

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #8

FILED  
1990 AUG 10 11 2 54

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: ALCOHOL BEVERAGE CONTROL COMMISSIONER TITLE NUMBER: 175

DATE EMERGENCY RULE WAS ORIGINALLY FILED: JULY 3, 1990

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

X

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

\_\_\_\_\_

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 3 TITLE OF RULE FARM WINERIES

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

  
HARRY G. CAMPER, JR.  
COMMISSIONER



State of West Virginia  
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON  
GOVERNOR

FILED

1990 AUG 10 12 37

CHARLES O. LORENSEN  
SECRETARY

CONSENT TO FILE

August 10, 1990

To Whom It May Concern:

Title of Rule: FARM WINERIES

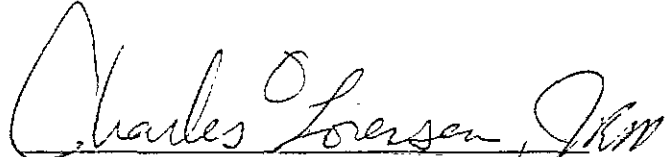
Title Number: 175

Series Number: 3

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Pursuant to West Virginia Code § 5E-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 10th day of August, 1990.

  
per Charles O. Lorensen, Secretary  
Department of Tax and Revenue



State of West Virginia  
Department of Tax and Revenue

Charleston 25305

FILED

AUG 10 1990

GASTON CAPERTON  
GOVERNOR

CHARLES O. LORENSEN  
SECRETARY

August 10, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: HARRY G. CAMPER, JR. *HGCJ*  
ALCOHOL BEVERAGE CONTROL COMMISSIONER

EMERGENCY RULE TITLE: FARM WINERIES

1. Date of filing: August 10, 1990
2. Statutory authority for promulgating the emergency rule:  
W. Va. Code §§ 60-2-16 and 29A-3-1 et. seq.
3. Date of filing of proposed legislative rule: August 10, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Yes
5. Has the same or similar emergency rule previously been filed and expired?  
The rule amends the emergency rule filed July 3, 1990
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
N/A
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.  
N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

175 C.S.R. 3 was not amended when relevant legislation was enacted in 1989. Additionally much of the information was confusing and some was in error. The rule now is more definitive, speaks with more specificity to the licensing process and hearing process and should eliminate confusion.

EMERGENCY  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
ALCOHOL BEVERAGE CONTROL COMMISSIONER  
DEPARTMENT OF TAX AND REVENUE  
TITLE 175  
SERIES 3  
1990

FILED

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FARM WINERIES

Filed: August 10, 1990

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§ 175-3-1. General.

1.1 These regulations are emergency legislative regulations as defined in West Virginia Code § 29A-3-15.

1.2 Scope. - These emergency 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.

1.3 Authority. - These emergency legislative regulations are authorized by West Virginia Code §§ 60-2-16 and 29A-3-15.

1.4 Filing date. - August 10, 1990.

1.5 Effective date. - These emergency legislative regulations become effective upon filing in the State Register.

1.6 Citation. - These emergency legislative regulations may be cited as 175 C.S.R. 3, § \_\_\_\_ (1990).

§ 175-3-2. Definitions. - As used in these emergency 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 or private wine restaurants and selling or distributing 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 (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 includes dessert wines 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 West Virginia Code article 60-3, 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 "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor or wine.

2.15 "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.

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

2.17 "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.

2.18 "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 West Virginia Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

2.19 "Retail liquor store" means a store established and operated under the authority of either West Virginia Code article 60-3 or West Virginia Code article 60-3A for the sale of alcoholic liquor in the original package for consumption off the premises.

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

2.22 "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of 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.

2.23 "Wine tasting" means an activity where members of an organization meet at a farm winery or at an authorized off-farm location 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.

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

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 175-3-7 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, 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, retailer or private wine restaurant in order to engage in those business activities. 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 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.

4.2.4 The fees for authorized activities are as follows:

4.2.4.1 Farm winery - \$50.00 annually

4.2.4.2 Wine tasting - \$50.00 annually

4.2.4.3 Special license - \$25.00

**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 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.** - A farm winery licensee may conduct wine tastings on its licensed premises, or in any rooms or areas directly connected therewith, or at an off-farm location, of wine produced or bottled by such licensee.

4.7 **Authorized sales.** - Every licensed farm winery may sell wine which it produced directly to consumers at the farm winery and at one off-farm winery location, through the ABCC warehouse, to any restaurant licensed under West Virginia Code § 60-8-3(k) to sell wine from a farm winery and to any person licensed under West Virginia Code Chapter 60 to sell wine at either wholesale or at retail.

4.7.1 A farm winery may ship wines from the farm winery without the bonding requirements of a transporter.

4.7.2 A person or licensee 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 **Label registration.** - Every farm winery offering wine for sale under the authority of West Virginia Code article 60-8 is required to register with the Commissioner each label which the winery offers for sale in West Virginia. The farm winery is required to pay a fee of \$3.00 for each label so registered. No wine may be sold under the authority of West Virginia Code article 60-8 until it has been registered.

4.11 **Annual report.** - 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.

4.12 **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 West Virginia 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 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 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 or any state 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 such 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 of chapter sixty of the West Virginia Code 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;

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.

§ 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.

**§ 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 West Virginia 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 West Virginia Code article 29A-5.

#### 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 accordance with the provisions of West Virginia Code § 29A-5-4.

9.2.2 The judgment of a circuit court 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 West Virginia Code article 29A-6.

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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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(Plus all the volunteer  
help we can get)

August 14, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Alcohol Beverage Control Commissioner

RULE: Amendments, Series 3; Farm Wineries

DATE FILED AS AN EMERGENCY RULE: July 3, 1990.

DECISION NO. 28-90

Following review under WV Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
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KEN HECHLER  
Secretary of State

FILED  
1990 AUG 14 PM 2:31  
OFFICE OF THE SECRETARY OF STATE

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DECISION                      EMERGENCY RULE DECISION  
(ERD 23-90)

AGENCY: Alcohol Beverage Control Commissioner  
RULE: Amendments, Series 3, Farm Wineries  
FILED AS AN EMERGENCY RULE: July 3, 1990

- par. 1 The Alcohol Beverage Control Commissioner (ABCC) has emergency amendments to the above rule.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The ABCC filed this emergency rule with supporting documents with the Secretary of State on July 3, 1990 and with the LRMRC on July 3, 1990.

par. 7 It is the determination of the Secretary of State that the ABCC has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §60-2-16 reads:

*The commission (commissioner) shall have the power to prescribe rules and regulations to give effect to the powers invested in it (him) by this chapter. Rules and regulations shall be recorded in a book especially kept for that purpose, and in its (his) discretion may be published for general circulation. All other records and entries necessary to show the official conduct of the commission (commissioner) shall be preserved and shall be public records and open for inspection during business hours.*

par. 9 It is the determination of the Secretary of State that the ABCC has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the ABCC are as follows:

The rule explains and clarifies the regulation of farm wineries. The regulation has been expanded to include definitions, the licensing process, Department of Health concerns, and a hearing process. Emergency filing is necessary to preclude confusion on the part of the farm wineries, vendors and the public.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency for the "immediate preservation of public peace, health, safety or welfare" and to "prevent substantial harm to public interest."

par. 14

This decision shall be cited as Emergency Rule Decision 28-90 or ERD 28-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Alcohol Beverage Control Commissioner, the Attorney General and the Legislative Rule Making Review Commission.



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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

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