



Fast Track Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-50
Regulation title	Retail Operations
Action title	Service of Soju by the Bottle
Document preparation date	July 2, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Alcoholic Beverage Control Board proposes to amend 3 VAC 5-50, Retail Operations, by the addition of a new subsection to 3 VAC 5-50-60, allowing for and setting the conditions for the service of soju, a Korean distilled spirit, by the bottle for on-premises consumption.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 4.1-103 and 4.1-111 of the Code of Virginia authorize the Alcoholic Beverage Control Board to promulgate reasonable regulations which it deems necessary to carry out the provisions of the Alcoholic

Beverage Control Act, provided such regulations are not inconsistent with the Act or the general laws of the Commonwealth. Section 4.1-221 of the Code of Virginia provides that the entire contents of a closed container of distilled spirits shall not be served to an individual for on-premises consumption except as may be provided by Board regulation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Chapter 913 of the 2004 Acts of Assembly amended subsection A.15. of Section 4.1-325 of the Code of Virginia. Prior to the amendment, mixed beverage licensees of the Board were prohibited from delivering to a consumer an original bottle of an alcoholic beverage purchased under such license. The amendment provided an exception to the provision for soju, a Korean distilled spirit product which is traditionally served by delivering a bottle to a group of consumers, who then proceed to pour each other individual drinks. The purpose of this action is to carry out the intent of the General Assembly to allow such service, while complying with the provisions of Section 4.1-221C of the Code, which states that the entire contents of a closed container of distilled spirits shall not be served to an individual for on-premises consumption except as may be provided by Board regulation. Limitations to such service contained in the amendment are essential to protect the health, safety, or welfare of citizens by limiting the potential for public intoxication.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Alcoholic Beverage Control Board has chosen to use the fast-track process in promulgating this amendment to its regulations to carry out the intent of Chapter 913 of the 2004 Acts of Assembly without unnecessary delay. This legislation received a degree of notoriety within the Korean restaurant community, and it is anticipated that many will expect to be able to serve bottles of soju upon its effective date of July 1, 2004. It is expected to be noncontroversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The amendment to 3 VAC 5-50-60 will add an exception to the general prohibition against serving the entire contents of a container of distilled spirits to a consumer for on-premises consumption. Service of bottles of soju will be permitted, with limitations on bottle size and a minimum number of consumers per bottle served.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public associated with this action is the ability of restaurants to serve soju in the traditional manner. There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action. A 375 milliliter bottle of soju contains approximately the same amount of alcohol as a standard 750 milliliter bottle of wine, service of which is already allowed by current regulation.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Mixed beverage licensees
Agency’s best estimate of the number of such entities that will be affected	Approximately 4,000
Projected cost of the regulation for affected individuals, businesses, or other entities	None

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.

Alternatives considered included not adopting any amendment to the current regulation, allowing service of soju by the bottle with no restrictions, and setting a larger minimum party size for such service. Not amending the regulation would have failed to carry out the evidence intent of the General Assembly. If no restrictions were placed on the service of soju, either on bottle size or the number of patrons to whom service might be made, service of excessive amounts of alcohol to an individual would be sanctioned. The Alcoholic Beverage Control Board concluded that limiting bottle size to 375 ml, which is the standard size for soju containers, and requiring at least two patrons per bottle served, would carry out the intent of the General Assembly to allow such service, while reasonably safeguarding against over-consumption.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action should have no impact on the institution of the family or of family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-50-60		No mixed beverage restaurant or carrier may serve the entire contents of a container of distilled spirits to a consumer for on-premises consumption, except for room service at a hotel or motel, or in a miniature bottle on a carrier's airliner.	Mixed beverage restaurants will also be allowed to serve the entire contents of a container of soju to a consumer for on-premises consumption, provided the container is no larger than 375 ml, and no more than one container may be served per two legal consumers in any group. This allows for the traditional method of service of soju, while limiting the potential for over-consumption.