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Proposed Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3VAC5-20
VAC Chapter title(s)	Advertising
Action title	Chapter 20 Reform
Date this document prepared	December 21, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

A comprehensive review and amendment of the full chapter. The intent is to remove any redundancies or language that contradicts the Code of Virginia, modernize various rules dealing with alcohol advertising, and make sure the regulations comport with current practices of the industry.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

NA

Mandate and Impetus

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, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this change is to comply with the periodic review requirements of the Administrative Process Act and also to reduce regulatory requirements by 25%.

Legal Basis

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

- 1) The promulgating agency is the Virginia Alcoholic Beverage Control Authority.
- 2) Section 4.1-101 of the Code of Virginia (Code) establishes the Virginia Alcoholic Beverage Control Authority (ABC Board.)

Section 4.1-103 of the Code enumerates the powers of the Board which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act).

Section 4.1-103(7) states the Board has the authority to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised, and its duties performed.

Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

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)(13) says the Board shall promulgate regulations that establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this subtitle, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

- a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this subtitle and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 12 (§ 33.2-1200 et seq.) of Title 33.2 where such signs are located on commercial real estate as defined in § 55.1-1100, but only in accordance with this subtitle.

Purpose

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 is intended to solve.

This regulation is essential to protect the health, safety, and welfare of citizens because it provides guidance for alcohol advertising to ensure that regulants do not engage in conduct that would encourage consumption by those that cannot lawfully consume, conduct that would violate the Tied House Laws, or conduct that would mislead or harm the public.

Substance

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.

Substantive changes of existing regulations:
3VAC5-20-10(C)(8) includes a new provision that excludes combination of food and alcoholic beverages offered at a discounted price by an on-premises licensee during the permitted hours for a happy hour pursuant to 3 VAC 5-50-160 from the prohibition against advertising that constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages.

3VAC5-20-30(2), (3), and (4) removed and placed in 3VAC5-30 because they reflect Tied House rules.

3VAC5-20-60 repealed and moved to 3VAC5-30 because they reflect Tied House rules.

Issues

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.

- 1) The primary advantage to the public is that the public can now enjoy combination food and alcoholic discounts during happy hour. Also, the changes make the regulations more understandable by removing regulations that do not relate to advertising and putting them in the appropriate regulation chapter (Tied House).
- 2) The Commonwealth’s benefit is that the regulation utilizes current terminology and the changes bring clarity to certain advertising rules that have been subjective and caused confusion in the regulated community.

There are no disadvantages to the Commonwealth.

Requirements More Restrictive than Federal

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.

3VAC5-20-60 was repealed; however, it was moved to Chapter 30. VA ABC's rule is more restrictive than the federal rule (below). The regulations are based on provisions in the VA Code and they cannot be changed unless the Code is changed.

§ 27 C.F.R. 6.84 Point of sale advertising materials and consumer advertising specialties.

- (a) General. The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

3VAC5-20-90 is more restrictive than the federal rules (below). VA ABC finds that its restrictions are in the interest of public safety to prevent or mitigate overconsumption of alcohol.

§ 27 C.F.R. 6.96 Consumer promotions.

(a) Coupons. The act by an industry member of furnishing to consumers coupons which are redeemable at a retail establishment does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided the following conditions are met:

- (1) All retailers within the market where the coupon offer is made may redeem such coupons; and
- (2) An industry member may not reimburse a retailer for more than the face value of all coupons redeemed, plus a usual and customary handling fee for the redemption of coupons.

- (b) Direct offerings. Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from participation.

3VAC5-20-10 is more restrictive than the federal rule below. VA ABC believes its restrictions are in the interest of public safety and to prevent market confusion.

§ 27 C.F.R. 6.72 "Tie-in" sales.

The act by an industry member of requiring that a retailer purchase one product (as defined in § 6.11) in order to obtain another constitutes a means to induce within the meaning of the Act. This includes the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package, i.e., a distinctive decanter, or wooden or tin box. This also includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not precluded from selling two or more kinds or brands of products to a retailer at a special combination price, provided the retailer has the option of purchasing either product at the usual price, and the retailer is not required to purchase any product it does not want. See § 6.93 for combination packaging of products plus non-alcoholic items.

§ 27 C.F.R. 6.93 Combination packaging.

The act by an industry member of packaging and distributing distilled spirits, wine, or malt beverages in combination with other (non-alcoholic) items for sale to consumers does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

3VAC5-20-20 is more restrictive than the federal rule below. VA ABC believes its restrictions are in the interest of upholding separation among industry tiers and tied house provisions.

§ 27 C.F.R. 6.84 Point of sale advertising materials and consumer advertising specialties.

(a) General. The act by an industry member of giving or selling point of sale advertising materials and consumer advertising specialties to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that the conditions prescribed in paragraph (c) of this section are met.

(b) Definitions —

(1) Point of sale advertising materials are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(2) Consumer advertising specialties are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

(c) Conditions and limitations.

(1) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials.

(2) The industry member may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

3VAC5-20-30 is more restrictive than the federal rule below. VA ABC believes its restrictions are in the interest of public safety.

§ 27 C.F.R. 6.102 Outside signs.

The act by an industry member of giving or selling outside signs to a retailer does not constitute a means to induce within the meaning of section 105(b)(3) of the Act provided that:

(a) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;

(b) The retailer is not compensated, directly or indirectly such as through a sign company, for displaying the signs; and

(c) The cost of the signs may not exceed \$400.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<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.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for the Authority.
<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.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefit is to bring clarity to the alcohol advertising regulations.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues resulting from the regulatory changes for localities.
Benefits the regulatory change is designed to produce.	The benefit is to bring clarity to the alcohol advertising regulations.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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.	These changes may impact the approximately 20,892 VA ABC licensees, but only those that engage in advertising.
Agency’s best estimate of the number of such entities that will be affected. 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.	VA ABC has approximately 20,892 licensees that would be subject to these regulation changes. VA ABC does not have the capability to determine which of its licensees meet the definition of a small business.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. 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.	There are no projected costs for licensees based on the revisions to these regulations.
Benefits the regulatory change is designed to produce.	The benefit is to bring clarity to the alcohol advertising regulations.

Alternatives to Regulation

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 were no alternatives to these regulatory changes that were considered.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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 were no alternatives to these regulatory changes that were considered.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, 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, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulatory changes comply with EO 19 in that they reduce the number of regulatory requirements, remove redundant language, and bring clarity to the alcohol advertising rules and to make sure the existing rules comport with modern principles of advertising.

The regulation is still very much needed because advertising rules exist to mitigate ills that may persist if it is left unregulated (i.e. appeal to minors; misleading ads; ads that encourage overconsumption).

The regulatory changes do not have an economic impact on small businesses. There are no requirements in these regulatory changes that will result in a costs to licensees.

Public Comment

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

Commenter	Comment	Agency response
Kevin R. McNally, Esq. – Counsel for Virginia Beer Wholesalers Association	VBWA supports the proposed amendments to the advertising regulations, but urges the Authority consider further clarification of what activities may constitute unlawful "sponsorship," as opposed to permissible "advertising." The distinction has become particularly important in light of the increasing presence of alcoholic beverages and advertising in and around at college sporting events.	The Authority appreciates the comment from VBWA and will continue to review rules regarding sponsorships; however, will keep the regulations the same at this time.
Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States	3VAC5-20-10 Consistent with the federal rules (27 C.F.R. §§ 6.72 and 6.93) and regulatory schemes of many other states, we urge the ABC to clarify its description of permitted combination packaging in section (D)(8) (“shall be limited to packaging”) to also allow industry members to package and sell alcohol beverages combined with other alcohol beverages or non-alcohol beverage items.	The Authority does not support making this revision.
Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States	3VAC5-20-20. Advertising; interior; retail licensees. We urge the ABC to eliminate the prohibition against retailers utilizing advertising materials that are illuminated. Illuminated signs, such as neon signs, are commonly used by retailers throughout the states and are allowed under the federal rules (27 C.F.R. § 6.84(b)(1) permits industry members to furnish signs to retailers that are “electric, mechanical or otherwise”). Moreover, such a prohibition may violate the protected commercial speech rights of alcohol beverage retailers under the First Amendment. See Michigan Attorney General Opinion No. 7146 (2004) (ban against illuminated advertising of alcohol beverages by certain retail licensees inside their establishments violates the First Amendment to the U.S. Constitution and the similar provision of the Michigan Constitution).	The Authority does not support this revision as this limitation is part of the Code of Virginia 4.1-216.1.

<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>3VAC5-20-30. Advertising; exterior.</p> <p>Sections (5) and (6) of this rule, respectively, prohibit industry members from furnishing outdoor advertising for retailers and reiterate the general prohibition against cooperative advertising in 3VAC5-30-80. Section (A) of the latter rule, however, also expressly recognizes the ABC’s authority under Va. Code § 4.1-216(C)) to provide regulatory exceptions from this prohibition. We urge the ABC to exercise this authority and, as provided in the federal rule (27 C.F.R. § 6.102) and other states, permit industry members to furnish outside signs to retailers. This should be subject to the provisions in the federal rule requiring conspicuous and substantial advertising material matter about the product or the industry member which is permanently inscribed or securely affixed, and prohibiting compensation to the retailer for displaying the signs. We also support imposing a dollar limit on outside signs furnished by industry members to retailers. We recommend adopting in the ABC’s rule an updated version of the \$400 federal outside sign dollar limit because it has not been changed since 1995. This dollar limit has lost approximately 50% of its value and should be doubled. Similar to our dollar limit discussion regarding the novelties and specialties rule, the ABC also should add a provision requiring an automatic annual increase based upon the consumer price index.</p>	<p>The Authority considered these changes, and the decision was not to change the regulation.</p>
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>3VAC5-20-60. Advertising; novelties and specialties.</p> <p>We urge the ABC to use its authority under Va. Code § 4.1-216(C)) to adopt an additional tied-house exception in its current novelties and specialties regulation. (See also 3VAC5-30-80(A) recognizing this authority of the ABC.) Utilizing the federal rule (27 C.F.R. § 6.84) as guidance, the ABC should expressly allow industry members to furnish advertising specialties that are intended to be carried away by consumers. Many other states have adopted this federal rule or a similar tied-house exception. Consumer advertising specialties are of negligible value and are a traditional, cost-effective means to draw a consumer’s</p>	<p>The Authority does not support increasing the amount on the value of novelty items. because the regulation is based on Virginia Code 4.1-201(A)(12). The Authority does not support making any of the other suggested regulation changes.</p>

	<p>attention to a particular brand among the numerous brands available on a retail shelf. Allowing industry members to furnish these types of advertising items is particularly important because of the significant tied house limitations on the overall ability of industry members to advertise and promote their products at retail premises.</p> <p>To enhance clarity and certainty for both industry and regulators, we recommend adopting the illustrative list of consumer advertising specialties in the federal rule, which includes items “such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.”</p> <p>Consistent with TTB and other states, consumer advertising specialties should be required to include conspicuous and substantial advertising material matter about the product or the industry member which is permanently inscribed or securely affixed.</p> <p>We oppose any dollar or quantity limits on novelties and specialties furnished to retailers by industry members. We believe these limits are unnecessary in light of the nature and value of these items, the compliance burdens that they impose on industry, and the absence of any such limits in the federal rules or in the schemes of many states. If any dollar limit is retained, it should be updated to account for inflation during the years that it has remained unchanged and has lost value. This calculation should be made by applying the change in the Bureau of Labor Statistics’ consumer price index to the current dollar limit since it initially was adopted. To ensure that going forward this limit is kept current on a regular basis, the ABC should add a provision requiring an automatic annual increase based upon the consumer price index.</p> <p>Further, the practices permitted by 3VAC5-20-60(3) and (6) (viz., to donate items in excess of a \$10 wholesale value to participants/entrants in connection with event sponsorships and to provide retailers with point-of-sale order blanks relating to</p>	
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	<p>novelty and specialty items, respectively) should be allowed for all industry members and for all alcohol beverages. No reason exists to limit section (3) to manufacturers or section (6) to beer and wine wholesalers. There also is no basis to discriminate against spirits vis-à-vis beer and wine.</p>	
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>VAC5-20-90. Advertising coupons.</p> <p>We urge the ABC to permit instant redeemable rebates to be honored at state stores as well as at retail licensed premises. We respectfully disagree with the statement on the ABC website (at Manufacturer’s Rebates Guidelines) that instant redeemable rebates would be a prohibited payment by a supplier to a retailer. If limited to the face value of the rebate, the retailer is receiving only a reimbursement for incurring the expense of honoring the rebate at the point-of-sale. These rebates are permitted under the federal rule (27 C.F.R. § 6.96(a)) and the trade practice schemes of many states. Instant redeemable rebates, however, should not be allowed to be offered or placed at a retail premise because of the risk of fraud; subject to exceptions for specific types of these rebates that do not present a similar risk. These exceptions include scan discounts and retailer redemption coupons, each of which is generated automatically from the register when an actual sale to a consumer is made.</p> <p>We also urge the ABC to add in VAC5-20-90(B)(1) (which expressly allows coupons to be offered via the Internet and electronic mail, as well as print media, direct mail or as part of or attached to the package) that coupons also may be offered via mobile electronic devices. This clarification would bring the rule into sync with the widespread and increasing use of personal devices by consumers in making their purchases and ensure that consumers are aware that this convenience is available to them.</p> <p>We also recommend revising the requirements under VAC5-20-90(B)(1) that if industry members offer mail-in coupon pads to retailers or if wholesalers attach mail-in coupons to packages, the</p>	<p>The Authority does not agree with making the suggested changes to the regulation.</p>

	<p>respective coupon pads or coupons must be offered to “all retail licensees equally.” Absent any consideration of geographic proximity, market areas and/or the types of retailers (e.g., on-premise versus off-premise), this overly broad and burdensome requirement potentially could apply to all retailers in the state, which can have only a chilling effect on industry members’ use of these means of furnishing coupons. We recommend revising each of these requirements by replacing the phrase “all retail licensees equally” with “all similarly situated retailers in the same geographic or market area.” Additionally, any obligation to provide coupons or coupon pads to retailers should be in proportion to the sales of the industry member’s product sold by each retailer. Our proposals ensure that unfair advantage is not given to any retailer or group of retailers, are in sync with competitive marketplace realities, and do not impose an undue burden on suppliers wishing to place mail-in rebates at retail establishments.</p> <p>Further, we urge the Commission to expressly clarify in the final rule that industry members may provide coupons for consumer purchases at both on-premise and off-premise retailers. This would be consistent with the federal rule (27 C.F.R. § 6.96) and the trade practice schemes of many states.</p> <p>Finally, the ABC should eliminate the 15-day advance notification requirement for coupons used for purchases of products in state stores. A prior notification requirement is inconsistent with the commercial need to implement promotions in a timely manner in today’s competitive marketplace and is unnecessary in view of the detailed parameters of the permitted activity set forth in this rule. As with coupons for products purchased in licensed retail establishments, we believe the ABC can more efficiently and effectively utilize its resources by deciding whether to investigate and/or take other action based on concerns raised after a promotion occurs. If the ABC decides to retain an advance notification requirement, we request reducing this requirement from 15 days to three business days.</p>	
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<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>3VAC5-20-100. Advertising; sponsorship of public events; restrictions and conditions.</p> <p>Currently, section (A) allows sponsorship of public events by manufacturers, importers and bottlers, and section (B)(9) allows manufacturers to sponsor public events and wholesalers to cosponsor charitable events. We are aware of no statutory or policy basis for this unequal treatment of different industry members and request allowing all permitted activities in these sections of the rule by all industry members.</p> <p>We also would not retain the language in section (B)(5) defining eligible charitable events as being “held for the specific purpose of raising funds.” In addition to this restriction being unnecessary, it may preclude sponsorships of charitable events for other legitimate purposes, such as a charity serving its charitable purpose (e.g., the charity furnishing free dental care for persons in need, introducing itself to the community or recruiting volunteers). We are not aware of any reason to exclude from this rule these or other allowable sponsorships by charities.</p> <p>Finally, for reasons similar to those we raised in opposing the prior notification requirement for coupons for use at state stores, we propose eliminating the prior notification requirement for sponsorships in section (B)(8). If retained, we request clarifying that such notification is required no more than three business days prior to the event.</p>	<p>The Authority does not support revisions to the regulation. The Authority will look into providing a guidance document regarding sponsorships.</p>
<p>Tommy Herbert – Virginia Restaurant Lodging and Travel Association</p>	<p>The Virginia Restaurant Lodging and Travel Association (VRLTA) was founded to provide a single unified voice for Virginia’s restaurant, hotel-lodging, travel, and hospitality supplier industries. Our mission is to further advocate on behalf of the legislative priorities and interests of Virginia’s restaurants, hotels, attractions, and destinations to Virginia’s General Assembly and regulatory agencies.</p> <p>VRLTA supports the proposed change to 3 VAC-5-20-10(C)(8) to allow ABC licensed restaurants to offer discounted price on food and alcoholic beverage combinations during the permitted hours for happy hours.</p>	<p>The Authority supports this revision.</p>

<p>Cole Johnson – CEO, The Looma Project, Inc.</p>	<p>I write on behalf of The Looma Project, Inc. (Looma) to submit these comments in response to the Virginia Alcoholic Beverage Control Authority’s (ABC Board) Notice of Intended Regulatory Action regarding Chapter 20 reform. Looma appreciates the opportunity to comment on these important regulations. Looma operates an in-store media platform focused on storytelling and education. Our network of digital screens connects shoppers to the people and stories behind their products. We support the ABC Board’s efforts to ensure that Chapter 20’s regulations comport with the alcohol industry’s current advertising practices. To protect consumers’ ability to make informed decisions and keep pace with modern trade practices, we urge the ABC Board to clarify in the final amendments to Chapter 20 that retail licensees may use dynamic interior digital screens to inform shoppers about their products.</p> <p>Shoppers Desire Transparency, Storytelling, and Dynamic Product Information in Navigating Increased Product Selection in the Alcohol Industry As the number of new products in the alcohol industry continues to grow, shoppers have more choice than ever before. Shoppers crave authentic and transparent information to help them make informed decisions. Marketing technology has improved significantly since the adoption of the existing regulations. The blanket prohibition on illuminated advertising materials in proposed regulation 3VAC5-20-10(E) is out-of-step with modern industry practices in nearly all other states and would unnecessarily restrict retailers from informing and educating shoppers via dynamic, video-based content.</p> <p>Digital Screens Help Shoppers, Increase Competition, & Reduce Waste Digital screens promote informed consumer choice and industry competition by helping shoppers differentiate among existing products and learn about new products and market entrants. Unlike blinking or neon illuminated signs that merely bombard shoppers with trade names, logos and/or slogans, digital screens promote informed consumer</p>	<p>The Authority does not support this change because the limitation is in the Code of Virginia 4.1-201(A)(12).</p>
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	<p>choice when it matters most: at the point of decision. Notably, digital screens empower retailer licensees to educate shoppers about the growing number of small, local craft producers of beer, wine and spirits. With digital screens, retailers can choose to feature the stories that most interest and resonate with their shoppers, including stories about lesser-known and local brands. In this regard, digital screens can help level the playing field among industry participants through technology. In addition, digital screens don't need to be replaced for each new advertisement. In this way, digital screens promote sustainability by creating less waste than antiquated advertising materials like paper, cardboard, rubber, foam or plastic advertising materials.</p> <p>Requested Clarification For the foregoing reasons, we request that proposed regulation 3VAC5-20-10(E) be clarified as follows (suggested revisions in italics): “ E. Interior advertising materials may not be illuminated, except for (i) back bar pedestals upon which advertising regarding spirits may appear and (ii) dynamic digital screens that display images or videos that advertise alcohol beverages with a total area of less than 500 square inches.” We believe this clarification ensures that the regulations comport with current industry practices and empowers shoppers to make more informed decisions about the alcohol products they consume.</p>	
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Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Virginia Alcoholic Beverage Control Authority is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to LaTonya Hucks-Watkins, Senior Legal Counsel, 7450 Freight Way, Mechanicsville, VA 23116, 804-213-

4698(o), 804-213-4574(f), latonya.hucks-watkins@virginiaabc.com. In order to be considered, comments must be received by 11:59 pm 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.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-20-10		Provides guidance on the general advertising rules.	<ul style="list-style-type: none"> • Added an exception in Subsection (C)(8) for food and beverage combinations offered at a discounted price during happy hour. • Deleted “materials” from Subsection E to reduce unnecessary words. • Removed some language about advertising associate with athletic teams and athletes. • Changed “board” to “Authority”. <p>The impact should be positive to regulants because the revisions make the regulation easier to understand and provides some flexibility in advertising food and alcohol combination advertising. Additionally, the changes simplify the rules regarding advertising using athletic imagery which has caused ongoing confusion.</p>
3VAC5-20-20		Provides guidance regarding interior advertising.	Repealed
3VAC5-20-30		Provides guidance regarding exterior advertising.	<ul style="list-style-type: none"> • Changed language from people who at not attained the minimum

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>drinking age to people who are under twenty-one, in Subsection 1. The rationale is to correlate to the legal age to consume alcohol.</p> <ul style="list-style-type: none"> Deleted Subsections 2-4 for redundancy. Created an exception in Subsection 5 for materials described in cross-referenced sections of the regulations. <p>There should be minimal impact because the majority of the change is removing language that already exists in the Code of Virginia.</p>
3VAC5-20-60		Provides guidance regarding advertising and distributing novelties and specialties.	Repealed (moved to Chapter 30)
3VAC5-20-90		Provides guidance regarding coupon use.	<ul style="list-style-type: none"> Revised Subsection (B)(1) to state consumer submitted refund coupons may not be honored for on-premises consumption at a retail outlet or government store. <p>The impact should be minimal because this has been the practice of the Authority, but to make it clear the regulation is being revised to include specific detail.</p>
3VAC5-20-100		Provides guidance regarding advertising for sponsorships of public events.	<ul style="list-style-type: none"> Changed "board" to "Authority". Separated the provisions for manufacturers and wholesalers in Subsection (B)(9) to create two subsections for clarity. <p>No change in requirements and no impact on the regulants resulting from this change.</p>

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage