



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-20
Regulation title	Advertising
Action title	Alcoholic Beverage Advertising on Outdoor Signs and Billboards
Date this document prepared	September 9, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 3 VAC 5-20-30 to simplify regulations concerning outdoor advertising of alcoholic beverages, and to promulgate restrictions on such advertising consistent with and required by actions of the 2011 and 2012 General Assemblies.

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 September 9, 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.

Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly amended § 4.1-111 of the Code of Virginia to require that the Alcoholic Beverage Control promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. While the promulgation of regulations is mandatory, most details are discretionary, although the statute contains more specific limitations on where billboard signs advertising alcoholic beverages may be placed.

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 action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly, which require the Alcoholic Beverage Control Board to promulgate regulations to “establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages...” The legislation specifies provisions which must be included in such regulations restricting where outdoor advertising signs may be placed.

The Alcoholic Beverage Control Board has determined that the action is essential to protect the health, safety, or welfare of citizens because regulation of alcoholic beverage advertising is necessary to ensure that such advertising does not encourage over-consumption of alcoholic beverages, nor does it encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold.

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 action amends 3 VAC 5-20-30 by deleting most of the existing language, which specifies certain numbers of signs, their placement, and content, for various categories of alcoholic beverage industry members. In its place are four paragraphs which would (1) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (2) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residences, with measurements as defined in the Code of Virginia; (3) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural use or un-zoned; and (4) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations. Three other paragraphs prohibit manufacturers, importers, or wholesalers from providing

outdoor advertising to retailers or engaging in cooperative advertising with retailers, and prohibit manufacturers or importers from requiring wholesalers to engage in outdoor advertising.

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 primary advantages to the public and regulated businesses lie in the opportunity for increased sharing of information about lawful products. The amended regulation provides fewer restrictions on commercial speech. The new provisions will be easier to comply with and to enforce. Some members of the public would find additional alcohol advertising or additional outdoor advertising of any nature to be a disadvantage, out of concern for substance abuse or esthetics. The regulatory action poses no disadvantages to 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.

None

Section number	Requirement at proposed stage	What has changed	Rationale for change

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
Distilled Spirits Council of the United States	Allow manufacturers, importers, and wholesalers to furnish outdoor signs to retailers under certain prescribed parameters.	The suggestion is incompatible with the requirements of §4.1-111 B(3) and §4.1-216.1 of the Code of Virginia, and will not be adopted.

Enter any other statement here

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
3 VAC 5-20-30		<p>Outdoor alcoholic beverage advertising for manufacturers and wholesalers is limited to one sign upon the licensed premises, no more than 30 feet about the ground on a wholesaler’s premises; no more than two directional signs not farther than ½ mile from the establishment, limited to 64 square feet; if a winery or farm winery with off-premises sales privileges, additional directional signs; and on vehicles and uniforms of persons employed exclusively in the business.</p> <p>Retailers are limited to no more than two signs at the establishment, or three if located at an intersection, with letters or symbols not larger than 12 inches in height or width and not animated, with no reference to “happy hour.”</p> <p>No advertising of alcoholic beverages may be displayed in exterior windows or in such a manner that it may be viewed from the exterior of the retail premises.</p> <p>Billboard advertising is only allowed in stadia,</p>	<p>Restrictions on number, height, size, and size of type of signs will be removed. Signs may not depict persons consuming alcohol, use cartoon characters, or use persons under the legal drinking age as models. Signs may not be located on agricultural or residential property, or un-zoned property, and must comply with statutory distances from schools, churches, playgrounds, and residences, as well as Virginia Department of Transportation statutes and regulations. Manufacturers, importers, or wholesalers may not provide outdoor advertising to a retailer, nor engage in cooperative advertising with a retailer.</p> <p>Changes are designed to simplify the regulation, and lessen restrictions in line with U. S. Supreme Court decisions on the protection of commercial speech. Alcoholic beverage manufacturers, wholesalers, importers, and retailers will likely engage in more outdoor advertising of beverage products. The regulation seeks to minimize impacts on children by restricting sign locations in areas where children congregate regularly.</p>

		coliseums, or racetracks primarily used for professional sporting events.	
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Enter any other statement here