



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5 – 20 and 3 VAC 5 - 30
<b>Regulation title</b>	Advertising and Tied-House
<b>Action title</b>	Amendments to Advertising and Tied-House Regulations to conform to recent General Assembly action and to simplify and update them.
<b>Date this document prepared</b>	August 8, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the proposed action is to develop amendments which will conform the board's advertising and tied-house regulations to statutory amendments enacted by the 2007 General Assembly; reorganize the advertising and tied-house chapters; and eliminate or modernize outdated provisions.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Title 4.1 of the Code of Virginia gives the Alcoholic Beverage Control Board general authority to regulate the manufacture, distribution and sale of alcoholic beverages within the Commonwealth, including the authority to promulgate regulations which it deems necessary to carry out the provisions of Title 4.1, in accordance with the Administrative Process Act. Section 4.1-320 generally prohibits alcoholic beverage advertising in Virginia, except in accordance with Board regulations. Section 4.1-111, subsection B 3 requires that the Board promulgate regulations which maintain the reasonable separation of retailer

interests from those of the manufacturers, bottlers, brokers, importers and wholesalers, 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. The Code mandates that the Board promulgate regulations, but details are left to the Board's discretion.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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These amendments will protect the health, safety, or welfare of citizens by maintaining reasonable restrictions by maintaining reasonable restrictions on alcoholic beverage promotion and maintaining a reasonable separation between the manufacturing, wholesaling and retail interests, to help ensure temperance, while allowing industry members additional ability to market their products.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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In 3 VAC 5-20-10, subsection B, prohibiting cooperative advertising, will be moved to 3 VAC 5-30, Tied-House. In the same section, subsection E. 4. would be amended to eliminate references to curative or therapeutic claims, or claims disparaging to a competitor's product.

In 3 VAC 5-20-20, the section will be rewritten to eliminate the distinction between permanent and nonpermanent point-of-sale materials, and to allow retail establishments to use all but illuminated point-of-sale materials inside their establishments. Current restrictions on the provision of such materials by industry members will be moved to 3 VAC 5-30, Tied-House. These provisions will be revised to conform to recent General Assembly action.

In 3 VAC 5-20-30, the section will be rewritten to eliminate specific language restrictions on exterior advertising signs at licensed establishments.

In 3 VAC 5-20-40, restrictions on specific language in alcoholic beverage advertising contained in subsections A.1., A. 2., A. 3., and B.3., shall be eliminated, and the limit on the percentage of advertising space which may be occupied by the identification of the sponsor in moderation messages in college student publications currently in subsection B.5., will be eliminated. The section will be revised to apply to all types of alcoholic beverages.

3 VAC 5-20-50 would be repealed.

In 3 VAC 5-20-60, subsection 2 would be amended to allow the display of novelty and specialty items on retail premises, and to allow such items to be given to patrons during tasting events. Subsection 6 would be amended to allow wholesalers to put order blanks for novelty and specialty items on packages.

Sections 3 VAC 5-20-70 and 3 VAC 5-20-80 would be repealed.

3 VAC 5-20-90 would be amended to allow coupons to be distributed on the internet, and to allow beer wholesalers to affix manufacturers' coupons to the package.

In 3 VAC 5-20-100, the section would be amended to allow sponsorship of public events by wholesalers.

In 3 VAC 5-30-10, subsection B2 would be amended to allow wholesalers to affix prices to products they have sold to a retailer.

In 3 VAC 5-30-20, the last sentence would be amended to add farm wineries to the exemptions from the provisions of this section.

In 3 VAC 5-30-30, subsection B, the definition of "Cash" would be expanded to include payments by credit or debit cards.

In 3 VAC 5-30-60, subsection D, the wholesale value of bottle or can openers which may be given by a manufacturer, bottler or wholesaler to a retailer would be increased to \$20.

In 3 VAC 5-30-60, subsection F, wine glasses upon which advertising matter regarding wine may appear would be added to the items which a manufacturer or wholesaler could sell at reasonable wholesale price to banquet licensees.

A new section 3 VAC 5-30-80 would also be added, moving to this chapter current restrictions on the provision of various advertising items presently contained in the Advertising regulation, 3 VAC 5-20.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The Alcoholic Beverage Control Board has considered making no changes to the regulations, other than those necessary as a result of General Assembly action, but believes the changes being considered can be made without endangering the public. It will consider any additional alternatives which may arise during the public comment period following the publication of the Notice of Intended Regulatory Action.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Jeffrey L. Painter, Post Office Box 27491, Richmond, VA 23261, telephone (804) 213-4621, fax (804) 213-4411, e-mail [jeffrey.painter@abc.virginia.gov](mailto:jeffrey.painter@abc.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Alcoholic Beverage Control Board does not currently intend to utilize advisers in the development of the proposed regulations. It has received comment from interested parties during a previous periodic review, and recently held a meeting with representatives of all stakeholder groups to discuss needed or desired changes in its advertising and related tied-house regulations.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not expected that this regulatory action will have any impact on the institution of the family.