



COMMONWEALTH of VIRGINIA

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CHIEF OPERATING OFFICER/SECRETARY TO THE BOARD
W. CURTIS COLEBURN, III

June 29, 2011

The Honorable S. Chris Jones, Chair
House Committee on General Laws
General Assembly Building
Richmond, Virginia 23219

The Honorable Linda T. Puller, Chair
Senate Committee on Rehabilitation and Social Services
General Assembly Building
Richmond, Virginia 23219

Re: Pilot Project Report Required by Chapter 238 of the 2009 Acts of Assembly

Dear Delegate Jones and Senator Puller:

On behalf of the Alcoholic Beverage Control Board, I am pleased to provide to you the results of the two-year pilot project conducted pursuant to the mandate of Chapter 238 of the 2009 Acts of Assembly, testing an alternative method of computing the food sales requirements for restaurants licensed to sell mixed beverages in the Commonwealth.

Please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "W. Curtis Coleburn, III".

W. Curtis Coleburn, III

PILOT PROJECT ON ALTERNATIVE METHOD FOR CALCULATING THE FOOD-TO-BEVERAGE RATIO FOR MIXED BEVERAGE RESTAURANTS

BACKGROUND

Chapter 238 of the 2009 Acts of General Assembly created a two-year pilot project for a limited number of restaurants, providing an alternate method for calculating the food-to-mixed beverage ratio required for a mixed-beverage restaurant license. The legislation directs the Alcoholic Beverage Control Board to submit a report with findings and recommendations to the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services by July 1, 2011.

Alternate Method

The alternate method prescribed by Chapter 238 provides that participating licensees “shall generate at least \$350 in food sales per proof gallon of spirits purchased from the Board” and a proof gallon is defined as “one gallon of 100 proof spirits.”

Traditional Method

The traditional method, found in § 4.1-210 of the Code of Virginia, provides that “...food cooked or prepared, and consumed on the premises and nonalcoholic beverages served on the premises . . .” of the restaurant must constitute, “. . . at least 45 percent of the gross receipts from the sale of mixed beverages and food.” Mixed beverage sales cannot exceed 55 percent of total sales of mixed beverages and food.

Participating licensees in the pilot project were deemed to have complied with the food-to-mixed beverage ratio by complying with either the traditional method or the alternative method. ABC made its stakeholders aware of this pilot program and solicited participants by advertising it in the agency’s Spring/Summer 2009 edition of the LICENSEE, the newsletter sent to all ABC licensees.

A “proof gallon” is one gallon of 100 proof spirits or its equivalent. To calculate the number of proof gallons represented by a particular container of spirits, one must multiply the volume of the container in gallons by the proof of the contents, divided by 100. Here are the equivalent measures in gallons of popular spirits containers:

750 ml = .198 gallons
1 liter = .264 gallons
1.75 liter = .462 gallons

So, to determine the proof gallons of a liter of 80 proof Bourbon, you would multiply .264 by .8 (which is 80 proof divided by 100). The result would be .2112 proof gallons.

To meet the food sales qualifications under the pilot project, you would have to sell \$73.92 of food and non-alcoholic beverages to offset that liter of Bourbon (.2112 proof gallons times \$350 per proof gallon).

Pilot project participants did not have to maintain any additional records or file additional reports. Each participant filed the Mixed Beverage Annual Review form as usual, and ABC used its records of spirits sold to the licensee to compute the food sales per proof gallon figure.

RESULTS

Licensees at Program Inception

Fourteen licensees indicated that they were interested in participating in the pilot program. One decided not to participate, which left thirteen in the program. Two of the thirteen surrendered their licenses during the pilot program period. Thus, eleven remained throughout the program. No restaurants in the western cities or rural portions of the Commonwealth chose to participate. Of the thirteen participants, five were in Northern Virginia, five in Tidewater, and three in Central Virginia.

Findings

The analysis of data submitted by the participating restaurants indicated that the \$350 per proof gallon rate adopted for the pilot project was roughly equivalent to the average food sales required under the traditional ratio method. The thirteen restaurants submitted 23 review reports during the pilot project period, and in 73.9% of the submissions (17 of 23), the restaurant was either qualified under both methods or not qualified under either. In two instances, restaurants were qualified under the pilot project formula, but not under the traditional one. In each of these cases, the restaurants were just under the 45% food requirement, so this might indicate that the pilot project food requirement is slightly more forgiving.

On four occasions, restaurants reported qualifying numbers under the traditional ratio method, but were not qualified when the pilot project method was applied. Each of these came in the second year of the project, following a first report in which they failed to qualify under either method. Two of these were found to have underreported alcohol purchases by 40% to 50% when compared to ABC's sales records, a third reported a 20% reduction in mixed beverage sales, although alcohol purchases increased by 14% over the previous year, and the fourth reported mixed beverage sales for the last two months of the license year down 75% from the year before. These situations will be subject to further investigation.

During the committee study which resulted in the pilot project legislation, licensees indicated that consumer trends toward higher-priced spirits drinks were contributing to difficulties in meeting the food ratio. There was no evidence of such a phenomenon in the pilot project restaurants' reports. One of the participants whose owner had expressed such an opinion before the pilot did not meet qualifying sales numbers in the second year of the project, but the sales reports clearly show that the failure was due to an almost 20% decline in sales of food and non-alcoholic beverages, rather than an increase in the price of mixed beverages sold.

CONCLUSION

The pilot project method of determining food sales requirements for mixed beverage restaurants was designed to require food sales in relation to quantity of alcohol sold rather than dollar sales of mixed drinks, which may vary widely among restaurants. A cocktail prepared with top-shelf premium liquor requires the same offsetting food sale as a well brand. This is the primary advantage of the pilot project method. However, since no means of measuring food sales other than price has been identified, the formula still measures the food requirement in dollars. While dinners offered in a family restaurant, a fine dining establishment, and an entertainment venue may all have the same calories and nutritional value, they are likely to have a range of prices. The places patrons attend primarily for drinking or entertainment rather than a meal, that have trouble meeting the traditional ratio, are still going to find the pilot project method difficult.

Neither of the methods is particularly more difficult or expensive to administer, although expanding the pilot project to all mixed beverage licensees would require some initial computer programming to interface store sales data with Enforcement review of mixed beverage annual review reports.

The data from the analysis of the mixed beverage annual review reports submitted by the participating licensees follows. Pursuant to § 4.1-118 of the Code of Virginia, the identity of licensees associated with particular reports may not be revealed.

PARTICIPATING LICENSEES' RESULTS

MBAR - Pilot Program Participants

1.

AR 2009 - Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$297,138	54%	\$252,692	46%	Yes

AR 2009 - Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$297,138	662.2	\$350	\$231,770	Yes

AR 2010 - Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$218,142	50%	\$220,695	50%	Yes

AR 2010 - Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$218,142	495.2	\$350	\$173,320	Yes

2.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$428,831	85%	\$72,804	15%	Yes

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$428,831	110.3	\$350	\$38,640	Yes

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$419,211	86%	\$56,911	14%	Yes

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$419,211	97.4	\$350	\$34,090	Yes

3.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$273,312	44%	\$343,330	56%	No

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$273,312	797.7	\$350	\$279,195	No

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$219,863	47%	\$251,171	53%	Yes

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$219,863	679.4	\$350	\$237,790	No

4.

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$89,717	32%	\$186,522	68%	No

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$89,717	507.1	\$350	\$177,415	No

AR 2011 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$103,924	48%	52%	\$110,366	Yes

AR 2011 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$103,924	308.1	\$350	\$107,835	No

5.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$0		\$0		License Surrendered

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$0		\$0		License Surrendered

6.

AR 2008 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$48,954	78%	\$13,738	22%	Yes - License Surrendered

AR 2008 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$48,954	16.4	\$350	\$5,740	Yes – License Surrendered

7.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$217,702	42%	\$297,656	58%	No

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$217,702	1,098.9	\$350	\$384,615	No

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$256,768	49%	\$266,992	51%	Yes

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$256,768	1,222	\$350	\$427,700	No

8.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$146,015	52%	\$135,504	48%	Yes

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$146,015	347.1	\$350	\$121,485	Yes

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$123,313	44%	\$156,713	56%	No

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$123,313	312.5	\$350	\$109,375	Yes

9.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$545,466	45%	\$660,450	55%	Yes

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$545,466	1537.4	\$350	\$538,090	Yes

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$445,033	40%	\$665,470	60%	No

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$445,033	1507.3	\$350	\$527,555	No

10.

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$29,645	23%	\$100,678	77%	No

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$29,645	329.5	\$350	\$115,290	No

AR 2011 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$28,814	29%	\$70,988	71%	No

AR 2011 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$28,814	235.1	\$350	\$82,285	No

11.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$108,334	34%	\$208,293	66%	No

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$108,334	696.4	\$350	\$243,740	No

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$116,440	47%	\$131,248	53%	Yes

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$116,440	517.4	\$350	\$181,090	No

12.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$503,008	44%	\$628,694	56%	No

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$503,008	1230.9	\$350	\$430,815	Yes

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$415,545	38%	\$663,973	62%	No

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$415,545	1259	\$350	\$440,650	No

13.

AR 2009 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$207,752	76%	\$66,333	24%	Yes

AR 2009 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$207,752	388.7	\$350	\$136,045	Yes

AR 2010 Traditional Method § 4.1-210

Food & Non Alcoholic Beverage Sales	Food Sales Percentage	Mixed Beverage Sales	Mixed Beverage Sales Percentage	Qualified
\$160,815	79%	\$41,706	21%	Yes

AR 2010 Pilot Project Method HB 2293

Food & Non Alcoholic Beverage Sales	Distilled Spirit Purchases In Proof Gallons	Food Sales Per Proof Gallon	Projected Minimum Food & Non Alcoholic Beverage Sales for One Year	Qualified
\$160,815	201	\$350	\$70,350	Yes