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Final Regulation Agency Background Document

Agency name	VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY
Virginia Administrative Code (VAC) citation(s)	3 VAC 5-50-250
Regulation title(s)	Confectionery license; definition; restrictions; labeling
Action title	Confectionery license
Date this document prepared	April 9, 2020

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*.

Brief Summary

Please 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.

Senate Bill 61 (and its duplicate House Bill 1602), from the 2018 General Assembly Session, created a confectionery license, which authorizes the licensee to prepare and sell on the licensed premises for off-premises consumption confectionery that contains five percent or less alcohol by volume. The bill provides that any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold and requires the Board of Directors of the Alcoholic Beverage Control Authority to promulgate regulations to implement the provisions of the bill, which shall include a definition of the term "confectionery" and labeling requirements for such confectionery.

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.

N/A

Statement of Final Agency Action

Please 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.

- 1) This action is taken on April 9, 2020.
- 2) The agency taking this action is the Virginia Alcoholic Beverage Control Authority
- 3) The title of this regulation is “Confectionery license; definition; restrictions; labeling”

Mandate and Impetus

Please 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.

There are no changes to the previously-reported information in the proposed stage.

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 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 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.

Purpose

Please 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's intended to solve.

The purpose of the regulation is to provide a definition of 'confectionery', as well as providing clarification as to the restrictions regarding the alcohol content, sales to those 21 and over, and labeling requirements for confections containing alcohol.

Substance

Please 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.

The current emergency regulation reads as follows:

3VAC5-50-250. Confectionery; definition; restrictions; labeling

- A. "Confectionery" - shall mean a general class of sweet foods and edibles, including baked goods and candies having an alcohol content not more than 5% by volume.
- B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product.
- C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol.
- D. Any establishment licensed to sell confectioneries for off-premises consumption, shall properly label the product with such label including:
 1. Notice that the product contains alcohol;
 2. Notice that the product can only be consumed off-premises; and
 3. Warning that the product should not be consumed by anyone under the age of 21.

The proposed change is as follows:

3VAC5-50-250. Confectionery; definition; restrictions; labeling

- A. "Confectionery" - shall mean ~~a general class of sweet foods and edibles, including~~ baked goods and candies having an alcohol content not more than 5% by volume.
- B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product.
- C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol.
- D. Any establishment licensed to sell confectioneries for off-premises consumption, shall properly label the product with such label including:
 1. Notice that the product contains alcohol;
 2. Notice that the product can only be consumed off-premises; and
 3. Warning that the product should not be consumed by anyone under the age of 21.

The language of the final stage is identical to the proposed stage.

Issues

Please 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.

The primary advantage to the public, the agency, and the Commonwealth is that the emergency regulation will be substituted with a permanent regulation. The permanent regulation is straightforward and does not lend to any confusion. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please 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.

N/A

Agencies, Localities, and Other Entities Particularly Affected

Please 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.

There are no changes to previously-reported information.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, 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. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

There were no comments received following the publication of the previous stage.

Detail of Changes Made Since the Previous Stage

*Please 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please 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

There have been no changes to the text since the previous stage was published to the Virginia Register of Regulations.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
3VAC5-50-250		The current emergency regulation reads as follows: 3VAC5-50-250. Confectionery; definition; restrictions; labeling A. "Confectionery" - shall mean a general class of sweet foods and edibles, including baked goods and candies having an alcohol content not more than 5% by volume. B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product. C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol. D. Any establishment licensed to sell confectioneries for off-premises consumption, shall	The proposed change is as follows: 3VAC5-50-250. Confectionery; definition; restrictions; labeling A. "Confectionery" - shall mean a general class of sweet foods and edibles, including baked goods and candies having an alcohol content not more than 5% by volume. B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product. C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol. D. Any establishment licensed to sell confectioneries for off-premises consumption, shall properly label the product

		<p>properly label the product with such label including:</p> <ol style="list-style-type: none"> 1. Notice that the product contains alcohol; 2. Notice that the product can only be consumed off-premises; and 3. Warning that the product should not be consumed by anyone under the age of 21. 	<p>with such label including:</p> <ol style="list-style-type: none"> 1. Notice that the product contains alcohol; 2. Notice that the product can only be consumed off-premises; and 3. Warning that the product should not be consumed by anyone under the age of 21. <p>*The substance remains the same; the language is revised so that it is clearer.</p>