

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

**FILED**  
**Do Not Mark In this Box**  
2007 MAY 30 PM 4: 34  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Alcohol Beverage Control Commission TITLE NUMBER: 175

RULE TYPE: Legislative CITE AUTHORITY §§60-1-5a, 60-4-3b, 60-4-15, 60-6-1, 60-6-2, and 60-8-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Farm Wineries


IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 2, 2007 AT 4:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Alcohol Beverage Control Commission  
322 70<sup>th</sup> Street, SE  
Charleston, WV 25304  
Attention: Anoop Bhasin, General Counsel

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
James Robert Alsop  
Cabinet Secretary  
Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and, if needed, Emergency and Modified Rule.)

DATE: May 30, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.)

Alcohol Beverage Control Commission

322 70<sup>th</sup> Street, SE, Charleston, WV 25304

Telephone: 304-558-2481

LEGISLATIVE RULE TITLE: 175-3 Farm Wineries

1. Authorizing statute(s) citation  §§60-1-5a, 60-4-3b, 60-4-15, 60-6-1, 60-6-2, and 60-8-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 30, 2007

b. What other notice, including advertising, did you give of the hearing?  
\_\_\_\_\_

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 2, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)  
\_\_\_\_\_

f. **Name, title, address and phone/fax/email numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Anoop Bhasin, General Counsel, Alcohol Beverage Control Commission

322 70<sup>th</sup> Street, SE, Charleston, WV 25304

Telephone: 304-558-2481, extension 253

- g. **IF DIFFERENT FROM ITEM '2-f'**, please give **Name, Title, Address and Phone Number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

\_\_\_\_\_  
\_\_\_\_\_

- b. Date of hearing or comment period:

\_\_\_\_\_

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

\_\_\_\_\_

- d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 175 CSR 3

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Alcohol Beverage Control Commission

Address: 322 70<sup>th</sup> Street, SE

Charleston, WV 25304

1. Effect of Proposed Rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THERAFTER
<b>ESTIMATED TOTAL COST</b>					
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

2. Explanation of Above Estimates:

There will be no financial increase or decrease to the public or government on this rule.

3. Objectives of These Rules:

The objective of this rule is to clarify the definition and role of farm wineries in light of the passage of SB 712 during the 2007 regular Session of the 78<sup>th</sup> Legislature. The rule will amend definitions, add licenses, add license fees, and amend and clarify how farm wineries are licensed and how they operate.

Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

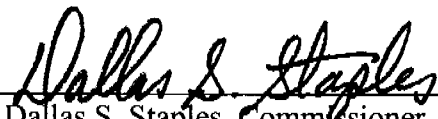
Increased revenue to State based on license fees, new licenses, and tax collections.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:  
None

C. Economic Impact on Citizens/Public at Large.  
None

Date: May 30, 2007

Signature of Agency Head or Authorized Representative:

  
\_\_\_\_\_  
Dallas S. Staples, Commissioner

**Title 175, Series 3  
Legislative Rule  
Alcohol Beverage Control Commission**

**FARM WINERIES**

**STATEMENT OF CIRCUMSTANCES**

With SB 712's passage during the 2007 Regular Session of the 78<sup>th</sup> Legislature, the Commissioner must amend 175CSR3, Farm Wineries, to correct certain definitions, add licenses, add license fees, and amend and clarify how farm wineries are licensed and how they operate.

**Title 175, Series 3  
Legislative Rule  
Alcohol Beverage Control Commission**

FILED

2007 MAY 30 PM 4: 34

OFFICE OF THE  
SECRETARY OF STATE

**FARM WINERIES**

**STATEMENT OF PURPOSE  
(Summary of Proposed Changes)**

This legislative rule explains the licensing and operations of farm wineries in light of the statutory changes enacted by the passage of SB 712 during the 2007 Regular Session of the 78<sup>th</sup> Legislature.

In paragraph 2.5. change to correct department to Department of Revenue

In paragraph 2.7. revise the definition of "Distributor" per SB 712.

In paragraph 2.8. revise the definition of "Farm winery" per SB 712.

In paragraph 2.9. revise the definition of "Fortified wine" per SB 712.

In paragraph 2.14. add the definition of "Multi-capacity winery or farm winery" per SB 712.

In paragraph 2.15. start of renumbering paragraphs to the end of the section.

In paragraph 2.17. revise the definition of "Private club" per SB 712.

In paragraph 2.18. add the definition of "Private wine bed and breakfast" per SB 712.

In paragraph 2.19. revise the definition of "Private wine restaurant" per SB 712

In paragraph 2.20. add the definition of "Private wine spa " per SB 712.

In paragraph 2.25. add the definition of "Supplier" per SB 712.

In paragraph 2.26. revise the definition of "Wine" per SB 712.

In paragraph 2.27. add the definition of "Wine specialty shop" per SB 712.

In paragraph 2.28. add the definition of "Wine sampling" per SB 712.

In paragraph 2.29. add the definition of "Wine tasting" per SB 712.

In paragraph 3.1.11. add section to clarify farm winery license requirements per SB 712

In paragraph 4.1.3. changed Bureau of Alcohol, Tobacco and Firearms to new bureau name,

Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (the "TTB").

In paragraph 4.2.2. clarify the farm winery licensing requirements per SB 712.

In paragraph 4.2.3. clarify the farm winery special license requirements per SB 712.

In paragraph 4.2.3.3. clarify the farm winery special license requirements per SB 712.

In paragraph 4.2.3.4. add section to clarify the farm winery special license fee per SB 712.

In paragraph 4.2.4. correct and add annual license fees affecting farm wineries per SB 712 to the section and subsections.

In paragraph 4.2.5. add section to clarify the farm winery direct shipper requirements per SB 712.

In paragraph 4.6. clarify the farm winery wine tasting and sampling requirements per SB 712.

In paragraph 4.7. clarify the farm winery authorized sales requirements per SB 712 to th section and subsections.

In paragraph 4.10. added new section 4.10. to clarify the farm winery wine liter tax obligations per SB 712.

In paragraph 4.11. renumbering to end of section and to clarify the farm winery wine brand review and registration requirements per SB 712.

In subsection 7.5.3. change from Bureau of ATF to TTB.

In paragraph 8.4. added new section to clarify the farm wineries are subject to penalties per SB 712.

In paragraph 9.1.3., 9.2.1., 9.2.2., and 9.2.3. language added to correct jurisdiction where the Commission may be subject to judicial review to Kanawha County and Kanawha County circuit court.

TITLE 175  
LEGISLATIVE RULE  
ALCOHOL BEVERAGE CONTROL COMMISSION

SERIES 3  
FARM WINERIES

**§175-3-1. General.**

1.1. Scope. -- These modified proposed legislative regulations repeal and replace 175 C.S.R. 3 and are promulgated to establish the procedure for the licensing and operation of farm wineries.

1.2. Authority. -- W. Va. Code §§60-2-16 and 29A-3-1 et seq.

1.3. Filing Date. - ~~April 15, 1991.~~

1.4. Effective Date. - ~~April 15, 1991.~~

**§175-3-2. Definitions.**

As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1. "Advertisement" means any advertisement of alcoholic liquors through the medium of billboards, newspapers, magazines, or similar publications, except that such term shall not include: (1) any label affixed to any container of alcoholic liquors or any individual covering, carton or other wrapper of such container; or (2) any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

2.2. "Alcohol Beverage Control Commissioner" or "ABCC" or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his delegate.

2.3. "Alcoholic liquor" means alcohol, beer, fortified wine and distilled spirits, and any liquid or solid capable of being used as a beverage, but shall not include wine with an alcohol content of fourteen percent (14%) or less by volume, ~~include~~ nonintoxicating beer or nonintoxicating beverages.

2.4. "Bottle" and "Container" means any bottle or container authorized by this regulation for packaging wine for sale at retail.

2.5. "Department" shall mean the West Virginia Department of ~~Tax and~~ Revenue.

2.6. "Distilled spirits" means ethyl alcohol, ethanol or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, natural spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than 24% of alcohol by volume shall be deemed to be distilled spirits.

2.7. "Distributor" means any person whose principal place of business is within the State of West Virginia, and who is engaged in selling or distributing wine to retailers, grocery stores, private wine bed and breakfasts, or private wine restaurants, private wine spas, private clubs or wine specialty shops and that selling or distributing sells or distributes nonfortified dessert wine, port, sherry and madeira wines to wine specialty shops under authority of West Virginia Code article 60-8 and actually maintains a warehouse in this State for the distribution of wine.

2.8. "Farm winery" means an establishment where in any year fifty thousand gallons or less of wine and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar and where port, sherry and Madeira wine may also be manufactured, with twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment and no more than twenty-five percent of such produce originating from any source outside this state. Any port, sherry or Madeira wine manufactured by a winery or a farm winery must not exceed an alcoholic content of twenty-two percent alcohol by volume and shall be matured in wooden barrels or casks. ~~"Farm winery" means an establishment where in any year fifty thousand (50,000) gallons or less of wine is manufactured exclusively by natural fermentation from grapes, other fruit or honey, with twenty five percent (25%) of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty five percent (25%) of such produce originating from any source outside this State: Provided, That a farm winery may include one off-farm location: Provided, however, That the owner of a farm winery may provide to the Commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young non-bearing fruit plants. The Commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the non-bearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the Commissioner after consultation with the Agriculture Commissioner.~~

2.9. "Fortified wine" means any wine to which brandy or other alcohol has been added and also includes dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent~~which are not fortified and any wine containing greater than fourteen percent (14%) alcohol by volume: Provided, That fortified wine may include wine with an alcohol content greater than fourteen percent (14%) if such alcohol content is derived solely from fermentation and no brandy or other alcohol has been added.~~

2.10. "Intoxicated" means having ones faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

2.11. "Licensed retailer" means the person licensed in accordance with W. Va. Code §§60-3-1, 60-3A or 60-8 to sell wine at retail to the general public.

2.12. "Manufacture" means to ferment, make, mix, concoct, process, blend bottle or fill an original package with any alcoholic liquor or wine.

2.13. "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor or wine, and among others includes a producer, bottler, importer, wholesaler, or winemaker.

2.14. "Multi-capacity winery or farm winery" means a winery or farm winery licensed as a retailer, wine specialty shop, supplier and direct shipper without obtaining an individual license for each capacity

and for one fee.

2.145. "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor or wine.

2.156. "Person" means any individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.167. "Private club" means a corporation or association licensed as a private club in accordance with West Virginia Code article 60-7 and 60-8.

2.178. "Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member and does not admit the general public.

2.19. "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of West Virginia Code article 60-8 as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public. Such private clubs that meet the private wine restaurant requirements numbered (1), (2) and (3) in this definition shall be considered private wine restaurants.

2.20. "Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services and relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

2.1821. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of W. Va. Code §60-1-1 et seq to sell alcoholic liquors for consumption on the premises.

175CSR3

~~2.19~~22. "Retail liquor store" means a store established and operated under the authority of either W. Va. Code §60-3-1, 60-3A-1 for the sale of alcoholic liquor in the original package for consumption off the premises.

~~2.20~~23. "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent or employee.

~~2.21~~24. "Selling" shall include solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.25. "Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

~~2.22~~26. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code, ~~fruits, or other agricultural products, containing sugar, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake, port, sherry, maderia or other product offered for sale or sold as wine containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume. Provided, That for purposes of these regulations, wine includes wine coolers and similar beverages containing not less than one half of one percent (.5%) nor more than seven percent (7%) alcohol by volume.~~

2.27. "Wine sampling" means a special event conducted at a licensed wine specialty shop's location during regular hours of business where the wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than one ounce each, to any one consumer in one day. Persons serving the complimentary samples must be twenty-one years of age and an authorized representative of the licensed wine specialty shop, winery, farm winery or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be registered with the commissioner. No licensee, employee or representative may furnish, give or serve complimentary samples of wine to any person less than twenty-one years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

2.28. "Wine specialty shop" means a retailer who shall deal principally in the sale of table wine, certain nonfortified dessert wines, wine accessories and food or foodstuffs normally associated with wine and: (1) Who shall maintain a representative number of such wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic and/or according to region of production and the inventory shall contain not less than fifteen percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks.

## 175CSR3

2.2329. "Wine tasting" means an activity where members of ~~an organization~~ a wine taster's club, which has at least fifty duly-elected and approved dues paying members in good standing, meet at a farm winery licensed wine specialty shop's premises not more than one time per week or at an authorized off farm location either at a time when the premises are closed to the general public or in a segregated facility on the premises to which the general public is not admitted for the purpose of tasting and comparing ~~samples of~~ different wines.

### §175-3-3. Licensure.

3.1. License application. - The application for license to operate a farm winery shall include the following:

3.1.1. The name of the applicant;

3.1.2. The address where the applicant will conduct its operations;

3.1.3. If the applicant be an individual or partnership, the names and addresses of all owners having ten percent (10%), or more, ownership interest;

3.1.4. If such applicant be an unincorporated association, the names and addresses of the members of its governing board;

3.1.5. If such applicant be a corporation, the names and addresses of its officers and directors and of all stockholders owning ten percent (10%), or more, of the common stock;

3.1.6. Arrest record, if any, of the applicant and its principals, officers, directors, owners, employees and manager/steward, including disposition of all such arrests;

3.1.7. West Virginia consumer sales tax identification number;

3.1.8. West Virginia business registration certificate number;

3.1.9. Application shall only be made on ABCC Form 200-FW. The form must be completed in its entirety and failure to compete all questions thereon shall constitute grounds for refusal to grant a license.

3.1.10. The application shall be signed by the applicant. In the case of a partnership, the application shall be signed by each of the partners: Provided, That in the case of a limited partnership, the applications shall be signed by each of the general partners and by each limited partner who owns ten percent (10%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members owning ten percent (10%) or more of the capital or profits shall sign. In the case of a corporation, the application shall be signed by an officer and under the seal of the corporation.

3.1.11. Applicants applying for other licenses under 175CSR4 or W.Va. Code §60-8-1 et seq. must complete the applicable forms as provided by the Commissioner's office, pay the applicable fees, and qualify for such other licenses independent of qualifying for a farm winery license.

3.2. Refusal of license. - No license shall be issued to any applicant:

## 175CSR3

3.2.1. That submits an application for license that contains any false statement, and any statement found to be false after the granting of such license shall be grounds for revocation or suspension of such license;

3.2.2. Upon receipt of an application for a license, the Commissioner shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the licensing provisions of the law have been complied with, and shall investigate all matters connected therewith which may affect the public welfare, health and morals. The Commissioner shall deny an application for a license if either the applicant or the premises for which a license is applied do not qualify for a license. The applicant may appeal denial of the license, such appeal to be prosecuted in accordance with Section 175-3-9 of these regulations.

3.3. License not transferable. - A license issued under the provisions of 175 C.S.R. 3 shall be valid only for the person(s)/organization named thereon to operate a farm winery on the premises therein described and is not transferable.

3.4. Change of corporate directors or officers; issuance or transfer of corporate stock. - Each corporate licensee shall, within thirty (30) days of a majority change of the members of the board of directors, or a change in any corporate officers, or the issuance or transfer of shares of its stock which results in a person not previously approved owning ten percent (10%) or more of its stock, shall report to the Commissioner such information with respect to the new person as is required to be furnished by an applicant for a license.

3.5. Change in ownership; change in management. - Each licensee shall report any change in ownership of the business which results in a person not previously approved owning ten percent (10%) or more of its stock, or the change in the management control of the licensed establishment, and shall report to the Commissioner such information with respect to the new person as is required to be furnished by an applicant for a license.

3.6. Federal basic permit information. - Each applicant for a license authorizing a farm winery shall submit to the Commissioner a copy of the applicant's federal basic permit, as required under the Federal Alcohol Administration Act, including copies of all data, written statements, affidavits or other documents prepared in connection therewith. A copy of the federal basic permit shall accompany the request for application.

3.7. License application form. - The application for a license to operate a farm winery, ABCC Form 200-FW, is available from the West Virginia Alcohol Beverage Control Commissioner's office.

3.8. Certain personnel not to hold license. - No farm winery license shall be held by, or issued to, any person employed by the Alcohol Beverage Control Commissioner when the duties of such person have to do with the enforcement of the Liquor Control Act or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession or manufacture of alcoholic beverages.

3.9. Bonded winery - A farm winery license shall be issued only to, or held by, an applicant qualified to operate or who is operating a winery or wine cellar bonded under the laws and regulations of the United States.

3.10. Pricing. - Wines produced by farm wineries shall be considered by the Commissioner to be a separate class of alcoholic liquor under the provisions of section nine, article three, chapter sixty of the

West Virginia Code of 1931, as amended, for the purpose of establishing pricing.

**§175-3-4. Operation of Farm Wineries.**

4.1. Application of Federal Alcohol Administration Act. - The Commissioner hereby finds and declares that the adoption by his office, for its control of farm wineries, of the provisions of the laws, Rules and Regulations of the United States relating to the operations of wineries will:

4.1.1. Simplify the licensing of farm wineries in this State;

4.1.2. Improve enforcement of production and sanitation standards through better use of information obtained from federal sources; and

4.1.3. Aid interpretation of the farm winery law through use of federal judicial and administrative determinations and precedents.

The Commissioner does, therefore, declare that these regulations be construed so as to accomplish the foregoing purposes with specific regard to: (1) Standards of identity for wine; (2) labeling requirements for wine; (3) requirements for approval of labels of wine domestically bottled or packed; (4) advertising of wine; and (5) standards of fill for wine; and incorporates by reference all such provisions of the Federal Alcohol Administration Act and regulations adopted thereunder by the United States Department of the Treasury, ~~Bureau of Alcohol, Tobacco and Firearms~~ Alcohol and Tobacco Tax Trade Bureau (the "TTB"), in effect on the effective date of the Rules and Regulations herein, and as the same may be amended.

4.2. Licenses and fees.

4.2.1. Farm wineries must be licensed as such by the Commissioner. The wine manufactured at a farm winery may be served or sold or both served and sold.

4.2.2. Farm wineries are ~~not~~ required to be licensed as a ~~distributor~~ farm winery, retailer, wine specialty shop, supplier, direct shipper or private wine restaurant in order to engage in those business activities, but may use a multi-capacity winery or farm winery license to engage in certain licensed capacities or may purchase each license separately. ~~However, a farm winery may not engage in simultaneous licensed business activities as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.~~

4.2.3. A farm winery may ~~be~~ obtain a specially licensed for the retail sale of wine at any fair or festival endorsed or sponsored by the governing body of a municipality or county commission.

4.2.3.1. The special license may be issued for a term no longer than ten (10) consecutive days.

4.2.3.2. The application for the special license must be submitted to the Commissioner at least thirty (30) days prior to when wine will first be sold.

4.2.3.3. The special license authorizes the exhibit, wine tasting and selling of wine for consumption off the premises of the fair or festival. Any licensee opening or selling wine for consumption of wine on-premises of the fair or festival will face penalties under this rule, 175CSR4, and W.Va. Code

## 175CSR3

§60-8-1 et seq.

4.2.3.4. Special license fee - \$250.00, or if on winery or farm winery premises or at a designated off-farm winery location, then \$50.00 for events described in W.Va. Code §60-8-3.

4.2.4. The annual fees for authorized activities are as follows:

4.2.4.1. Farm winery - \$50.00 ~~annually~~;

4.2.4.2. Retailer or Wine Specialty Shop - \$150.00 or \$250.00, respectively;

4.2.4.3. Supplier - \$150.00;

4.2.4.4. Direct Shipper or Direct Shipper Wine Specialty - \$150.00 or \$250.00, respectively;

4.2.4.5. Private Wine Bed and Breakfast, Private Wine Restaurant, or Private Wine Spa -

4.2.4.5. Wine Sampling - \$150.00;

4.2.4.6. Wine tasting - \$150.00 ~~annually~~; or

4.2.4.7. Multi-capacity winery or farm winery - \$300.00.

~~4.2.4.3. Special license - \$25.00~~

4.2.5. Farm wineries licensed as a Direct Shipper or Direct Shipper Wine Specialty must meet all the requirements of a Direct Shipper or Direct Shipper Wine Specialty under 175CSR4 or the West Virginia Code.

4.3. Inspection. - The Commissioner or his agents shall have the authority to inspect, at any reasonable hour, the records, stocks and premises of the licensee to determine if the licensee is complying with all provisions of applicable laws and regulations. Such agents desiring to make such inspections shall identify themselves by suitable credentials. Any denial or interference with such inspections by the farm winery owner, his agents or employees shall be a violation of these regulations and will be reported as such.

Any evidence of a violation found during an inspection shall be seized and impounded and the same shall be admissible into evidence to prove such violation.

4.4. Age for purchase or consumption of farm wine. - No farm winery shall serve or sell farm wine to individuals below the age of twenty-one (21) years and any such individuals below the age of twenty-one (21) shall not be permitted to consume farm wine or any other alcoholic liquors on the premises of a farm winery. Additionally, a farm winery may not sell wine to any person who is visibly intoxicated.

4.5. Hours for sale of farm wine. - No farm winery licensee shall sell, give, serve or dispense farm wine, or permit the consumption thereof, on any licensed premises, or in any rooms directly connected therewith between the hours of one a.m. and one p.m. on any Sunday; nor shall any licensee sell, give or dispense farm wine, or permit the consumption thereof, on any licensed premises, or in any rooms directly connected therewith, between the hours of twelve midnight and ten a.m. on any week day. These

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prohibitions do not apply to those rooms in the structure which are used for the farm winery owners' normal, usual and customary residential activities.

4.6. Wine tastings and samplings. - A farm winery licensee having acquired a wine tasting license and a wine specialty shop license may conduct wine tastings and a farm winery licensee having acquired a wine sampling license and a wine specialty shop license may conduct wine samplings, on its respective licensed premises, or in any rooms or areas directly connected therewith, or at an off-farm winery location, of wine produced or bottled by such licensee as provided in W.Va. Code §60-8-3.

4.7. Authorized sales. ~~Every licensed~~ A farm winery licensed as a retailer or a wine specialty shop may sell wine ~~which it produced~~ directly to consumers at the farm winery; at one off-farm winery location; and through the ABCC warehouse; A farm winery licensed as a supplier may sell to any restaurant private club, private wine bed and breakfast, private wine restaurant, private wine spa, retailer or wine specialty shop licensed under W. Va. Code §§60-8-3 and 60-8-3(k) ~~to sell wine from a farm winery; and/or to any person licensed under W. Va. Code §60-1-1 et seq. to sell wine at either wholesale or at retail.~~

4.7.1. A farm winery licensed as a direct shipper may ship wines from the farm winery to a consumer without the bonding requirements of a transporter, but must use a licensed and bonded common carrier or some other bonded transporter.

4.7.2. A ~~person or licensee~~ direct shipper licensed in West Virginia in a state which affords the wineries of this State equal reciprocal shipping privileges, may ship for personal use and not for resale, not more than two (2) cases per month to any adult resident in this State.

4.8. Return by purchaser. - A person, who has purchased wine from a licensed farm winery and has taken delivery of such wine within this State for delivery or use within or without this State, may return all or any portion of such wine to the licensed premises of such farm winery. To make such return, the purchaser need not obtain any license in this State, and may return the wine in a vehicle owned or controlled by such purchaser.

4.9. Tax on sales. - Licensees shall collect the tax imposed by the provisions of West Virginia Code §60-3-9d and account for them in accordance with applicable regulations of the State Department of Tax and Revenue.

4.10. West Virginia liter tax – All wineries and farm wineries licensed as suppliers or as direct shippers must pay the liter tax as specified in W. Va. Code §60-8-4.

4.101. ~~Label~~ Wine brand review and registration. - Every farm winery licensed as a supplier offering wine for sale under the authority of W. Va. Code §60-8-1 et seq. is required to submit its brand and all of its labels to Commissioner for review and then register with the Commissioner each label which the farm winery offers for sale in West Virginia. The farm winery licensed as a supplier is required to pay a fee of ~~\$3.00~~ 100.00 for each ~~label~~ brand so registered. No wine may be sold under the authority of W. Va. Code §60-8-1 et seq. until it has been reviewed and registered by the Commissioner. The Commissioner will further specify the wine brand review and registration requirements and the forms to be used by a farm winery and other licensees in 175 CSR 4. Such forms will be available at the Commissioner's offices.

4.112. Annual report and tax information. - Every licensed farm winery shall report its total gallonage of wine produced or blended for the twelve (12) month period ending June 30 of each year or

partial year. Such report shall be submitted by letter report within thirty (30) days after the end of such fiscal year. Additionally all farm wineries must submit a copy of their wine liter tax return and sales tax distribution return to the tax commissioner and the Commissioner.

4.123. Blood alcohol chart. - Each farm winery shall post in an open and prominent place within the licensed premises where it can be observed by customers a blood alcohol chart in the form prescribed by W. Va. Code §60-6-24.

**§175-3-5. Reserved For Future Use.**

**§175-3-6. Advertising.**

6.1. General prohibition. - All advertising of wine which encourages intemperance, makes the consumption of alcoholic liquor appear to be glamorous, is lewd or obscene, induces minors to purchase, or tends to deceive or misrepresent, is hereby prohibited. Federal law, as interpreted by the ABCC, provides the following guidelines relative to acceptable and prohibited advertising of wine.

6.2. Permissible media. - A farm winery in West Virginia may advertise off premises in any media including, but not limited to billboards, newspapers, magazines and similar publications, radio and television.

6.3. Application. - No person engaged in business of a farm winery, directly or indirectly, or through an affiliate, shall publish or disseminate, or cause to be published or disseminated, any advertisement of the wine produced or manufactured at such farm winery, unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication, unless such publisher or outdoor advertising company is engaged in business of a farm winery.

6.4. Mandatory statements for advertising wine.

6.4.1. Responsible advertiser. - The advertisement shall state the name and address of the farm winery. Street name and number may be omitted in the address.

6.4.2. Class, type and distinctive designation. - The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

6.4.3. Alcoholic content. - The alcoholic content shall be stated in the manner and form in which it appears on the labels of the wine advertised.

6.5. Lettering.

6.5.1. Conspicuousness of mandatory statements. - Statements required by this part to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

6.5.1.1. Required information shall be stated against a contrasting background and in type or

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lettering which is at least the equivalent of eight (8) point type.

6.5.1.2. Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

6.5.1.3. Where an advertisement relates to more than one product, the required information shall appear in such a manner as to clearly indicate the particular products to which it is applicable.

6.5.1.4. Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6. Prohibited statements.

6.6.1. Restrictions. - An advertisement shall not contain:

6.6.1.1. Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards, when no medals or awards have been given or where the medals or awards were not given on a competitive or comparative basis are prohibited.

6.6.1.2. Any statement that is disparaging of a competitor's product.

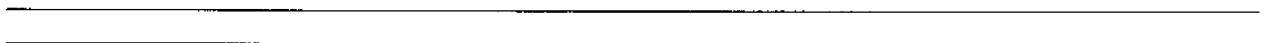
6.6.1.3. Any statement, design, device or representation which is obscene, lewd or indecent.

6.6.1.4. Any statement, design, device or representation of, or relating to, analyses, standards or tests, irrespective of falsity which is likely to mislead the consumer. For example, an advertisement may not contain a statement such as "Analyzed by the laboratory and found to be pure and free from deleterious ingredients," or "Tested and approved. Signed by the Research Institute."

6.6.1.5. Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, which is likely to mislead the consumer.

6.6.1.5.a. Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form:

"We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."



Blank to be filled in with the name of person making guaranty.

6.6.1.6. Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law or regulation of any municipality, county or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

6.6.1.7. Any statement of bonded wine cellar and bonded winery numbers unless stated in

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direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wine cellar and bonded winery number may be made in the following form: "Bonded Wine Cellar No.\_\_\_\_," "Bonded Winery No.\_\_\_\_," "B.W.C. No.\_\_\_\_," "B.W. No.\_\_\_\_."

No additional reference thereto shall be made, nor shall any use be made, of such statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government specifications or standards.

6.6.1.8. Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is "Unfortified" or has been "Fortified," or has intoxicating qualities, or contains distilled spirits (except for a reference to distilled spirits in a statement of composition where such statement is required by these regulations to appear as a part of the designation of the product).

6.6.2. Statements inconsistent with labeling. - The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

6.6.3. Curative and therapeutic effects. - The advertisement shall not contain any statement, design, or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression. For example, advertisements may not contain statements as "\_\_\_\_\_ is good for you" or "Conducive to well being."

6.6.4. Place of origin. - The advertisement shall not represent that the wine was produced or processed by one who was not in fact the actual producer.

6.6.5. Flags, seals, coats of arms, crests and other insignia. - No advertisement shall contain any statement, design, device or pictorial representation of, or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American Flag, any state flag or any emblem, seal, insignia or decoration associated with any such flag or the Armed Forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family or individual with whom such flag, seal, coat of arms, crest or insignia is associated.

#### **§175-3-7. Violations.**

7.1. Prohibited acts. - The Commissioner may suspend or revoke any farm license for violation of any of the applicable provisions W. Va. Code §60-1-1 et seq., W.Va. Code §60-8-1 et seq. or of any lawful rule or regulation of the Commissioner, or for the following causes:

7.1.1. For conviction of the licensee or his agent or employee for a felony related to business operations of the licensee;

7.1.2. For making any false material statement in an application for license;

7.1.3. For assigning, transferring or pledging a license contrary to the Rules and Regulations of the Commissioner;

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7.1.4. For selling farm wine to a wholesale or retail dealer who is not a holder of a proper ABCC license at the time of the sale;

7.1.5. For failure of the holder of a license to pay an excise tax together with any penalties imposed by the law relating thereto and for violation of any rule or regulation of the State Department of Tax and Revenue in pursuance thereof.

7.2. Employment of minors. - No person under the age of eighteen (18) years shall be employed for or permitted by any licensee to participate in any manner whatsoever in the serving, sale or delivery of wine.

7.3. Imitation and substandard wine - application of these regulations. - The production, importation or sale within this State of any product as, or under the designation of, wine, which fails to conform to the standards prescribed in these regulations, and by reference therefore to the Federal Alcohol Administration Act, and regulations duly promulgated thereunder, or of any wine fermented from raisins, dried fruits, or dried berries or of any imitation or substandard wine as hereinafter defined, is hereby prohibited.

7.4. Coined names.

7.4.1. The sale in this State of wines identified on labels or in advertisements by a type or brand designation which implies mixtures of wine for which standards of identity are established in these regulations, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Port," "Sherry," "Tokay," "Sauterne," "Claret," "Burgundy," is hereby prohibited.

7.4.2. The sale in this State of wine or combinations of wine and other alcoholic beverages which contain on the label statement such as "Whiskey Wine," "Rum and Wine," "Gin and Wine," "Beer and Wine," or simulations of such combinations, is hereby prohibited.

7.5. Containers.

7.5.1. The sale of wine in any container originally designed for a product other than wine, or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents, is hereby prohibited.

7.5.2. The sale of wine in containers which have blown, branded or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler or bottler or any other person different from the person whose name is required to appear on the brand label, is hereby prohibited.

7.5.3. The capacity of containers for wine shall conform to standards of fill provided by regulations of the ~~Bureau of Alcohol, Tobacco and Firearms~~ TTB.

### **§175-3-8. Enforcement.**

8.1. Samples required. - Every farm winery licensee shall, upon demand of the Commissioner, furnish, without cost to the Commissioner, samples of any wines upon its premises for purposes of

analysis.

8.2. Suspension or revocation of license. - The license of a farm winery may be suspended or revoked upon proof of violation of any of the provisions of these regulations, as provided by the laws of this State.

8.3. Seizure of substandard and imitation wine. - Imitation, substandard or misbranded wine offered for sale in violation of these regulations may be seized and disposed of, as provided by the laws of this State.

8.4. Every farm winery is subject to the penalties available to the Commissioner under W.Va. Code §60-8-1 et seq.

**§175-3-9. Hearing and Appeal Procedure.**

Whenever the Commissioner refuses to issue a license, or suspends or revokes a license, he shall enter an order to that effect, and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

9.1. Hearings.

9.1.1. Any applicant or licensee, as the case may be, adversely affected by such order shall have a right to a hearing thereon before the Commissioner, providing that demand in writing for such hearing is served upon the Commissioner within ten (10) days following the receipt by such applicant or licensee of the copy of said order. The service of such demand for a hearing upon the Commissioner shall operate to suspend the execution of the order with respect to which a hearing is being demanded; however, an order suspending a license because a distributor refuses or fails to keep the bond required by W. Va. Code §60-8-18(b) will itself not be suspended by such service. The person demanding a hearing shall give security for the cost of such hearing in such form and amount as the Commissioner may reasonably require. If the person demanding such hearing does not prevail in such hearing, or upon judicial review thereof, the costs of such hearing shall be assessed against him by the Commissioner and may be collected by an action at law or other proper remedy.

9.1.2. The Commissioner shall immediately set a date for such hearing and notify the person demanding such hearing thereof, which hearing shall be held within thirty (30) days after receipt of said demand. At such hearing, the Commissioner shall hear evidence and enter an order supported by findings of facts which will affirm, modify or vacate the order which is the subject of the hearing. The order resulting from the hearing shall be final unless vacated or modified upon Judicial review thereof.

9.1.3. Such hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1 et seq., in the circuit court of Kanawha County, West Virginia.

9.2. Appeal procedure.

9.2.1. Any person adversely affected by an order entered following such hearing shall have the right of judicial review in the circuit court of Kanawha County, West Virginia in accordance with the provisions of W. Va. Code §29A-5-4.

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9.2.2. The judgment of a circuit court of Kanawha County, West Virginia reviewing the order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals in accordance with the provisions of W. Va. Code §29A-6-1 et seq.

9.2.3. Legal counsel and services for the Commissioner in all such proceedings in ~~any~~ circuit court and the Supreme Court of Appeals shall be provided by the attorney general or his assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

### **§175-3-10. Severability.**

10.1. Severability. - The sections and subsections of these regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations, and all other sections shall remain in full force and effect: Provided, That such remaining portions are not determined to be inseparable, and, to this end, these regulations are declared separable.