instantly redeemable coupons, increase the dollar value amount (\$10 to \$20) for novelty and specialty items bearing alcoholic beverage advertising that may be given to eligible individuals, prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons less than 21 years of age, and allow contributions of alcoholic beverages to charitable groups for service at events.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, curtis.coleburn@abc.virginia.gov, telephone (804) 213-4409, facsimile (804) 213-4411.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

Family impact

Assess the potential impact of the proposed 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 action is not anticipated to have any impact on the institution of the family or family stability.

Periodic review/small business impact review result

If this NOIRA is the result of a periodic review/small business impact review, 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 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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

No comments were made concerning this regulation.

In keeping with Executive Order 14 (2010), the following observations are made. This proposal is necessary to promote the general health, safety and welfare of the public and is easily understandable. There is a continued need to have conditions and restrictions on the advertising of alcoholic beverages, so that this commercial speech is protected and placed in appropriate locations and targets an appropriate audience.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2010. Some changes in industry practices (instantly redeemable coupons) led to this proposal. The remaining proposals are a result of industry suggestions.