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## Final Regulation Agency Background Document

<b>Agency name</b>	The Virginia Alcoholic Beverage Control Authority
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	3 VAC 5-30
<b>VAC Chapter title(s)</b>	Tied House
<b>Action title</b>	Chapter 30 Reform
<b>Date this document prepared</b>	11/25/2024

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, modernize some of the Tied House regulations and make sure the regulations comport with current practices of the industry.

### 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. Tied House

### 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.*

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

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)(3) states the Board shall promulgate regulations that maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; 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.

**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.*

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This regulation is essential to protect the health, safety, and welfare of citizens because it provides guidance for regulants aimed at preventing violations of the Tied House Laws which often create unfair advantages in the alcohol industry at the expense of the consumer.

**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.*

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New substantive provisions: 3VAC5-30-100 added, but only consists of a current regulation that is in Chapter 20, but better suited to be included in the Tied House regulations.

Substantive changes of existing regulations:

3VAC5-30-10(B)(3)(g) revised in response to a comment suggesting that the language of the regulation did not make it explicit that the exchange of discontinued product must be for quality control purposes.

3VAC5-30-30(G) – revised so that it is a violation of the Board regulations for a licensee to purchase alcohol from a government store with a dishonored check.

3VAC5-30-40: Removed the chart with deposit fees and included a statement that wholesalers shall charge the same deposit for all of their retailers. VA ABC will no longer set minimum deposits. The current deposits in the existing chart are extremely outdated and VA ABC does not want to go through the regulatory process to keep updating the minimums when wholesalers can choose at their discretion whether or not to charge the minimum.

3VAC5-30-60(K): Removed because it is unnecessary to have a regulation that states what is already in the Code.

3VAC5-30-70(B): Removed because VA ABC does not want to continually have to define "routine business entertainment" as that is subjective and changes frequently.

3VAC5-30-80: Added regulations that were previously in Chapter 20 to this section because they deal more with Tied House rules than they deal with advertising.

3VAC5-30-90: Updated the regulation to include language that is currently in a guidance document.

**Issues**

*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.*

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- 1) The primary advantage to the public is that the revisions move portions of the regulations that dealt with Tied House issues to this section devoted to Tied House making the regulations easier to find. The changes reorganize the Chapter so that it reads more fluidly. The revisions bring clarity to the Authority’s rules regarding price discrimination for entities that have both on- and off-premises privileges.
- 2) The Commonwealth’s benefit is that the regulation utilizes current terminology used by the Authority and also makes the regulations easier to explain. The changes put into the administrative code various practices the Authority has operated under. The revisions remove the responsibility for setting deposit fees and gives that responsibility to the wholesalers so long as the wholesalers charge the same fee for all retailers.

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.*

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§ 27 C.F.R 6.99 Stocking, rotation, and pricing service.

(a) General. Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

(b) Shelf plan and shelf schematics. The act by an industry member of providing a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages does not constitute a means to induce within the meaning of section 105(b)(3) of the Act.

Virginia ABC does allow the furnishing of shelf plans so long as it is a service available to all retailers equally.

§ 27 C.F.R. 6.83 Product displays. Subsections (c)(2) and (c)(3)

(c) Conditions and limitations.

(2) All product displays must bear conspicuous and substantial advertising matter on the product or the industry member which is permanently inscribed or securely affixed. The name and address of the retailer may appear on the product displays.

(3) The giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for

the initial completion of such display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display.

Virginia ABC does not want to condition giving or selling product displays on purchasing alcohol.

§ 27 C.F.R. 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

§ 27 C.F.R. 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.39).

Virginia ABC will not permit returns based on these provisions. Virginia ABC feels this exception could be abused.

§ 27 C.F.R. 6.98 Advertising service.

The listing of the names and addresses of two or more unaffiliated retailers selling the products of an industry member in an advertisement of that industry member does not constitute a means to induce within the meaning of section 105(b)(3) of the Act, provided:

(a) The advertisement does not also contain the retail price of the product (except where the exclusive retailer in the jurisdiction is a State or a political subdivision of a State), and

(b) The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and

(c) The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer, except where the retailer is an agency of a State or a political subdivision of a State.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

§ 27 C.F.R. 6.84 Point of sale advertising materials and consumer advertising specialties. Subsection (b)(1)

(b) Definitions—

(1) Point of sale advertising materials are items designed to be used within a retail establishment to attract consumer attention to the products of the industry member. Such materials include, but are not limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

§ 27 C.F.R. 6.96 Consumer promotions. Subsection (b)  
 (b) Direct offerings. Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from participation.

Virginia ABC does not support changing to this standard as it has potential to result in unfair trade practices.

**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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Kevin McNally – Counsel for Virginia Beer Wholesalers Association a	<b>3VAC5-30-10 Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts</b> Although the Virginia Beer Wholesalers Association and its members generally support most of the proposed amendments to the Tied House regulations, they believe that 3VAC5-30-10 requires	The agency added the additional language suggested in the comment for the sake of clarification.

Commenter	Comment	Agency response
	<p>an important clarification regarding the exchange of “discontinued” products. The issue had not presented itself until well-after the proposed regulations were published and the initial comment period closed, but VBWA believes that the Authority should incorporate the change in the final regulations.</p> <p>Section 3VAC5-30-10g states: Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. <i>Where production of the product has been discontinued, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis.</i> Any such exchange shall be documented by the word "exchange" on the proper invoice.</p> <p>VBWA believes that the intent of the regulation is that “discontinued” products, like any other product, may be exchanged <i>only</i> for quality control purposes. A “discontinued” product that is exchanged <i>for quality control purposes</i> may be replaced with another product from the same manufacturer. Otherwise-saleable beer, however, may not be exchanged for a different beer product merely because the manufacturer discontinued the original beverage.</p> <p>Consequently, VBWA urges that the Authority consider inserting “<i>for quality control purposes</i>” into the second sentence of 3VAC5-30-10g, as follows:</p> <p>Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange</p>	

Commenter	Comment	Agency response
	<p>the <i>discontinued</i> product for <i>quality control purposes with</i> a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.</p> <p>VBWA believes that this small change will prevent future confusion in the marketplace.</p>	
	<p><b>3VAC5-30-40 Deposits on containers required; records; redemption of deposits; exceptions</b></p> <p>The Virginia Beer Wholesalers Association and its members strongly oppose the proposed wholesale elimination of the minimum deposit requirements for kegs, tapping equipment, and other durables provided to retailers by beer wholesalers. The proposed changes provide no meaningful relief to either wholesalers or retailers as <i>some</i> deposit is still required to be collected and refunded on the exact same items and recorded in the exact same manner as under the current regulation. Only the minimum permissible deposit has been eliminated. Those minimum deposits have been in place in the regulation for well over than thirty years without change, so it is not as though keeping such values updated has presented a high regulatory burden for the Authority. VBWA is not opposed to streamlining the number of items for which deposits must be collected and recorded, but believes the elimination of the minimum amounts alone to be a wholly-unnecessary exercise.</p>	<p>The agency will not make any changes to the proposed text based on this comment. The agency will no longer set minimums. The aim is that the wholesalers charge the same fee for all of their retailers.</p>



**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
*3VAC5-30-10(B)(3)(g)			The requirement is the same. The revision is a clarification of the language.	Revised in response to a comment suggesting that the language of the regulation did not make it explicit that the exchange of discontinued product must be for quality control purposes.
*3VAC5-30-30(G)			The requirement is the same, it just makes it a board violation for a licensee to purchase alcohol from the Board with a dishonored check.	Revised so that it is a violation of the Board regulations for a licensee to purchase alcohol from a government store with a dishonored check.

**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
3VAC5-30-10		Outlines the permitted and prohibited acts for manufacturers, wholesalers, brokers, bottlers, importers and or their representatives.	<ul style="list-style-type: none"> <li>Removed exception in Subsection A for Sundays in jurisdictions where Sunday sales of alcohol beverages are prohibited.</li> </ul>

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"> <li>• Revised the exception set out in Subsection (B)(3)(e) so that written approval from the Authority is required for a product refund to be issued to a retail licensee whose license has been terminated or voluntarily surrendered.</li> <li>• Removed “condemned” from Subsection (B)(3)(f) and replaced it with “deemed a threat to public safety” to enhance clarity.</li> <li>• Revised Subsection (B)(3)(f) so that a refund for products deemed a threat to public safety may only be issued upon written approval from the Authority.</li> <li>• *Revised Subsection (B)(3)(g) in response to a comment suggesting that the language of the regulation did not make it explicit that the exchange of discontinued product must be for quality control purposes.</li> <li>• *3VAC5-30-30(G) – revised so that it is a violation of the Board regulations for a licensee to purchase alcohol from a government store with a dishonored check.</li> <li>• Changed “board” to “Authority”.</li> </ul> <p>The rationale for the changes is that they were necessary to comport with current practices and to update the language that is used.</p>
3VAC5-30-20		Outlines current restrictions on employment.	<ul style="list-style-type: none"> <li>• Changed gender specific pronouns (universal change)</li> <li>• Deleted “off-premises” specification before winery licensees.</li> </ul> <p>The changes were done to update the language used in</p>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			the regulations and make the regulation apply to all wineries.
3VAC5-30-30		Provides guidance as to the definition of “cash” and how payments are made to wholesalers and to the Board.	Changed “board” to “Authority” to update the language to the correct terminology.
3VAC5-30-40		Provides guidance on deposits on containers, recordkeeping, and redemption of those deposits.	<ul style="list-style-type: none"> <li>• Eliminated mandatory minimum deposit fees for wholesalers to charge retailers from Subsection A.</li> <li>• Replaced the mandatory minimums in Subsection A with a requirement that wholesalers charge the same deposit fee for all their retailers.</li> </ul> <p>The rationale for this is that the Authority does not need to set mandatory minimums. The Authority’s primary concern is that the retailers are charged the same deposits by the wholesalers.</p>
3VAC5-30-50		Provides guidance for wine and beer solicitors.	Changed “board” to “Authority” to update the language to the correct terminology.
3VAC5-30-60		Provides guidance for inducements to retailers and permitted service equipment that may be provided.	<ul style="list-style-type: none"> <li>• Added “of alcoholic beverages” to Subsection A.</li> <li>• Expanded applicable beverages for dispensing knobs in Subsection (A)(1) from wine and beer to “alcoholic beverages.”</li> <li>• Deleted “matter” in Subsection (A)(1) to reduce unnecessary words.</li> <li>• Changed “carbon dioxide” in Subsection (A)(2) to “gas pressure” to avoid a limiting specificity.</li> <li>• Created Subsection (A)(3) to enhance the efficient organization of the permitted</li> </ul>

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>conduct enumerated in Subsection H, which was deleted.</p> <ul style="list-style-type: none"> <li>• Deleted “any retailer” and replaced “the” with “any” in Subsection B to make the sentence easier to read.</li> <li>• Moved Subsection I and added it to Subsection B.</li> <li>• Expanded Subsection D so that it applies to manufacturers, bottlers and wholesalers of all alcoholic beverages.</li> <li>• Deleted “matter regarding alcohol beverages may appear” in Subsection D and replaced it with “is displayed” to reduce unnecessary words.</li> <li>• Moved Subsections F and G to 3 VAC 5-30-80.</li> <li>• Deleted Subsection K to avoid redundancy.</li> </ul> <p>The primary rationale for these changes is to revise the language used and to remove redundancies.</p>
3VAC5-30-70		Provides guidance for what routine business entertainment may be provided to a retailer.	Deleted Subsection B, and reference to it in Subsection A, to avoid a limiting definition and reduce unnecessary words.
3VAC5-30-80		Provides guidance regarding what advertising materials may be provided to retailers.	<ul style="list-style-type: none"> <li>• Added Subsections M and N from 3 VAC 5-30-60. It made more sense to consolidate these sections since they were dealing with advertising.</li> <li>• Deleted “matter” from Subsection M to reduce unnecessary words.</li> <li>• Added Subsections J and K from 3 VAC 5-20-30. It made more sense to move these to the Tied House Chapter.</li> </ul>

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"> <li>• Changed “board” to “Authority”.</li> </ul>
3VAC5-30-90		Provides guidance regarding price inducements and discrimination.	<ul style="list-style-type: none"> <li>• Created provisions in (B)(1)-(4) to govern permitted price differentiations by wholesale wine licensees. The regulation lacked this additional guidance and needed it included so that licensees are aware of these requirements.</li> <li>• Changed “board” to “Authority”.</li> </ul>
3VAC5-30-100		Provides guidance on novelty and specialty items.	This section was previously in another Chapter, but it made more sense for it to be in the Tied House Chapter.