



Final 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	August 13, 2013

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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action amends the general procedures for mixed beverage restaurants by (i) prescribing the labeling, container size, and recordkeeping requirements for infusing, storing, and selling flavored distilled spirits and (ii) requiring compliance with all applicable state and federal food safety requirements.

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 or board taking the action, and (3) the title of the regulation.

On August 5, 2013, the Alcoholic Beverage Control Board took final action to amend 3 VAC 5-50, Retail Operations.

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 of the 2010 Acts of Assembly by adding 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

The regulatory action is essential to protect the health, safety, or welfare of citizens by ensuring that licensees that infuse 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

A new subdivision F will be added to 3VAC5-50-60 allowing mixed beverage restaurants to infuse a container of distilled spirits either in the original container or in another container. 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 there are 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
3 VAC 5-50-60	If spirits are infused in a substitute container, the container may not exceed 2 liters in volume.	The 2 liter container size limit has been eliminated, while clarifying that each original container of spirits must be infused individually.	This will allow more flexibility.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Seven unregistered Townhall commenters	Support proposal.	
Virginia Hospitality and Travel Association	Support proposal, but recommend size of permitted infusion container be increased to at least 5 liters.	The agency has amended the proposal to remove the limit on infusion container size.

Enter any other statement here

All changes made in this regulatory action

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

Current section	Proposed new section	Current requirement	Proposed change and rationale
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number	number, if applicable		
3 VAC 5-50-60		Infusion not allowed.	<p>A mixed beverage restaurant may infuse, store, and sell flavored distilled spirits. If infused in the original bottle, the mixed beverage stamp must remain affixed. If infused in a substitute container, the substitute container must be appropriately labeled. Records of all infusions must be maintained, and licensees must comply with state and federal food safety regulations.</p> <p>This change will allow Virginia restaurants more flexibility to create artisanal cocktails.</p>

Enter any other statement here