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Final Regulation Agency Background Document

Agency name	The Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3 VAC 5-50
VAC Chapter title(s)	Retail Operations
Action title	Chapter 50 Reform
Date this document prepared	11/27/2024

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. Additionally, to ensure that the regulations comport with current practices within the industry and the VA ABC.

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

Statement of Final Agency Action

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 taking the action; and 3) the title of the regulation.

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1. December 3, 2024 – Board approval of final stage
 2. Virginia Alcoholic Beverage Control Authority
 3. Retail Operations

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

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.

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- 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(14) states the Board has the authority to control the possession, sale, transportation, and delivery of alcoholic beverages.

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

Section 4.1-103(27) states the Board has the authority to establish minimum food sale requirements for all retail licensees.

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)(1) of the Code provides the Board with the authority to prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

Section 4.1-111 (B)(6) of the Code provides that the Board shall promulgate regulations that prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

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 comprehensive guidance for retail licensees on numerous issues, including but not limited to, designated manager requirements, qualifications, gifts of alcohol, and license specific regulations for such licensees as restaurants, bed and breakfast establishments, marketplace licensees, clubs, and caterers to name a few.

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:

Substantive changes of existing regulations:

3VAC5-50-60(A)(1): revised to allow licensees to serve the entire container of spirits if the container contains 16 ounces or less and the ABV content is **12.6% or less**.

3VAC5-50-60(A)(2): revised to include the word "grain" before "alcohol" as it was initially intended to state.

3VAC5-50-60(B)(4): Revised to include limitations on mixed beverage licensees that serve flights of samples so that they are limited to no more than 5 mixed beverages, and each shall contain no more than one ounce of distilled spirits.

3VAC5-50-110(H): Revised by removing text from 3VAC5-40-30 and placing it in the retail section.

3VAC5-50-130(C)(2): Revised to include a subsection that limits the number of times a nonmember may frequent a club, require nonmembers to be accompanied by club members, and makes it a violation if the club occupancy consists of a number of nonmembers that exceeds the number of club members.

3VAC5-50-130(C)(3): Revised to include a provision that a nonmember attending a member-sponsored private function is not to be counted as a guest with respect to the club guests' restrictions.

3VAC5-50-180: Removed language that was redundant restatements of text in the Code.

3VAC5-50-190: Removed language that was redundant restatements of text in the Code.

3VAC5-50-200: Removed language that was redundant restatements of text in the Code.

3VAC5-50-210: Removed language that distinguished between wine and beer and beer only licenses.

3VAC5-50-250: Clarified this section only applies to licenses issued pursuant to 4.1-206.3(C)(3) of the Code.

3VAC5-50-190: Removed language that was redundant restatements of text in the Code.

3VAC5-50-260 – Removed language that is no longer applicable because the deadlines have passed.

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 it removes text that is redundant and makes the regulations easier to read. The regulations are updated to account for low alcohol beverage coolers. Additionally, the regulations are revised to remove regulations that are no longer applicable since license reform.
- 2) The advantage to the Commonwealth is that regulations that are simply restatements of Code do not have to be maintained and the result is a more condensed regulatory chapter. Also, the Commonwealth is benefited because the regulations are up-to-date with the Code.

There are no disadvantages to the public or Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

NA

Localities Particularly Affected

NA

Other Entities Particularly Affected

NA

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
Andy Deloney – Senior Vice President and Head of State Policy for the Distilled Spirits Council of the United States	3VAC5-50-60. Mixed beverage licensees generally; sales of spirits in closed containers; suspension of purchase privileges. We recommend that the ABC revise subsection (E), by allowing a mixed beverage restaurant to serve an entire container of any type of spirits (a practice known as “bottle service”), and not only soju as currently provided, for on-premise consumption to at least two patrons. We are aware of no reason to prohibit this practice for any spirits product except soju. (See also Va. Code § 4.1-111(B)(16) allowing on-premises licensee to furnish a gift of a bottle of wine to a group of two or more patrons under certain terms, including but not limited to a one gift per 24-hour limit.)	For public safety reasons, the Authority shall maintain its position on prohibiting bottle service.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
3VAC5-50-60(A)(1)			<p>A. No mixed beverage restaurant or carrier licensee shall:</p> <p>1. Serve as one drink the entire contents of a container of spirits in its original container for on- or off-premises consumption except (i) as provided by subsections C, D, and E of this section; or (ii) if the container of spirits contains 12.6 ounces or less and the ABV content is 15% or less.</p>	In the previous stage the maximum amount of the container was 16 ounces, but that conflicted with the code limit of 375 milliliters so it was revised to 12.6 ounces.

Changes were made from the previous stage.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-50-10		Provides guidance on the sale and consumption of alcohol.	Deleted Subsection B, but combined it with Subsection A. Reduced text. Also removed gender specific language. There is no anticipated impact.
3VAC5-50-20		Provides guidance on how to determine legal age of purchaser.	<ul style="list-style-type: none"> • Changed gender specific pronouns. • Removed “subject’s height” from identification requirements. There is no anticipated impact.
3VAC5-50-30		Provides guidance on hours when alcohol may be sold.	<ul style="list-style-type: none"> • Removed the exception for the City of Danville. The rationale was that it is no longer

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			<p>necessary to have that exception.</p> <ul style="list-style-type: none"> • Changed “board” to “Authority”. • Added mixed beverage casinos to comport with the Code. <p>There is no anticipated impact.</p>
3VAC5-50-40		<p>Provides guidance regarding designated managers and disapproval from the Authority.</p>	<ul style="list-style-type: none"> • Cleaned up some of the language so that it reads better. • Revised Subsection E so that a licensee may immediately hire an employee whose offenses occurred more than 5 years prior to the date of employment or petition the Authority for approval of such employment if the offense occurred less than 5 years prior to the date of employment. • Removed gender specific pronouns. • Changed “board” to “Authority”. <p>The impact should be positive as retailers have more control over who they may employ.</p>
3VAC5-50-50		<p>Provides guidance regarding employment of minors.</p>	<ul style="list-style-type: none"> • Revised the last sentence so that 18-year-olds may serve wine and beer at a counter in any on-premises establishment. This change was necessary because post-license reform there are no longer “beer only” or “wine only” retail establishments. • Changed gender specific pronouns. <p>There is no anticipated impact.</p>
3VAC5-50-60		<p>Provides guidance regarding rules specific to mixed beverage licensees.</p>	<ul style="list-style-type: none"> • Revised Subsection (A)(1) so that a mixed beverage restaurant licensee may serve the entire contents of a spirits container that is 12.6 oz or less and with a max ABV of 15 for on and off-premises consumption. This was done to allow for the service of low alcoholic beverage coolers. • Added “grain” to (A)(2). This change reflects what was always the intent of this regulation. • Cleaned up the language in (B)(1).

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"> • (B)(4) added a provision that allows for a flight of samples or a flight of mixed beverages and the mixed beverage cannot contain more than one ounce of distilled spirits. This change was made to provide for a more comprehensive and specific regulation. • Added Subsection (G)(4) which imposes restrictions on mixed beverage restaurant licensees such that a container of premixed mixed beverages to be served by tapping equipment cannot exceed 20 liters in volume and such containers must be labelled as to the type of mixed beverage and the brand and quantities of the spirits products used to produce the mixed beverage • Changed gender specific pronouns. • Changed “board” to “Authority”. There is no anticipated impact from these revisions.
3VAC5-50-70		Provides guidance on the requirements for construction, lighting, and inspection.	<p>There should be no impact from these revisions because they are stylistic changes not substantive.</p> <ul style="list-style-type: none"> • Changed gender specific pronouns. • Changed “board” to “Authority”.
3VAC5-50-80		Provides guidance on entreating or urging patrons to purchase alcohol.	<ul style="list-style-type: none"> • Changed “board” to “Authority” • Changed “purchase” to “overconsume” to more accurately reflect the activity the Authority wants to discourage. • Deleted the provision regulating containers of ice in public display areas.
3VAC5-50-90		Provides guidance on the storage of alcohol.	<p>There should be no impact from these revisions because they are stylistic changes not substantive.</p> <ul style="list-style-type: none"> • Changed gender specific pronouns. • Changed “board” to “Authority”.
3VAC5-50-100		Provides information regarding qualifications for off-premises retailers.	<ul style="list-style-type: none"> • Combined all but two of the listed license types into one regulation

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			and increased to reduce the amount of text. • Changed “board” to “Authority”.
3VAC5-50-110		Provides guidance regarding qualifications for on-premises retail establishments.	<ul style="list-style-type: none"> • Increased the monthly sales for a gourmet oyster house to \$2,000. • Added the exception for casino licensees regarding the requirement to have food available up until 30 minutes before closing. • Added language from 5-40-30 regarding wine served in carafes and decanters. • Changed “board” to “Authority”. There is no anticipated impact as the changes are mostly stylistic; however, gourmet oyster houses will have to meet a higher monthly sales requirement, but it is the same requirement that other similar businesses have to meet as well.
3VAC5-50-130		Provides guidance for licensed clubs.	<ul style="list-style-type: none"> • Changed (A)(4) from average number of members to current number of members. This is easier to calculate and more accurate than an average number. • Added C(2) so that nonmembers are limited to one visit per month provided the nonmember is accompanied by a member (does not apply to HOAs so long as guests are accompanied by a member). • Changed “board” to “Authority”.
3VAC5-50-140		Provides guidance regarding prohibited conduct on the premises of a retail establishment.	There should be no impact from these revisions because they are stylistic changes not substantive. • Changed gender specific pronouns.
3VAC5-50-150		Provides guidance regarding off-premises deliveries.	There should be no impact from these revisions because they are stylistic changes not substantive. • Changed “board” to “Authority”.
3VAC5-50-170		Provides guidance regarding caterer’s licenses.	There should be no impact from these revisions because they are stylistic changes not substantive. • Changed gender specific pronouns.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
3VAC5-50-180		Provides guidance regarding volunteer fire departments and banquet facility licenses.	<ul style="list-style-type: none"> • Changed “board” to “Authority”. • Deleted redundant subsections. and kept the limitations that are not specified in the Code. • Changed “board” to “Authority”. There should be no impact because the things that were removed, already exist in the Code.
3VAC5-50-190		Provides guidance regarding the rules for operating a bed and breakfast.	<ul style="list-style-type: none"> • Deleted redundant subsections. and kept the limitations that are not specified in the Code. • Changed “board” to “Authority”. There should be no impact because the things that were removed, already exist in the Code.
3VAC5-50-200		Provides guidance regarding the rules of operating a gift shop.	<ul style="list-style-type: none"> • Deleted redundant subsections. and kept the limitations that are not specified in the Code. • Changed “board” to “Authority”. There should be no impact because the things that were removed, already exist in the Code.
3VAC5-50-210		Provides guidance regarding how wine and beer retailers may compensate employees.	<ul style="list-style-type: none"> • The revisions expand the availability of a compensation plan to other retailers, not just wine and beer retailers. The impact should be positive since this exception will be accessible to more licensees.
3VAC5-50-220		Provides guidance regarding interests in a licensed business and percentage-based payments.	<ul style="list-style-type: none"> • Added language to clarify that contracts between management companies and promoters must be provided to the Authority. • Removed repetitive language in Subsection (3)(b). <p>There should not be an impact as this change comports with established practices. The change is done to make it abundantly clear and eliminate any confusion.</p>
3VAC5-50-240		Provides guidance regarding alcoholic energy drink placement.	Revised to provide guidance as to where any alcoholic product (not just energy drinks) may be placed outside of the designated alcohol product area.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			There should not be any impact as this language comports with the Code.
3VAC5-50-250		Provides guidance regarding the confectionary license.	Revised to make it clear that these regulations only apply to confectionary licenses.
3VAC5-50-260		Provides guidance regarding the marketplace license.	Revised to eliminate requirements that were no longer applicable following license reform. There is no impact because those requirements applied to licenses that no longer exist.