

Title 175
Legislative Rules

ET

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

ALCOHOL BEVERAGE CONTROL COMMISSIONER

FARM WINERIES

~~Chapter 60-2~~

(Series ~~III~~ 3)

Section 1. General

1.01 Scope - These regulations are promulgated establishing the procedure for licensing and operation of farm wineries.

1.02 Authority - These regulations are issued under the authority of Articles 2, 3, 4 and 6, Chapter 60, and Chapter 29A, West Virginia Code of 1931, as amended.

1.03 Effective Date - These regulations were promulgated on the 4th day of June, 1981. A public hearing on the regulations was conducted on the 8th day of July, 1981, which resulted in extensive amendment and modification of the regulations as first written. These regulations became effective on the 1st day of December, 1981.

1.04 Filing Date - These regulations were filed in the Office of the Secretary of State on the 4th day of June, 1981, and they were refiled in final form on the 3rd day of September, 1981. These regulations are being refiled on December 30, 1982, in compliance with Chapter 29A, Article 2, Section 5 of the West Virginia Code of 1931, as amended.

~~1.05 Certification - These regulations are certified authentic by the Alcohol Beverage Control Commissioner of West Virginia.~~

Section 2. Licensure

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

- (1) The name of the applicant;
- (2) The address where the applicant will conduct its operations.
- (3) If the applicant be an individual or partnership, the names and addresses of all owners having 10%, or more, ownership interest;
- (4) If such applicant be an unincorporated association, the names and addresses of the members of its governing board;
- (5) If such applicant be a corporation, the names and addresses of its officers and directors and of all stockholders owning 10%, or more, of the common stock;
- (6) Arrest record, if any, of the applicant and its principals, officers, directors, owners, employees and manager/steward, including disposition of all such arrests.
- (7) Number of employees
- (8) West Virginia Consumer Sales Tax Identification Number;
- (9) West Virginia Business Franchise Tax Number;
- (10) West Virginia Health Department Permit Number;
- (11) Application shall only be made on ABCC Form 200-FW;
The form must be completed in its entirety and failure to complete all questions thereon shall constitute grounds for refusal to grant a license;
- (12) 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 10 percent or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members owning 10 percent 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.

2.02 Refusal of License - No license shall be issued to any applicant;

(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;

(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.

2.03 License Not Transferable - A license issued under the provisions of these rules and regulations shall be valid only for the person(s)/organization names thereon to operate a farm winery on the premises therein described and is not transferable.

2.04 Change of Corporate Directors or Officers; Issuance or Transfer of Corporate Stock - Each corporate licensee shall, within thirty 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 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.

2.05 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 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.

2.06 Federal Basic Permit Information - Each applicant for a license authorizing a farm winery shall submit to the department a copy of its 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.

2.07 License Application Form - The application for a license to operate a farm winery, ABCC Form 200-FW, ~~shall be in the form set forth below~~ *is available from the WV ABCC office.*

APPLICATION FOR FARM WINERY LICENSE

THE UNDERSIGNED RESPECTFULLY STATES:

1. That _____, is a _____ (Here state whether a corporation, voluntary association, partnership or individual) Doing business as _____

(Address)

(City or Town)

2. Where is place of business located?

(Address) (City) (Zip Code)

If place of business is outside the corporate limits state nearest municipality/town _____ County _____

If rural location, state P. O. address _____

3. If applicant will manufacture wine in more than one plant, give exact location of additional plant or plants _____

4. What is your age? _____ Are you a U. S. Citizen? _____
If not native born, when were you naturalized? _____

5. How long have you resided in West Virginia? _____ (If applicant is a partnership or voluntary association, state how long each member has resided in the State) _____

6. Have you as an individual, or has any member of the partnership or voluntary association, or officer, director, major stockholder (10% ownership or more) of a corporate applicant ever been convicted of any felony? _____
If yes, give date, location, offense and disposition _____

7. If a corporation, attach statement giving the full list of officers, directors and stockholders (10% ownership or more), including their addresses and citizenship _____
If a partnership, give name of each partner and their addresses and citizenship _____

If an association, give name of each principal member (10% ownership or more), and their addresses and citizenship.

8. If a foreign corporation, is it qualified to do business in West Virginia? _____ If so qualified, attach a certified copy of a Certificate of Good Standing issued by the Secretary of State of West Virginia.

9. Has applicant any interest, financial or otherwise, direct or indirect, in the business of any person holding any type of beer or intoxicating liquor licenses by the authority of this State? _____ If yes, give details _____

10. Name nearest church, or school, and state distance (in feet)
therefrom _____

11. Have you ever been refused, or rejected on application for a permit
from the Alcohol Beverage Control Commissioner of West Virginia? _____
If yes, give details _____

(If more space is needed, use additional sheets)

NOTE: All changes in ownership interest during the license
year must be immediately reported to the Alcohol
Beverage Control Commissioner, Charleston, West Virginia 25304

AFFIDAVIT

STATE OF WEST VIRGINIA

COUNTY OF _____, TO-WIT:

IN SUPPORT OF THE FOREGOING APPLICATION, THE UNDERSIGNED MAKES OATH THAT THE STATEMENTS CONTAINED THEREIN AND ALL ATTACHMENTS ARE TRUE TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

DATE _____, 19__	_____	_____
	Signature	Title
DATE _____, 19__	_____	_____
	Signature	Title
DATE _____, 19__	_____	_____
	Signature	Title
DATE _____, 19__	_____	_____
	Signature	Title

Subscribed and sworn to before me this _____ day of _____, 19___. My commission expires on the _____ day of _____, 19__.

ABCC FORM NO. 200-FW

Notary Public

2.08 License Form - The license to operate a farm winery, ABCC Form 201-FW, shall be in the form set forth below:

STATE OF WEST VIRGINIA

Office of the West Virginia Alcohol Beverage Control Commissioner, SS:

This is to certify that the undersigned, in pursuance of the authority vested in the Commissioner by Chapter 60, Article 4, Section 2, West Virginia Code of 1931, as amended, has this day granted in the name and for the place of business set out below a farm winery license

Given under my hand this, the _____
day of _____, 19_____.

Commissioner

NOTICE: This license is issued to the farm winery and is not assign-
able or transferable.

Post this license in a conspicuous place at the location for
which issued ABCC-201-FW.

2.09 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 of the State of West Virginia 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.

2.10 Bonded Winery - A farm winery license shall be issued only to, or held by, an applicant qualified to operate or operating a winery or wine cellar bonded under the internal revenue laws of the United States.

2.11 Pricing - Wines produced by farm wineries shall be considered by the Commissioner to be a separate class of alcoholic beverage under the provisions of Section 9, Article 3, Chapter 60 of the West Virginia Code of 1931, as amended, for the purpose of establishing pricing.

Section 3. Operation of Farm Wineries

3.01 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: (1) simplify the licensing of farm wineries in this State; (2) improve enforcement of production and sanitation standards through better use of information obtained from federal sources; and (3) aid interpretation of the farm winery law through use of federal judicial and administrative determinations and precedents.

The Commissioner does, therefor, declare that these rules and 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 adopts 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 hereafter amended.

3.02 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 rules and 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.

3.03 Age for Purchase or Consumption of Farm Wine - No farm winery shall serve or sell farm wine to individuals below the age of eighteen years and such individuals shall not be permitted to consume farm wine or any other alcoholic liquors on the premises of a farm winery.

3.04 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 1:00 o'clock a.m. and 1:00 o'clock 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 12:00 o'clock midnight and 10:00 o'clock a.m. on any week day.

3.05 Wine[#]tastings - A farm winery licensee may conduct wine[#]tastings on its licensed premises, or in any rooms or areas directly connected therewith, of wine produced or bottled by such licensee.

3.06 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.

3.07 Sales Tax - Licensees shall collect the tax imposed by the provisions of West Virginia Code 60-3-9(d) and account for them in accordance with applicable rules and regulations of the State Tax Department.

3.08 Advertising - Advertising by licensees shall be in compliance with the provisions of ~~Part II, Section 2, West Virginia Administrative Regulations,~~ Alcohol Beverage Control Commissioner, Chapter 60-2, Series ² II, (1972).

3.09 Annual Report - Every licensed farm winery shall report its total gallonage of wine produced or blended for the 12 month period ending June 30th of each year or partial year. Such report shall be submitted by letter report within 30 days after the end of the fiscal year.

Section 4. Sanitation ~~(Series 10)~~

4.01 General Standards of Sanitation and Cleanliness -

Wherever wine is produced, treated, bottled or otherwise handled in exposed containers, the premises shall be free of any refuse or other source of contamination. All containers, pipelines and other equipment of whatever description shall be thoroughly cleansed in conformity with established sanitary practices for foodstuffs and beverages, before such containers, pipelines and other equipment are used for, or in any other manner come into contact with wine.

4.02 Sanitation Requirements of Buildings - Each licensee shall operate in a building:

(a) Which is kept clean and well ventilated at all times, having dry floors of sound construction.

(b) In which the entire floor of the winery is in good repair and constructed of a tight floor of tongue and wood grooving which has been painted or otherwise treated to make it waterproof, or concrete, tile, asphalt, macadam, or other composition material.

(c) In which any toilet facilities shall be partitioned off from any part of the winery.

(d) Which is provided with handwashing facilities consisting of a lavatory, soap and towels.

4.03 Bottles and Containers - All bottles and other containers to be filled with wine for retail sale shall be subject to the following provisions:

(a) All new bottles, without caps affixed at the glass factory, immediately prior to being filled, shall be cleansed in accordance with modern practices and principles applicable to the farm winery industry and which also meet the requirements of the law, rules and regulations specified in Section 3.01 of these regulations.

(b) The re-use of bottles and other containers for packaging wine for sale at retail is prohibited, provided that bottles and other containers of wine which have not been opened may be returned for re-use to the bottler or winery who has filled the same. For the purpose of this section the words "bottle" and "container" shall mean any bottle or container authorized by this Regulation for packaging wine for sale at retail.

4.04 Stoppers and Seals -

(a) All bottles of wine for distribution or sale in the State of West Virginia shall be stoppered by means of new corks or new screw caps.

(b) All said bottles shall be protected from tampering or contamination by the bottler by sealing the same during either bottling or labeling operations with seals of a type which must be irreparably mutilated or destroyed before the contents can be removed. Such seals shall not be made solely of paper.

(c) All bottle caps and corks shall be stored only in dustproof containers until used and they shall be covered at all times so as to be dustfree.

4.05 Barrels, Kegs, Vats, Tanks, Etc.

(a) All barrels, kegs, vats, or tanks used for storage of wine and all open gravity filters shall be protected at all times, while being used, from dust or other extraneous matter.

(b) All fruit or vegetable juice, grape must or wine which is spilled on the outside of any barrel, keg, vat or tank shall be completely removed by rinsing with water at the end of each day. The outside of all barrels, kegs, vats or tanks, shall be clean at all times.

(c) All barrels, kegs, vats, tanks, except railroad cars or truck tanks, used for sale of wine shall immediately after being emptied, be freed from lees, cheese or other solid matter which might adhere to the inside of the container.

4.06 Plant Floors - The floor of the winery shall be swept and scrubbed, mopped or flushed at the close of each day of usage and shall be kept clean and free from dust and trash at all times.

4.07 Toilet and Lavatory - The toilet and lavatory shall be maintained in a state of complete efficiency, and shall be clean at all times.

4.08 Employees Physical Condition - No person suffering from a contagious or infectious disease shall work in a licensed place of business, in the manufacturing or bottling of wine. Proprietors or managers shall require any person or persons employed in manufacturing or bottling wine in or around the licensed premises to submit to a physical examination and to produce a certificate from a duly licensed physician making such examination, that such person is free from contagious or infectious disease. Such certificate shall be shown on demand to any duly qualified representative of the Commissioner.

Section 5. Violations (~~Series II~~)

5.01 Prohibited Acts - The Commissioner may suspend or revoke any farm license for violation of any of the applicable provisions of Chapter 60 of the West Virginia Code or of any lawful rule or regulation of the Commissioner and for the following causes:

- (a) For conviction of the licensee or his agent or employee for a felony related to business operations of the licensee;
- (b) for making any false material statement in an application for license;
- (c) for assigning, transferring or pledging a license contrary to the rules and regulations of the Commissioner;
- (d) 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;
- (e) 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 Tax Department in pursuance thereof.

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

5.03 Imitation and Substandard Wine - Application of this article - 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 rules and regulations by reference 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.

5.04 Coined Names -

(a) The sale in this State of wines, identified on labels or in advertisements by a type or brand designation which implies mixtures of wines 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.

(b) The sale in this State of wine or combinations of wine and other alcoholic beverages which contain on the label statements such as "whiskey wine", "rum and wine", "gin and wine", "beer and wine", or simulations of such combinations, is hereby prohibited.

5.05 Containers -

(a) 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.

(b) 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.

(c) The capacity of containers for wine shall conform to standards of fill provided by Federal Regulations of the Bureau of Internal Revenue.

Section 6. Enforcement (~~Series 12~~)

6.01 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.

6.02 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 rules and regulations, as provided by the laws of this State.

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

Section 7. Hearing and Appeal Procedure (~~Series 13~~)

7.01 Hearings - No revocation or suspension of a farm winery license shall be made until notice is given and a hearing is conducted in compliance with the Administrative Procedures Act (Chapter 29A of the West Virginia Code) of West Virginia.

7.02 Appeal Procedure - A farm winery licensee shall have all appeal rights authorized by the provisions of the Administrative Procedures Act (Chapter 29A of the West Virginia Code) of West Virginia.

Section 8. Severability

8.01 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 such remaining portions are not determined to be inseparable, and, to this end, these regulations are declared separable.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL COMMISSIONER
FARM WINERIES

September 3, 1981

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for
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