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Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3VAC5-50-160
Regulation title(s)	Happy Hour and Related Promotions; Definition; Exceptions
Action title	Happy Hour Advertising Amendments
Date this document prepared	August 28, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

Section 3VAC5-50-160 of the Virginia Administrative Code governs “Happy Hour” and related promotions. The proposed amendments change 3VAC5-50-160 such that advertising of happy hour is permitted so long as the advertisement does not advertise pricing and does not tend to induce minors or other interdicted individuals to drink, or encourage excessive drinking. Additionally, the proposed changes to 3VAC5-50-160 delete superfluous provisions that appear in other sections of Title 3 of the Virginia Administrative Code. The amendments add a new subsection (3VAC5-50-160[E]) to include a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

NA

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

On May 17, 2018, the Board of the Virginia Alcoholic Beverage Control took action to formally revise the regulations governing happy hour advertising. As of August 11, 2019, the proposed stage was completed. There were no comments from the public. The title of the Regulation is 3-VAC5-50 Retail Operations.

Mandate and Impetus

Please 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 the previously-reported information.

Legal Basis

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

Virginia ABC Board is granted the authority to promulgate such action pursuant to:

Section 4.1-101 of the Code of Virginia (Code) establishes the Alcoholic Beverage Control Authority (ABC Board.)

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)(15) states that the Board shall promulgate regulations that shall prescribe the terms for any “happy hour” conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour.

Purpose

Please 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's intended to solve.

Virginia ABC has undertaken this action as a measure to allow its licensees to engage in responsible advertising for happy hour events. These changes will provide the public with a regulation that is condensed and easily accessible and understandable by eliminating some redundancies and clarifying the rules relating to happy hour advertising all of which lends itself to the ongoing protection of the health, safety, and welfare of citizens. Virginia ABC does not anticipate any potential issues that would have to be addressed as this regulation is developed. Virginia ABC hopes that the change will afford licensees more discretion in the language that they choose to use in their advertising while still maintaining compliance with the Code.

Substance

Please 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.

The substantive changes to the existing regulation include adding a new regulation numbered as 3VAC5-50-160(B) that permits happy hour advertising so long as the advertisement does not induce minors or interdicted individuals to consume alcohol or encourage people to consume in excess.

The current 3VAC5-50-160(B) is changed to 3VAC5-50-160(C) to compensate for the aforementioned addition of the regulation permitting happy hour advertising.

The current sections 3VAC5-50-160(B)(2), 3VAC5-50-160(B)(5), and 3VAC5-50-160(B)(6) are deleted because they are addressed in other sections of Title 3 of the Virginia Administrative Code.

3VAC5-50-160(C)(5) (currently 3VAC5-50-160[B][8]) is amended to the extent that all the text relating to where a licensee may advertise its happy hour, the wording a licensee may use in the advertisement, lists of available alcoholic beverages featured during happy hours, and the period in which alcoholic beverages are being sold at reduced prices is removed and replaced with a prohibition against advertising pricing related to happy hour.

The current 3VAC5-50-160(C) is changed to 3VAC5-50-160(D) to account for the additional regulation that was added.

3VAC5-50-160(E) is added and includes a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

A cross reference is included to direct the reader to 3VAC5-20-10 for a definition of advertising.

Issues

Please 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 licensees will have more discretion in advertising their happy hour events, provided they do so responsibly and according to the provisions of the Code.
- 2) The primary advantage to the agency is that the regulation changes maintain compliance the Code and removes some redundant text.
- 3) There are no disadvantages to the public or Commonwealth associated with this regulatory change. Licensees must take appropriate efforts to ensure that their advertising does not induce minors or other interdicted individuals to drink, or encourage excessive drinking

Requirements More Restrictive than Federal

Please 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 are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please 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

There are no other state agencies particularly affected by this change to the regulation.

Localities Particularly Affected

There are no other localities particularly affected by this change to the regulation.

Other Entities Particularly Affected

There are no other entities particularly affected by this change to the regulation.

Public Comment

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

No comments were received.

Commenter	Comment	Agency response

Detail of Changes Made Since the Previous Stage

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

No changes since the previous stage

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