



Final Regulation 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	August 5, 2013

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*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final 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) remove vague and unenforceable language, 2) allow combination packaging for beer and distilled spirits, and 3) prevent the distribution of novelty and specialty items bearing alcoholic beverage advertising to individuals less than 21 years of age.

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 or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to adopt amendments to 3 VAC 5-20, Advertising.

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 board to promulgate reasonable regulations necessary to carry out the provisions of the Alcoholic Beverage Control Act. Section 4.1-320 of the Code of Virginia provides that there shall be no alcoholic beverage advertising in Virginia except as allowed by board regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

This regulatory action is necessary to clarify provisions and remove provisions that are vague and unenforceable. The streamlining and clarification of the provisions of this regulation should help promote the welfare of citizens by providing more definitive and reliable guidelines for advertising alcoholic beverages.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The amendments to 3VAC5-20 eliminate antiquated, unenforceable language; prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons younger than 21 years of age; and allow combination packaging for beer and distilled spirits products.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The clarification of the use of coupons benefits the regulated community and the agency by establishing more definitive guidelines. It is a benefit to the public for persons younger than 21 years of age not to be provided items bearing alcoholic beverage advertising.

The removal of vague and unenforceable provisions will ease the burden on the regulated community.

The streamlining and clarification of the provisions of this regulation should help promote the welfare of all citizens by providing more definitive and reliable guidelines for advertising alcoholic beverages. There are no known disadvantages to the public, the agency, or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
3 VAC 5-20-100 (B)	Contributions of alcoholic beverages prohibited in connection with event sponsorships. Original language prohibiting awards of alcoholic beverages deleted.	Original language of the existing regulation restored.	Intent of the proposed change was to simplify language, not to expand allowable gifts of alcoholic beverages. Original language restored to eliminate confusion as to effect of amendment.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Virginia Wine Wholesalers Association, Inc.	3 VAC 5-20-100—Maintain the current prohibition against awards of alcoholic beverages.	The proposal has been modified to maintain the current prohibition.
Virginia Beer Wholesalers Association, Inc.	Supports amendments to 3 VAC 5-20-10, 3 VAC 5-20-60, and 3 VAC 5-20-90. Recommend that the current prohibition against awards of alcoholic beverages be restored.	The proposal has been modified to maintain the current prohibition.
Distilled Spirits Council of the United States	3 VAC 5-20-10—Revise D7 to allow a product purchase as a means of entry for a contest or sweepstakes, if an alternative means of entry is provided that does not require a	That is already the rule. If an alternative means of entry is provided, a product purchase is not <u>required</u> .

<p>Virginia Hospitality and Travel Association</p>	<p>product purchase.</p> <p>Revise D8 to eliminate “limited to packaging” & all industry members and their representatives should be allowed to engage in the activity.</p> <p>3 VAC 5-20-60—use federal rule as guideline to allow novelty and specialty items beyond statutory minimum, and permit distribution directly to consumers or to retailers for distribution to consumers. Include an illustrative list of permitted items. Allow importers, bottlers, wholesalers, and their representatives to donate items in excess of \$10 wholesale value to participants in sponsored events.</p> <p>3 VAC 5-20-90—allow instantly redeemable coupons, electronic coupons, and scanback. Eliminate advance notification for products sold in State stores.</p> <p>3 VAC 5-20-100—Expand permitted sponsorships to all public events, allow all industry members and their representatives to sponsor events, eliminate prior notice requirements, and allow sponsorship of events at retail establishments.</p> <p>Supports proposed amendments.</p>	<p>Term “limited to packaging” is not confusing. It refers to combination packaging originally supplied by the manufacturer. Other parties cannot add things of value to the package.</p> <p>These suggestions were previously considered and rejected. Manufacturers can currently distribute novelty and specialty items to consumers, just not on retail premises.</p> <p>This proposal was previously considered and rejected at the proposed stage. There was almost universal opposition among other industry members. Advance notification for coupons in state stores is necessary to allow stores to adequately stock products on which rebates are offered.</p> <p>These requests were previously considered and discarded. The changes would encourage widespread alcoholic beverage sponsorship of public events.</p>
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3VAC5-20-10 (A)		Prohibits “blatant or obtrusive” advertising	Delete prohibition. The previous language was vague.
3VAC5-20-10 (D) (3)		Prohibit use of any professional athlete or athletic team in advertising.	Prohibit use of any present or former professional athlete or athletic team. This will clarify advertising restrictions.
		Advertising must comply with regulations of Federal Bureau of Alcohol, Tobacco, and Firearms	Advertising must comply with regulations of the appropriate federal agency. BATF is no longer regulating alcoholic beverage trade practices.
3VAC5-20-10 (D) (8)		Combination packaging allowed for wine, but not beer.	Strike “for wine”, rendering regulation applicable to all types of alcohol.
3VAC5-20-20-60		No age restriction on recipients of alcohol advertising novelty and specialty items.	Novelty advertising materials may not be distributed to persons under legal drinking age.
3VAC5-20-90 (B) (1)		Only mail-in coupons can be utilized.	New language clarifies that only mail-in coupons may be used and not instantly redeemable coupons.
3 VAC5-20-100		Wineries, distilleries, and breweries can sponsor certain public events	Adds importers and bottlers to allowable sponsors, and clarifies how sponsorships may be advertised

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