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Proposed Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3VAC5-30
VAC Chapter title(s)	Tied House
Action title	Chapter 30 Reform
Date this document prepared	December 26, 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 some of the Tied House regulations 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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)(3) states the Board shall promulgate regulations that maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

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 regulants aimed at preventing violations of the Tied House Laws which often create unfair advantages in the alcohol industry at the expense of the consumer.

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.

New substantive provisions: 3VAC5-30-100 added, but only consists of a current regulation that is in Chapter 20, but better suited to be included in the Tied House regulations.

Substantive changes of existing regulations:

3VAC5-30-40: Removed the chart with deposit fees and included a statement that wholesalers shall charge the same deposit for all of their retailers. VA ABC will no longer set minimum deposits. The current deposits in the existing chart are extremely outdated and VA ABC does not want to go through the regulatory process to keep updating the minimums when wholesalers can choose at their discretion whether or not to charge the minimum.

3VAC5-30-60(K): Removed because it is unnecessary to have a regulation that states what is already in the Code.

3VAC5-30-70(B): Removed because VA ABC does not want to continually have to define "routine business entertainment" as that is subjective and changes frequently.

3VAC5-30-80: Added regulations that were previously in Chapter 20 to this section because they deal more with Tied House rules than they deal with advertising.

3VAC5-30-90: Updated the regulation to include language that is currently in a guidance document.

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 revisions move portions of the regulations that dealt with Tied House issues to this section devoted to Tied House making the regulations easier to find. The changes reorganize the Chapter so that it reads more fluidly. The revisions bring clarity to the Authority's rules regarding price discrimination for entities that have both on- and off-premises privileges.
- 2) The Commonwealth's benefit is that the regulation utilizes current terminology used by the Authority and also makes the regulations easier to explain. The changes put into the administrative code various practices the Authority has operated under. The revisions remove the responsibility for setting deposit fees and gives that responsibility to the wholesalers so long as the wholesalers charge the same fee for all retailers.

There are no disadvantages to the public or 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.

§ 27 C.F.R 6.99 Stocking, rotation, and pricing service.

(a) General. Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

(b) Shelf plan and shelf schematics. The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

Virginia ABC does allow the furnishing of shelf plans so long as it is a service available to all retailers equally.

§ 27 C.F.R. 6.83 Product displays. Subsections (c)(2) and (c)(3)

(c) Conditions and limitations.

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

Virginia ABC does not want to condition giving or selling product displays on purchasing alcohol.

§ 27 C.F.R. 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

§ 27 C.F.R. 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.39).

Virginia ABC will not permit returns based on these provisions. Virginia ABC feels this exception could be abused.

§ 27 C.F.R. 6.98 Advertising service.

The listing of the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(a) The advertisement does not also contain the retail price of the product (except where the exclusive retailer in the jurisdiction is a State or a political subdivision of a State), and

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and

(c) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer, except where the retailer is an agency of a State or a political subdivision of a State.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

§ 27 C.F.R. 6.84 Point of sale advertising materials and consumer advertising specialties. Subsection (b)(1)

(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.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

§ 27 C.F.R. 6.96 Consumer promotions. Subsection (b)

(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.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

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 Tied House 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 Tied House 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 to the extent that the licensee engages in conduct with industry members that are a part of a different tier.
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 Tied House 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 Tied House rules and to make sure the existing rules comport with modern practices among industry members. The regulation is still very much needed because different tier members need to be aware of what practices are not permitted by the Authority.

The regulatory changes do not have an economic impact on small businesses. There are no requirements in these regulatory changes that will result in 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
<p>Kevin Robert McNally, Esq – Counsel for Virginia Beer Wholesalers Association</p>	<p>The Virginia Beer Wholesalers Association supports the proposed amendments to the tied house regulations, but believes that the Authority should consider making explicit that the general prohibition on cooperative advertising and providing “things of value” to retailers is as applicable to those operating in the “digital marketplace” as it is to “brick & mortar” retailers. It hardly seems logical that digital retailers of alcoholic beverages should not be subject to the same tied house constraints as their physical world counterparts.</p>	<p>The Authority appreciates the support for the regulatory changes, but is of the position that there isn’t a need for a call out in the regulation to digital marketplaces.</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-5-30-40 to repeal the outdated requirement to impose minimum deposit requirements for kegs.</p>	<p>The requirement for these fees was not repealed, only that the Authority will not set them and that the wholesaler must charge the same fee for all retailers.</p>
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>We urge the ABC to adopt several revisions to this rule to bring it into closer conformity with TTB and other states. First, industry members should be allowed to furnish retailers a recommended shelf plan or shelf schematic for alcohol beverages (which is allowed pursuant to 27 C.F.R. § 6.99(b)).</p> <p>Second, 3VAC5-30-10(A)(5) (allowing industry members to create or build product displays for retailers) should be clarified by adding the following terms:</p>	<p>Virginia ABC’s position remains that wholesalers shall provide the same benefits to all retailers they engage with in order to be equitable. Virginia ABC maintains its current position on consignments.</p>

Commenter	Comment	Agency response
	<ul style="list-style-type: none"> • All product displays must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed (as provided in 27 C.F.R. § 6.83(c)(2)). • The furnishing of product displays may be conditioned upon the purchase of the distilled spirits, wine, or beer advertised on those displays in a quantity necessary for the initial completion of such display; and no other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display (as provided in 27 C.F.R. § 6.83(c)(3)). <p>Third, we urge the ABC to add the two following exceptions to the consignment sales prohibition in 3VAC5-30-10(B)(3):</p> <ul style="list-style-type: none"> • Products returned by retailers open only a portion of the year if the alcohol beverages are likely to spoil during the off season (as provided in 27 C.F.R. § 11.39). (This exception typically is identified as applying to beer products; spoilage, however, may be a concern for spirits product if it is made with certain ingredients, such as cream or milk.) • Products in the possession of a wholesaler at the time of its termination (as provided in 27 C.F.R. § 11.35). (The federal exception also applies to retailers, which our proposal does not include because retailer termination is covered by 3VAC5-30-10(B)(3)(e) (consignment exception for a retailer terminated by operation of law, voluntary surrender or order of the Board).) <p>3VAC5-</p>	
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>As provided in the federal tied-house exception for equipment and supplies (27 C.F.R. § 6.88) and by other states, we request the ABC to add glassware and similar containers made of other material to the items that an industry member may sell to a retailer under 3VAC5-30-60(B). (Note that Va. Code § 4.1-201(A)(11) allows industry members to sell branded service items, such as</p>	<p>Virginia ABC had already made the changes to 3VAC5-30-60(D) prior to receiving this comment. Virginia ABC's position remains that other tier members shall provide the same benefits to all retailers they engage with in order to be equitable.</p>

Commenter	Comment	Agency response
	<p>glasses, to on-premise retail licensees.)</p> <p>Further, 3VAC5-30-60(D) should be revised to allow all industry members, and not only wine or beer manufacturers, bottlers or wholesalers, to furnish bottle or can openers upon which brand advertising may appear. No reason exists to exclude spirits industry members or importers of any type of alcohol beverages; a level playing field should be provided for all. There also is no basis to discriminate against spirits vis-à-vis beer and wine. (Note that we also are proposing to expressly list bottle and can openers as permitted consumer advertising specialties under 3VAC5-20-60.)</p> <p>We also recommend eliminating the requirement in 3VAC5-30-60(G)(4) that industry members furnishing customized advertising materials must make these materials available to all retailers. This is contrary to the federal rules, which allow identifying the retailer on point-of-sale advertising materials and product displays furnished by an industry member, absent any requirement that this be available to other retailers. (27 C.F.R. §§ 6.83(c)(2) and 6.84(c)(1).) If not eliminated, we urge clarifying that this requirement applies only to similarly situated retailers in the same geographic or market area (and not to all retailers). Regarding the types of customized retailer information allowed on advertising materials, we recommend updating 3VAC5-30-60(G), which permits retailer name, logo, address, and website, to also allow QR code and any point of contact via other digital means of communication (each of which may include a link or</p>	

Commenter	Comment	Agency response
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>hyperlink to the respective electronic address).</p> <p>We recommend several revisions to this rule. First, “meals and beverages” should be replaced with “food and beverages” as the permitted type of routine business entertainment listed in section (B)(1) of this rule.</p> <p>Second, museums and national and state historic sites should be added as a category of permitted routine business entertainment in section (B) of this rule.</p> <p>Third, we recommend updating the \$400 dollar limit for routine business entertainment to account for inflation during the years that it has remained unchanged and, going forward, adding an automatic annual increase (both based upon the consumer price index, as previously discussed regarding novelties and specialties).</p>	<p>Virginia ABC had already made changes to business entertainment by eliminating the examples and leaving that up to the industry members. Virginia ABC will leave the \$400 limit in place.</p>
<p>Andy Delony – Senior Vice President and Head of State Policy for Distilled Spirits Council of the United States</p>	<p>Pursuant to its authority to provide regulatory tied-house exceptions under Va. Code § 4.1-216(C)), we urge the ABC to allow industry member advertising to reference retailers in two circumstances. (See also 3VAC5-30-80(A) reiterating the ABC’s statutory authority to issue regulatory exceptions to the prohibition against cooperative advertising.) First, as permitted under the federal rule (27 C.F.R. § 6.98), we recommend allowing industry members’ advertisements to list two or more licensed retailers if the advertisement does not contain the retail price of the product, the listing is the only reference to the retailers and is relatively inconspicuous in relation to the entire advertisement and, except for ABC stores, the advertisement does not refer only to one licensed retailer or only to retail establishments controlled by the same licensed retailer. Many other states have adopted this rule or a similar rule.</p>	<p>Virginia ABC’s position remains that other tier members shall provide the same benefits to all retailers they engage with in order to be equitable. Virginia ABC will maintain its current regulations.</p>

Commenter	Comment	Agency response
	<p>Second, we urge the ABC to allow an industry member to advertise an event (e.g., consumer tasting) that it holds or conducts at a retail premise. Industry members sponsor and/or participate in these events to provide consumers an opportunity to taste and learn about new products or other products that they may not be familiar with. The ability of an industry member to advertise its own promotional event is integral to the success of the event itself. Prohibiting this type of advertising also may deprive consumers of the opportunity to attend these events and learn about products. A growing number of states (e.g., Michigan, Ohio and Pennsylvania) allow this practice subject to various conditions (e.g., no reference to prices, no industry member payments to retailers, limits on references to the retailer, and/or limited to free social media).</p> <p>We also would welcome the ABC’s support for elimination of the language in Va. Code § 4.1-216.1(A) and (B), which is reiterated in 3VAC5-30-80(B), limiting advertising materials furnished by industry members to “nonilluminated” advertising materials “made of paper, cardboard, canvas, rubber, foam, or plastic.” These limits are unnecessary considering the nature and value of advertising materials, the compliance burden they impose upon industry, and the absence of any such limits in the federal rules or in the schemes of many states. Further, as previously discussed concerning 3VAC5-20-20, a prohibition against “illuminated” advertising materials may violate the First Amendment. In lieu of these current restrictions, we urge the ABC to adopt the</p>	

Commenter	Comment	Agency response
	<p>illustrative list of point-of-sale advertising materials in the federal rule (27 C.F.R. § 6.84(b)(1)). This includes, but is 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 alcohol beverage lists or menus. This revision is consistent with the rules or laws in many states and would enhance clarity and certainty for both industry and regulators. If the current list of permitted materials is retained, it should be revised to provide additional flexibility (the current rule would not allow, for example, a coaster made of wood, or a thermometer or clock with a glass cover) by clarifying that this list of permitted materials is illustrative and not exclusive.</p> <p>For the same reasons previously discussed regarding the dollar limits on novelties and specialties, we also oppose any dollar limits on advertising materials furnished to retailers by industry members. Any dollar limit retained should be updated to account for inflation during the years that it has remained unchanged and, going forward, adding an automatic annual increase (both based upon the consumer price index, as also previously discussed regarding novelties and specialties).</p> <p>Finally, we recommend eliminating the requirement in 3VAC5-30-80(E) that industry members offering point-of-sale entry blanks for contests and sweepstakes must offer them “equally” to all retailers or all mixed beverage licensees. The federal rule (27 C.F.R. § 6.96(b)) does not impose any such requirement. If not eliminated, we urge clarifying that this requirement applies only to</p>	

Commenter	Comment	Agency response
	similarly situated retailers or mixed beverage licensees in the same geographic or market area (not to all retailers or mixed beverage licensees). Additionally, any obligation to provide point-of-sale entry blanks for contests and sweepstakes to retailers or mixed beverage licensees should be in proportion to the sales of the industry member's product sold by each retailer or mixed beverage licensee, respectively.	

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
3VAC5-30-10		Outlines the permitted and prohibited acts for manufacturers, wholesalers, brokers, bottlers, importers and or their representatives.	<ul style="list-style-type: none"> • Removed exception in Subsection A for Sundays in jurisdictions where Sunday sales of alcohol beverages are prohibited. • Revised the exception set out in Subsection (B)(3)(e) so that written approval from the Authority is required for a product refund to be issued to a retail licensee whose license has been terminated or voluntarily surrendered. • Removed “condemned” from Subsection (B)(3)(f) and replaced it with “deemed a threat to public safety” to enhance clarity. • Revised Subsection (B)(3)(f) so that a refund for products deemed a threat to public safety may only be issued upon written approval from the Authority. • Changed “board” to “Authority”. <p>The rationale for the changes is that they were necessary to comport with current practices and to update the language that is used.</p>
3VAC5-30-20		Outlines current restrictions on employment.	<ul style="list-style-type: none"> • Changed gender specific pronouns (universal change) • Deleted “off-premises” specification before winery licensees. <p>The changes were done to update the language used in the regulations and make the regulation apply to all wineries.</p>
3VAC5-30-30		Provides guidance as to the definition of “cash” and how payments are made to wholesalers and to the Board.	Changed “board” to “Authority” to update the language to the correct terminology.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-30-40		Provides guidance on deposits on containers, recordkeeping, and redemption of those deposits.	<ul style="list-style-type: none"> • Eliminated mandatory minimum deposit fees for wholesalers to charge retailers from Subsection A. • Replaced the mandatory minimums in Subsection A with a requirement that wholesalers charge the same deposit fee for all their retailers. <p>The rationale for this is that the Authority does not need to set mandatory minimums. The Authority’s primary concern is that the retailers are charged the same deposits by the wholesalers.</p>
3VAC5-30-50		Provides guidance for wine and beer solicitors.	Changed “board” to “Authority” to update the language to the correct terminology.
3VAC5-30-60		Provides guidance for inducements to retailers and permitted service equipment that may be provided.	<ul style="list-style-type: none"> • Added “of alcoholic beverages” to Subsection A. • Expanded applicable beverages for dispensing knobs in Subsection (A)(1) from wine and beer to “alcoholic beverages.” • Deleted “matter” in Subsection (A)(1) to reduce unnecessary words. • Changed “carbon dioxide” in Subsection (A)(2) to “gas pressure” to avoid a limiting specificity. • Created Subsection (A)(3) to enhance the efficient organization of the permitted conduct enumerated in Subsection H, which was deleted. • Deleted “any retailer” and replaced “the” with “any” in Subsection B to make the sentence easier to read.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<ul style="list-style-type: none"> • Moved Subsection I and added it to Subsection B. • Expanded Subsection D so that it applies to manufacturers, bottlers and wholesalers of all alcoholic beverages. • Deleted “matter regarding alcohol beverages may appear” in Subsection D and replaced it with “is displayed” to reduce unnecessary words. • Moved Subsections F and G to 3 VAC 5-30-80. • Deleted Subsection K to avoid redundancy. <p>The primary rationale for these changes is to revise the language used and to remove redundancies.</p>
3VAC5-30-70		Provides guidance for what routine business entertainment may be provided to a retailer.	Deleted Subsection B, and reference to it in Subsection A, to avoid a limiting definition and reduce unnecessary words.
3VAC5-30-80		Provides guidance regarding what advertising materials may be provided to retailers.	<ul style="list-style-type: none"> • Added Subsections M and N from 3 VAC 5-30-60. It made more sense to consolidate these sections since they were dealing with advertising. • Deleted “matter” from Subsection M to reduce unnecessary words. • Added Subsections J and K from 3 VAC 5-20-30. It made more sense to move these to the Tied House Chapter. • Changed “board” to “Authority”.
3VAC5-30-90		Provides guidance regarding price inducements and discrimination.	<ul style="list-style-type: none"> • Created provisions in (B)(1)-(4) to govern permitted price differentiations by wholesale wine licensees. The regulation lacked this additional guidance and

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			needed it included so that licensees are aware of these requirements. <ul style="list-style-type: none"> • Changed “board” to “Authority”.
3VAC5-30-100		Provides guidance on novelty and specialty items.	This section was previously in another Chapter, but it made more sense for it to be in the Tied House Chapter.

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