



[townhall.virginia.gov](http://townhall.virginia.gov)

## Periodic Review Report of Findings

<b>Agency name</b>	Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) citation</b>	3VAC5-20-60
<b>Regulation title</b>	Advertising
<b>Date this document prepared</b>	02/04/2019

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*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

N/A

## 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.*

Section 4.1-101 of the Code of Virginia (Code) establishes the Department of Alcoholic Beverage Control (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 may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. Section 4.1-103(24) permits the Board to promulgate regulations in accordance with the Administrative Process Act and Section 4.1-111.

Section 4.1-111 (A) 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.

**Alternatives**

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

VA ABC is considering changing the regulation after a comment to a periodic review of the regulation requested that the regulation be amended to allow industry members to provide novelty gifts to all of a retailer’s employees instead of just to those employees that are present at the time when the education trade tasting is occurring.

**Public Comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, 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. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
The Wine Institute	The Wine Institute encourages VA ABC to limit the number of \$10 novelty items to the number of employees currently employed in relevant jobs at a particular location, not just those that are working on a shift when an education trade tasting is happening.	The agency would like to explore possible revisions to the regulation.

**Effectiveness**

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation is necessary for the protection of public health, safety, and welfare and it is clearly written and easily understandable. The regulation limits the dollar figure of the novelty gift so that

it is not improperly inducing retailers to use their products. Additionally, the regulation limits the number of novelty items that may be given away to the number of employees present when the industry member is at the retail establishment. The regulation also provides prohibitions to giving away items to patrons on the premises of the retail licensees as well as guidelines for displaying and distributing items bearing moderation and responsible drinking messages.

### Decision

*Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

The rule making entity has decided explore possible amendments to the regulation.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, 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 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. Also, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

The regulation is still needed because it limits the dollar figure of the novelty gift so that it is not improperly inducing retailers to use their products. Additionally, the regulation limits the number of novelty items that may be given away to the number of employees present when the industry member is at the retail establishment. The regulation also provides prohibitions to giving away items to patrons on the premises of the retail licensees as well as guidelines for displaying and distributing items bearing moderation and responsible drinking messages.

The comment suggesting the change came from The Wine Institute which is composed of over one thousand members. The comment suggests that limiting the industry member to providing novelty items solely to the retail employees present on the day the industry member is at the establishment may limit familiarity to these products to just those employees instead of all relevant employees who would also benefit from them. The regulation is not complex nor is the suggested revision. There are no conflicts with other federal or state regulations. The regulation was last evaluated in 2013. There have not been any significant changes in technology, economic conditions or other factors that would affect this regulation. The agency does not anticipate an impact on small business.