



Notice of Intended Regulatory Action (NOIRA) 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	September 27, 2011

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*.

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.

This action is intended to comply with the mandate of subdivision A 12 of § 4.1-209 of the Code of Virginia, which provides that the board shall “establish a minimum monthly food sale requirement of oysters and other seafood” for gourmet oyster house licenses.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Subdivision A 12 of Section 4.1-209 of the Code of Virginia, adopted as 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.

Need

Please detail 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 proposed regulatory action is essential to protect the health, safety, or welfare of citizens, in order to encourage temperance by 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 detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

It is anticipated that the regulatory action will amend 3 VAC 5-50-110, the section which sets forth food sales requirements for alcoholic beverage licensees, to prescribe the monthly sales of oysters and other seafood required for gourmet oyster house licenses.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

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

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 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 comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to **W. Curtis Coleburn, Chief Operating Officer**,

Department of Alcoholic Beverage Control, Post Office Box 27491, Richmond, Virginia 23261, curtis.coleburn@abc.virginia.gov, telephone (804) 213-4409, facsimile (804) 213-4411. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

Family impact

Assess the potential 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.