



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	Gourmet Oyster House Food Requirements
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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed amendment establishes a \$1,000 minimum monthly food sale requirement of oysters and other seafood for gourmet oyster house licensees. This action is required by Chapter 626 of the 2011 Acts of Assembly.

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 4.1-209 A 12 of the Code of Virginia, enacted by Chapter 626 of the 2011 Acts of Assembly, requires that the board establish a minimum monthly food sale requirement for gourmet oyster house licenses, but leaves the details of such a requirement to the board's discretion.

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 encouraging temperance through ensuring that alcoholic beverages sold and served for on-premises consumption are sold by businesses that serve a substantial amount of food in addition to beverage offerings.

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.

The proposed action will add a subdivision to 3VAC5-50-110 B, which sets forth the minimum food sales requirements for wine and beer on-premises or on-premises and off-premises licensees, to require gourmet oyster houses to sell a minimum of \$1,000 per month of oysters and other seafood.

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 the regulatory action will be to ensure that wine and beer are sold for on-premises consumption in establishments also selling a substantial quantity of food, which encourages temperance. There are 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
		No changes since proposed.	

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
Virginia Hospitality and Travel Association	Neutral	

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 number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-50-110		No food qualifications for Gourmet Oyster House licensees are established.	A Gourmet Oyster House must maintain an inventory and monthly sales of oysters and other seafood of at least \$1,000 per month. The agency believes this is a sufficient amount of food sales to ensure that the licensed business is an bona fide eating establishment.

Enter any other statement here

