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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3VAC5-50-160
Regulation title(s)	Happy Hour and Related Promotions; Definitions; Exceptions
Action title	Happy Hour Advertising Amendments
Date this document prepared	May 17, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The purpose of this action is to amend 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 persons to drink in excess. 3VAC5-50-160 is further amended to delete superfluous provisions that appear in other sections of Title 3 of the Virginia Administrative Code. 3VAC5-50-160(E) is added to provide a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the Authority.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’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 Department of Alcoholic Beverage Control (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 describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

Virginia ABC has undertaken this action as a measure to allow its licensees to engage in responsible advertising to promote their happy hour events. Virginia ABC does not anticipate any potential issues that would have to be addressed as this regulation is developed.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

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 advertising that encourages 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, what 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.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The proposed amendments to the regulation represent the least intrusive and least costly approach to addressing this issue while protecting public safety and staying within the authority of the Code. There is no anticipated negative impact to small businesses in promulgating these revisions.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to [insert staff contact person’s name, mailing address, phone number, fax number, and email address]. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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.

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the 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.

Commenter	Comment	Agency response