



Virginia  
Regulatory  
Town Hall

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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC5-20
<b>Regulation title</b>	Advertising
<b>Action title</b>	Updating Advertising Regulations as a Result of Periodic Review
<b>Date this document prepared</b>	October 30, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The purpose of this action is to amend the board's regulation governing alcoholic beverage advertising to implement changes suggested by a recent periodic review. The action is intended to 1) remove vague and unenforceable language, 2) allow combination packaging for beer and distilled spirits, and 3) prevent the distribution of novelty and specialty items bearing alcoholic beverage advertising to individuals less than 21 years of age.

### 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.*

There are no acronyms or technical terms used in the document.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if*

*applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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Section 4.1-103 of the Code of Virginia provides that the board has the power to control the possession, transportation, sale and delivery of alcoholic beverages within the Commonwealth, while § 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of the Alcoholic Beverage Control Act. Section 4.1-320 of the Code provides that there shall be no alcoholic beverage advertising in Virginia except as allowed by board regulations.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The proposed regulatory action is necessary to clarify advertising regulation provisions and to remove provisions of the advertising regulations that are vague and unenforceable. The streamlining and clarification of the provisions of this regulation should help promote the welfare of the citizens by providing more definitive and reliable guidance on the advertising of alcoholic beverages.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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Chapter 20 will be amended to eliminate antiquated, unenforceable language, prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons less than 21 years of age, and to allow combination packaging for beer and distilled spirits products.

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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The clarification of the use of coupons benefits the regulated community and the agency by establishing more definitive guidelines. It is a benefit to the public and citizens by not providing persons less than 21 years of age items bearing alcoholic beverage advertising.

The removal of vague and unenforceable provisions will ease the burden on the regulated community. The streamlining and clarification of the provisions of this regulation should help promote the welfare of the citizens by providing more definitive and reliable guidance on the advertising of alcoholic beverages.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no parallel federal requirements. The proposal does not conflict with other state or federal laws or regulations.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities particularly affected.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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 via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov), telephone (804) 213-4409, facsimile (804) 213-4411.** 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 date of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.*

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<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	none
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	none
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	Manufacturers, wholesalers, importers of alcoholic beverages
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 1,000 businesses, of which 60% are small businesses.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	none
<b>Beneficial impact the regulation is designed to produce.</b>	Streamlining and clarifying advertising rules.

**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.*

There is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The board has not identified any alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law. The proposed regulatory change has no reporting or additional record keeping requirements.

**Small business impact review result**

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2010. The proposals are a result of industry suggestions. Neither technology, economic conditions, or other factors have changed significantly in the area affected by the regulation. The proposal imposes no reporting or additional record keeping requirements.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Distilled Spirits Counsel of U.S.	3VAC5-20-10 (D) (8) Combination packaging should apply equally to all alcoholic beverages.	The agency incorporated this change.
	3VAC5-20-60 Proposed increasing from \$10 to \$20 the amount for novelty specialty items.	This proposal conflicts with an existing statute, so it was not incorporated.

	<p>3VAC5-20-90 (B) (2) Suggested no notice requirement for using coupons in ABC stores.</p> <p>3VAC5-20-100 (A) Sponsorship should not be limited to specific types of events.</p>	<p>The agency responded by reducing the 45-day requirement to 15 days.</p> <p>The agency declined to do this because it would promote widespread sponsorship of public events by alcoholic beverage companies.</p>
<p>Virginia Beer Wholesalers</p>	<p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons.</p> <p>3VAC5-20-60 (2) This proposal conflicts with an existing statute.</p> <p>3VAC5-20-100 (B) (3) Oppose use of instantly redeemable coupons. Oppose contributions of alcoholic beverages to the organizations in charge of charitable events.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p> <p>Agency responded by removing proposal.</p> <p>The agency responded by eliminating the proposed change to allow contributions of alcoholic beverages for organizations in charge of charitable events.</p>
<p>Virginia Wine Wholesalers</p>	<p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons.</p> <p>3VAC5-20-60 (2) This proposal conflicts with an existing statute.</p> <p>3VAC5-20-100 (B) (3) Oppose use of instantly redeemable coupons. Oppose contributions of alcoholic beverages to the organizations in charge of charitable events.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p> <p>Agency responded by removing proposal.</p> <p>The agency responded by eliminating the proposed change to allow contributions of alcoholic beverages for organizations in charge of charitable events.</p>
<p>Virginia Wine Council</p>	<p>3VAC5-20-10 Add subsection (f) that wine labels should not be considered advertising and should be approved under 3VAC5-40-20.</p> <p>3VAC5-20-40 Supports clarifying “current electronic advertising regulations regarding the roles and retailers in advertising via social media outlets.”</p> <p>3VAC5-20-60 Proposed increasing from \$10 to \$20 the amount for novelty specialty items.</p>	<p>The agency did not accept this because wine labels should be subject to both regulations.</p> <p>The agency rejected this because it is already covered under electronic advertising.</p> <p>This proposal conflicts with an existing statute, so it was not incorporated.</p>
<p>Diageo North</p>	<p>3VAC5-20-10 (D) (3) Remove</p>	<p>The agency removed the language and put</p>

<p>America</p>	<p>“Federal Bureau of Alcohol, Tobacco and Firearms” and replace with “Alcohol and Tobacco Tax and Trade Bureau.”</p> <p>3VAC5-20-10 (D) (8) Combination packaging should apply equally to all alcoholic beverages.</p> <p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons.</p> <p>3VAC5-20-90 (B) (1) Remove “state government stores.”</p> <p>3VAC5-20-90 (B) (2) Reduce the advance notification requirement for use of coupons in ABC stores from 45 days to 15 days.</p> <p>3VAC5-20-100 (B) (6) Supports sponsorship and advertising of events in any media including internet or any electronic means.</p> <p>3VAC5-20-100 (B) (8) Clarify no advance approval by board required in connection with sponsorship of public events.</p>	<p>“appropriate federal agency” instead of proposed language in case there is a future nominal change.</p> <p>The agency incorporated this change.</p> <p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p> <p>The agency accepted this suggestion and removed the language.</p> <p>The agency incorporated this suggestion.</p> <p>The agency incorporated this suggestion.</p> <p>The agency did not accept this because it is clearly stated in the regulation.</p>
<p>Wine Institute</p>	<p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p>
<p>Virginia Hospitality and Travel Assoc.</p>	<p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons unless mixed beverages licensees could use them.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p>
<p>Anheuser-Busch</p>	<p>3VAC5-20-90 (B) (1) Oppose use of instantly redeemable coupons.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon.</p>
<p>MillerCoors LLC</p>	<p>3VAC5-20-100 (B) (3) Oppose use of instantly redeemable coupons. Oppose contributions of alcoholic beverages to the organizations in charge of charitable events.</p>	<p>The agency responded to these comments by removing the proposal to allow this kind of coupon and eliminating the proposed change to allow contributions of alcoholic beverages for organizations in charge of charitable events.</p>

Concerned individuals	3VAC5-20-90 (B) (1) Oppose instantly redeemable coupons	The agency responded to these comments by removing the proposal to allow this kind of coupon.
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**Family impact**

*Please assess the 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.*

This action is not anticipated to have any impact on the institution of the family or family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
3VAC5-20-10 (D) (3)		Prohibit use of any professional athlete or athletic team in advertising.	Prohibit use of any present or former professional athlete or athletic team. This will clarify advertising restrictions.
3VAC5-20-10 (D) (8)		Combination packaging allowed for wine, but not beer.	Strike “for wine”, rendering regulation applicable to all types of alcohol.
3VAC5-20-20-60		No age restriction on recipients of alcohol advertising novelty and specialty items.	Novelty advertising materials may not be distributed to persons under legal drinking age.

3VAC5-20-90 (B) (1)		Only mail-in coupons can be utilized.	New language clarifies that only mail-in coupons may be used and not instantly redeemable coupons.
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here