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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) citation(s)	3VAC5-50-250
Regulation title(s)	Confectionery license; definition; restrictions; labeling
Action title	Confectionery license
Date this document prepared	April 30, 2018

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Senate Bill 61 (and its duplicate House Bill 1602) creates 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.

NA

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

The agency is of the position that this regulation is an emergency because the new statute creating the license will take effect on July 1, 2018. The General Assembly mandated that the agency promulgate regulations to implement the provisions of the bill. This new license classification has already garnered a lot of interest in the licensee community. There are individuals who intend to (and may have already) applied for this new license, and will want it issued on its effective date of July 1, 2018. Without a regulation that clearly defines 'confectionery' and also outlines the restrictions and labeling requirements, the agency's Bureau of Law Enforcement will have a difficulty regulating and monitoring the conduct of those licensees who obtain this new classification of license.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The subject matter of the regulation deals with the creation of the new confectionery license. The new license classification 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 goal 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 confectioneries containing alcohol.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulation is essential to protecting the health, safety or welfare of citizens in that it not only does it define ‘confectionery’ it also includes the restrictions of sale for these items (specifically that they cannot be sold to individuals under the age of 21) and it also includes the labeling requirements so that the public is made aware that the item contains alcohol and that it cannot be consumed on-premises or by anyone underage.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements

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
3VAC5-50-250		\$4.1-206(A)(16) – effective July 1, 2016 which will create a new classification of license (confectionery license)	The intent is to define ‘confectionery’ as well as provide clarification as to the restrictions on the license and also the labeling requirements.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to promulgating this regulation because it is based on a mandate from the General Assembly in the drafting of SB 61 that the ABC Board draft this regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **[insert staff contact person's name, mailing address, phone number, fax number, and email address]**. 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 day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Please assess the impact of this 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.

The agency does not anticipate any impact on the institution of the family and/or family stability through the promulgation of this regulation.

Periodic review/small business impact review announcement

If you wish to use this emergency/NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.