



Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-50
Regulation title	Retail Operations
Action title	Infusion of Distilled Spirits by Mixed Beverage Licensees
Date this document prepared	June 27, 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.

This regulatory action will amend 3 VAC 5-50-60, the section which sets forth general procedures for mixed beverage restaurants, to prescribe the labeling, container size, and record-keeping requirements for infusing, storing and selling flavored distilled spirits, and to require compliance with all applicable state and federal food safety requirements.

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.

Section 4.1-111 of the Code of Virginia was amended by Chapter 481, 2010 Acts of Assembly, to add subdivision B 11, which requires the board to promulgate regulations that prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

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.

The proposed regulatory action is essential to protect the health, safety, or welfare of citizens by ensuring that licensees infusing distilled spirits with flavoring agents comply with food safety regulations, and encouraging temperance by maintaining the food-to-beverage sale ratio required of mixed beverage licensees.

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.)

A new subdivision F will be added to 3 VAC 5-50-60, allowing mixed beverage restaurants to infuse spirits either in the original container, or in another container of up to 2 liters. The mixed beverage stamp must remain affixed to spirits infused in the original container, and those placed in another container must be appropriately labeled. Accurate records must be maintained of all spirits used in infusions. Restaurants creating infusions must comply with food safety regulations.

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.

The primary advantage of this action is to allow mixed beverage restaurants the flexibility to produce their own flavor-infused distilled spirits for the production of cocktails. It poses no disadvantages to the public or the Commonwealth.

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.

There are no applicable federal requirements.

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.

There is no locality 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.

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, Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, Virginia 23261, telephone (804) 213-4409, fax (804) 213-4411, curtis.coleburn@abc.virginia.gov. 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.

Projected cost to the state to implement and	None
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enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Mixed Beverage Restaurants
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. 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.	4789, of which approximately 90% are small businesses
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.	The proposed regulatory change does not contain any mandatory costs. Only those restaurants which choose to infuse spirits will be affected. These costs will solely consist of minimal record-keeping, which will vary by the number of products infused.
Beneficial impact the regulation is designed to produce.	Allow those restaurants which want to create their own flavored distilled spirits by infusion to do so lawfully.

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.

Since the language of the statute mandates the promulgation of regulations, there is no viable alternative to the proposed regulatory action.

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 requirement. It has minimal, simple record-keeping requirements. In order to determine compliance with statutes requiring purchases of all distilled beverages from state stores, prevent fraud by substitution of product, ensure compliance with the required ratio of food sales to mixed beverage sales, and protect the health of the public, the minimal record-keeping required is not burdensome.

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 proposed amendment creates a new provision of the regulation, not previously addressed, so there have been no complaints or comments received concerning the regulation from the public related to this proposal. It is mandated by statute that the board promulgate a regulation in this area. The proposal is not complex and it does not overlap, duplicate, or conflict with federal or state law or regulation. The existing regulation was reevaluated earlier in 2012, and neither technology, economic conditions, or other factors have changed significantly in the area affected by the regulation. The proposal requires only minimal record-keeping by mixed beverage licensees, and should have minimal impact on small businesses.

Public comment

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

Commenter	Comment	Agency response
No comments received		

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 expected 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
3 VAC5-50-60		Infusion not allowed	<p>A mixed beverage restaurant licensee may infuse, store and sell flavored distilled spirits under the following circumstances:</p> <ol style="list-style-type: none"> 1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle. 2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed two (2) liters in volume, will be labeled with the following information: Date of infusion; Brand of spirits; and Amount of spirits used. 3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

			<p>4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.</p> <p>These changes will satisfy the statutory mandate to allow mixed beverage licensees to infuse mixed beverages with flavorings, while facilitating the enforcement of the required food-to-mixed beverage sales ratio, and promoting the health and safety of consumers.</p>
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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