

Form

(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: July 26, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Alcohol Beverage Control Commission

900 Pennsylvania Avenue, 4th Floor, Charleston, WV 25302

Telephone: 304-356-5500

LEGISLATIVE RULE TITLE: 175 CSR 3 - Farm Wineries

1. Authorizing statute(s) citation W. Va. Code §§ 60-2-16, 60-4-3b, 60-8-1 et seq.,
60-3A-1 et seq., and 29A-3-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 19, 2013

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 19, 2013, 4:00 p.m.

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

Attached X No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
July 26, 2013

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

Anoop Bhasin, WVABCA General Counsel

900 Pennsylvania, 4th Floor, Charleston, West Virginia 25304

Telephone: 304-356-5500

- g. **IF DIFFERENT FROM ITEM '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 therefor?

d. Attach findings and determinations and reasons:

Attached

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

FARM WINERIES

STATEMENT OF CIRCUMSTANCES

This rule is being amended per the passage of SB 470 and SB 498 during the 2013 regular session and various clean up and additions from existing code sections along with typographical changes. This amendment to the rule reflects the statutory changes at W. Va. Code §60-8-18 and §60-8-34.

SB 470 contains changes to the code regarding permitting wine sales on Sundays, starting at 10 a.m., at licensed fair and festivals for only licensed farm wineries.

SB 498 contains changes to the code regarding the hearing location for appeals of WVABCA hearings.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: 175 CSR 3 - Farm Wineries

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Alcohol Beverage Control Administration

Address: 900 Pennsylvania Ave., 4th Floor, Charleston, West Virginia 25302

Phone Number: 304-356-5500 Email: Anoop.K.Bhasin@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

No significant impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

175 CSR 3 - Farm Wineries

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

No significant impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The revenue generated from farm winery sales at fairs and festivals at 10 a.m. versus 1 p.m. are trade off sales with no likely greater revenues, but with greater convenience to consumers.

Date: July 26, 2013

Signature of Agency Head or Authorized Representative

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

FARM WINERIES

SUMMARY OF PROPOSED AMENDMENTS

This legislative rule explains farm wineries.

In section 1.2., added 2 statutes.

In section 1.3., changed filing date.

In section 1.4., changed effective date.

In section 2.26., added code reference.

In section 2.27., added language to the definition of "Wine Sampling".

In section 2.29., added language to the definition of "Wine Tasting".

In section 3.1.e., added section.

In section 4.2.c., added clarifying language.

In section 4.2.c.3., added clarifying language.

In section 4.2.d., added clarifying language.

In section 4.3.b., after comment period corrected typo removing "the".

In section 4.5., added amended language, and after comment period found typo in 10th line of section and added "licensee".

In section 9.2.c., added amended language.

In section 9.3.a., added amended language.

In section 9.3.b., added amended language.

**TITLE 175
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSION**

**SERIES 3
FARM WINERIES**

RECEIVED
2013 JUL 26 PM 2:10
SECRETARY OF STATE
STATE OF WEST VIRGINIA

§175-3-1. General.

1.1. Scope. -- This rule repeals and replaces 175CSR3 and is promulgated to establish procedures for the licensing and operation of farm wineries.

1.2. Authority. -- W. Va. Code §§60-2-16, 60-4-3b, 60-8-1 et seq., and 29A-3-1 et seq.

1.3. Filing Date. -- ~~May 2, 2008~~.

1.4. Effective Date. -- ~~May 2, 2008~~.

§175-3-2. Definitions.

As used in this rule 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 audio, visual or other electronic display promoting alcoholic liquors through the medium of billboards, newspapers, magazines, or similar publications, and display materials or equipment. The term advertisement does not include:

2.1.a. Any label, affixed to a container of alcoholic liquors or any individual covering, carton or other wrapper of the container, or

2.1.b. Any editorial or other reading matter in any periodical or publication 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 this rule.

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

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 does not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

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

2.5. "Department" means the West Virginia Department of 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 includes, but is not limited to, natural spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Alcoholic beverages containing more than 24% of alcohol by volume are considered distilled spirits.

2.7. "Distributor" means any person:

2.7.a. Whose principal place of business is within the State of West Virginia;

2.7.b. Who sells or distributes wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or wine specialty shops;

2.7.c. Who sells or distributes nonfortified dessert wine and port, sherry and Madeira wines to wine specialty shops pursuant to chapter 60, article 8 of the West Virginia Code; and

2.7.d. Who actually maintains a warehouse in this state for the distribution of wine.

2.8. "Farm winery" means an establishment which:

2.8.a. In any year manufactures more than fifty thousand gallons of:

2.8.a.1. wine and nonfortified dessert wine exclusively by natural fermentation from grapes, other fruits, honey or other agricultural products containing sugar and

2.8.a.2. port, sherry and Madeira wine matured in wooden barrels or casks, the alcohol content of which does not exceed twenty-two percent by volume; or

2.8.a.3. any combination of paragraphs 1 and 2;

2.8.b. Grows or produces at least twenty-five percent of the raw products used to make wine on the premises of the farm winery; and

2.8.c. Imports no more than twenty-five percent (25%) of the raw products used to make the wine from any source outside this state.

2.8.d. A farm winery may include one off-farm location.

2.8.e. Where the owner of a farm winery provides evidence, supported by written findings of the West Virginia Commissioner of Agriculture, that young nonbearing fruit plants have been planted on the premises of the farm winery, the Commissioner may grant the farm winery owner permission to use products from 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, to produce wine. The duration of the off-farm location permit shall be determined by the Commissioner after consultation with the Commissioner of Agriculture.

2.9. "Fortified wine" means any wine to which brandy or other alcohol has been added. For purposes of this rule, "fortified wine" includes dessert wines which are fortified but which have an alcohol content by volume of at least fourteen and one-tenths percent (14.1%) and not exceeding sixteen percent (16%).

2.10. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point that physical or mental control or both are markedly diminished.

2.11. "Licensed retailer" means a person licensed in accordance with W. Va. Code §§60-3-1, 60-3A-1 *et seq.* or §60-8-1 *et seq.* 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 license which authorizes a winery or farm winery to operate as a retailer, wine specialty shop, a supplier and a direct shipper without obtaining a separate license for each capacity the winery or farm winery operates.

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

2.16. "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.

2.17. "Private club" means a corporation or association licensed as a private club in accordance with W. Va. Code §60-7-1 *et seq.* and §60-8-1 *et seq.*

2.18. "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 also:

2.18.a. 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;

2.18.b. Is licensed under the provisions of article eight, chapter 60 of the West Virginia Code 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

2.18.c. 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:

2.19.a. 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;

2.19.b. Is licensed under the provisions of article 8, chapter 60 of the West Virginia Code 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

2.19.c. 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. Private clubs that meet the private wine restaurant requirements stated in subdivisions a., b., and c. of 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 also:

2.20.a. 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;

2.20.b. Is licensed under the provisions of article eight, chapter 60 of the West Virginia Code 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

2.20.c. 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.

2.21. "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: "Public Place" does not 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.

2.22. "Retail liquor store" means a store established and operated under the authority of either W. Va. Code §60-3-1 *et seq.* or §60-3A-1 *et seq.* to sell alcoholic liquors in the original package for consumption off the premises.

2.23. "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by a principal, proprietor, agent or employee.

2.24. "Selling" includes 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 provider of wine which sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

2.26. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of grapes, other fruits, honey or other agricultural products containing sugar and to which no alcohol has been added, including table wine. "Wine" does not include fortified wine or nonintoxicating beer as that term is defined in article sixteen, chapter eleven of the West Virginia Code (See Section 2.3. for alcohol content percentage).

2.27. "Wine sampling" means a special event conducted at a licensed wine specialty shop's location during regular hours of business at which no more than three complimentary samples of wine, consisting of no more than one ounce each may be served, to any one consumer in one day. Persons serving complimentary samples must be ~~twenty-one~~ 21 years of age or over and an authorized representative and employee of the licensed wine specialty shop; Only a licensed representative of a winery, farm winery, or a licensed distributor or of a registered licensed wine supplier may participate, educate and attend a wine sampling. ~~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:

2.28.a. Deals principally in the sale of table wine, certain nonfortified dessert wines, wine accessories and food or foodstuffs normally associated with wine;

2.28.b. Maintains in its inventory:

2.28.b.1. a representative number of wines for sale which are designated by label as varietal wine, vintage, generic and/or according to region of production; and

2.28.b.2. not less than fifteen percent vintage or vintage-dated wine by actual bottle count; and

2.28.c. May maintain an inventory of port, sherry and Madeira wines which have been matured in wooden barrels or casks and which have an alcoholic content of not more than twenty-two percent (22%) alcohol by volume.

2.29. "Wine tasting" means an activity in which members of a wine taster's club, which has at least fifty duly-elected and approved dues-paying members in good standing, meet on the premises of a licensed wine specialty shop not more than one time per week 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 different wines. Persons serving at the wine tasting must be 21 years of age or over.

§175-3-3. Licensure.

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

3.1.a. License application.

3.1.a.1. The name of the applicant;

3.1.a.2. The address where the applicant will conduct its operations;

3.1.a.3.

3.1.a.3.A. If the applicant is an individual or partnership, the names and addresses of all owners having ten percent (10%), or more, ownership interest;

3.1.a.3.B. If the applicant is an unincorporated association or any other business entity, the names and addresses of the members of its governing board;

3.1.a.2.C. 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.a.4. Arrest record, if any, of the applicant and of its principals, officers, directors, owners, employees and manager/steward, including disposition of all such arrests;

3.1.a.5. West Virginia consumer sales tax identification number;

3.1.a.6. West Virginia business registration certificate number;

3.1.b. Application may be made only on ABCC Form 200-FW. The form must be completed in

its entirety, and failure to compete all questions thereon constitutes grounds for refusing to grant a license.

3.1.c. The application shall be signed by the applicant. In the case of a partnership, the application shall be signed by each of the partners. In the case of a limited partnership, the application 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.d. An applicant applying for other licenses under 175 CSR 4 or W. Va. Code §60-8-1 *et seq.* must complete the applicable forms provided by the Commissioner's office, pay the applicable fees, and qualify for such other licenses independently of qualifying for a farm winery license.

3.1.e. Every applicant who is licensed must have its representatives licensed to solicit or consummate sales in this state and to attend or conduct tastings, samplings, off-premises sales at licensed fairs and festivals. An Application for Representative's License, available from the Commissioner, must be completed for each representative.

3.2. Refusal of license.

3.2.a. No license may be issued to any applicant that submits an application 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.b. 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. The Commissioner shall investigate all matters connected with the application 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 in accordance with Section 9 of this rule.

3.3. License not transferable. -- A license issued under the provisions of this rule authorizes only the person(s)/organization named on the license to operate a farm winery on the premises described and is not transferable.

3.4. Change of corporate directors or officers; issuance or transfer of corporate stock. - A corporate licensee shall, within thirty (30) days of a majority change of the members of the board of directors, 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, and report to the Commissioner the information with respect to the new person that is required to be furnished by an applicant for a license.

3.5. Change in ownership; change in management. -- A 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 report to the Commissioner the information with respect to the new person that is required to be furnished by an applicant for a license.

3.6. Federal basic permit information. -- An 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. The applicant shall submit a copy of the federal basic permit with the request for the 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 may 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 may 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. -- For the purpose of establishing pricing, the Commissioner shall consider wines produced by farm wineries to be a separate class of alcoholic liquor under the provisions of section nine, article three, chapter sixty of the West Virginia Code.

§175-3-4. Operation of Farm Wineries.

4.1. Application of Federal Alcohol Administration Act.

4.1.a. The Commissioner hereby finds and declares that for control of farm wineries, the adoption of the laws, rules and regulations of the United States relating to the operations of wineries will:

4.1.a.1. Simplify the licensing of farm wineries in this state;

4.1.a.2. Improve enforcement of production and sanitation standards through better use of information obtained from federal sources; and

4.1.a.3. Aid interpretation of the farm winery law through use of federal judicial and administrative determinations and precedents.

4.1.b. The Commissioner declares that this rule is to be construed so as to accomplish the foregoing purposes with specific regard to:

4.1.b.1. Standards of identity for wine;

4.1.b.2. Labeling requirements for wine;

4.1.b.3. Requirements for approval of labels of wine domestically bottled or packed;

4.1.b.4. Advertising of wine; and

4.1.b.5. Standards of fill for wine.

4.1.c. The Commissioner incorporates by reference all applicable provisions of the Federal Alcohol Administration Act and regulations adopted thereunder by the United States Department of the Treasury, 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.a. A farm winery must be licensed by the Commissioner. A licensed farm winery may serve or sell or both serve and sell the wine it manufactures

4.2.b. A farm winery may also hold licenses to conduct business as a retailer, wine specialty shop, supplier, direct shipper or private wine restaurant only. A farm winery may either obtain separate licenses to conduct business in each capacity or obtain a multi-capacity license authorizing the farm winery to conduct business in every capacity named above.

4.2.c. A farm winery may obtain a special license to sell its wine at retail at any fair or festival endorsed or sponsored by the governing body of a municipality or county commission and that applies for and obtains a fair and festival license from the Commissioner.

4.2.c.1. The special license may be issued for a term no longer than ten (10) consecutive days.

4.2.c.2. The application for the special license must be submitted to the Commissioner at least thirty (30) days prior to the date on which the wine will first be sold.

4.2.c.3. The special license authorizes the exhibit, tasting, selling of samples and selling of wine for consumption off the premises of the fair or festival. Any licensee opening or selling wine, not being used for a tasting or sampling of wine, for consumption of wine on the premises of at the fair or festival is subject to penalties under this rule, 175CSR4, and W. Va. Code §60-8-1 *et seq.* Any served tastings or samplings may not exceed a reasonable serving of 3 ounces at the fair or festival.

4.2.c.4. The special license fee – the fee for a special license is \$250.00, if the fair or festival takes place on the winery or farm winery's premises or at a designated off-farm winery location, then the license fee is \$50.00 for events described in W. Va. Code §60-8-3.

4.2.d. The annual fees for the following authorized activities are as follows:

4.2.d.1. Farm winery - \$50.00;

4.2.d.2. Retailer - \$150.00;

4.2.d.3. Wine Specialty Shop - \$250.00;

4.2.d.4. Supplier - \$150.00;

4.2.d.5. Direct Shipper - \$150.00;

4.2.d.6. Direct Shipper Wine Specialty - \$250.00;

4.2.d.7. Private Wine Bed and Breakfast - \$150.00;

4.2.d.8. Private Wine Restaurant - \$250.00;

4.2.d.9. Private Wine Spa - \$150.00;

4.2.d.10. Wine Sampling - \$150.00;

4.2.d.11. Wine tasting - \$150.00; and

4.2.d.12. Multi-capacity winery or farm winery - \$300.00.

4.2.e. A farm winery licensed as a direct shipper or direct shipper wine specialty must meet all the requirements for licensure under 175CSR4 and the West Virginia Code.

4.3. Inspection.

4.3.a. The Commissioner or his or her agents may inspect, at any reasonable hour, the records, stocks and premises of a licensee to determine if the licensee is complying with all provisions of applicable laws and rules. An agent desiring to make an inspection shall identify himself/herself by suitable credentials. Any denial or interference with an inspection by the farm winery owner, his agents or employees is a violation of this rule and will be reported.

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

4.4. Age for purchase or consumption of farm wine. - No farm winery may serve or sell farm wine to individual under the age of twenty-one (21) for consumption of farm wine or any other alcoholic liquors on the premises of the farm winery. 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 may sell, give, serve or dispense or permit the consumption of wine, 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 may any licensee sell, give or dispense farm wine, or permit the consumption of wine, 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. A farm winery licensee may conduct tasting, samples and off-premise sales under the hours of operation at a licensed fair or festival as specified above and in W.Va. Code §60-8-1 et seq., except that for any licensed fair or festival operating on Sundays, no farm winery licensee may conduct tastings, samples and off-premise sales between the hours of 2 a.m. and 10 a.m.

4.6. Wine tastings. -- A farm winery licensee which has acquired a wine tasting license and a wine specialty shop license may conduct wine tastings on its 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. Wine samplings. -- A farm winery licensee which has acquired a wine sampling license and a wine specialty shop license may conduct wine samplings on its 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.

4.8. Authorized sales. A farm winery licensed as a retailer or a wine specialty shop may sell wine 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 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).

4.9. Shipping.

4.9.a. 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.

4.9.b. A direct shipper licensed in West Virginia may ship for personal use and not for resale, not more than two (2) cases per month to any adult resident in this State.

4.10. Return by purchaser. -- A person who has purchased wine from a licensed farm winery and has taken delivery of such wine within 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 him or her.

4.11. Tax on sales. -- A licensee shall collect the tax imposed under West Virginia Code §60-3-9d and be held accountable for it in accordance with applicable rules of the Department of Revenue.

4.12. West Virginia liter tax -- Every winery and farm winery licensed as a supplier or as direct shipper must pay the liter tax as specified in W. Va. Code §60-8-4.

4.13. 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.* shall submit its brand and all of its labels to Commissioner for review, and register with the Commissioner each label which the farm winery offers for sale in West Virginia. A farm winery licensed as a supplier shall pay a fee of \$100.00 for each brand registered. No wine may be sold in this state until the brand and labels have 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 175CSR'4. Forms will be available at the Commissioner's offices.

4.14. Annual report and tax information. -- Every licensed farm winery shall report to the Commissioner its total gallonage of wine it produced or blended for the twelve (12) month period ending June 30 of each year or partial year. The report shall be submitted by letter report within thirty (30) days after the end of the fiscal year. Each farm winery must submit a copy of its wine liter tax return and sales tax distribution return to the Tax Commissioner and the Commissioner.

4.15. 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 the 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 this rule. These provisions do not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication, unless the publisher or outdoor advertising company is engaged in business of a farm winery.

6.4. Mandatory statements for advertising wine.

6.4.a. 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.b. 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.c. 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.a. 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.

6.5.b. In particular:

6.5.b.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.b.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.b.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.b.4. Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6. Prohibited statements. -- An advertisement may not contain:

6.6.a. 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.b. Any statement that is disparaging of a competitor's product;

6.6.c. Any statement, design, device or representation which is obscene, lewd or indecent;

6.6.d. 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.e. Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, which is likely to mislead the consumer. 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.f. Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, rule or regulation of any municipality, county or state, federal or foreign government unless the statement is required or specifically authorized by the laws, rules or regulations of the government. If a municipal county, state or federal permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;

6.6.g. 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 or use shall be made of any 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.h. 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 this rule to appear as a part of the designation of the product);

6.6.i. Any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof;

6.6.j. 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.k. Any representation that the wine was produced or processed by one who was not in fact the actual producer; or

6.6.l. 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 §60-4-3b, W. Va. Code §60-8-1 et seq. or of any lawful rule of the Commissioner. The Commissioner may also suspend or revoke a farm winery for the following causes:

7.1.a. Conviction of the licensee or his or her agent or employee for a felony related to business operations of the licensee;

7.1.b. Making any false material statement in an application for license;

7.1.c. Assigning, transferring or pledging a license contrary to the rules of the Commissioner;

7.1.d. 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.e. Failing to pay an excise tax together with any penalties imposed by the law relating thereto and violating any rule of the Department of Revenue in pursuance thereof.

7.2. Employment of minors. -- No person under the age of eighteen (18) years may be employed 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 this rule, 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.a. 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 this rule, 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.b. 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.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.

7.5.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.

7.5.c. The capacity of containers for wine shall conform to standards of fill provided by the rules

and regulations of the 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 this rule, 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 this rule 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.

9.1. 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.

9.2. Hearings.

9.2.a. Any applicant or licensee, as the case may be, adversely affected by an order refusing to issue or suspending or revoking a license has a right to a hearing before the Commissioner, upon written demand served upon the Commissioner within ten (10) days following the receipt by the applicant or licensee of the order. The service of a written demand for a hearing upon the Commissioner suspends the execution of the order with respect to which a hearing is being demanded, except when the order addresses an issue involving public health or safety and then the order is not be suspended by such service; further except that 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 the hearing in the form and amount as the Commissioner may reasonably require. If the person demanding the hearing does not prevail, the Commissioner shall assess the full costs of the hearing against him or her and may be collect by an action at law or other proper remedy.

9.2.b. Upon receipt of a demand for a hearing, the Commissioner shall immediately set a date for a hearing and notify the person demanding the hearing thereof, which hearing shall be held within thirty (30) days after receipt of the demand. At the 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 is final unless vacated or modified upon judicial review thereof.

9.2.c. A hearing and the administrative procedure prior to, during and following the hearing shall be governed by the provisions of W.Va. Code §60-8-18, and in all other respects not specified W. Va. Code §29A-5-1 et seq., and W.Va. Code §60-8-1 et seq., in the Circuit Court of Kanawha County, West Virginia circuit court.

9.3. Appeal procedure.

9.3.a. Any person adversely affected by an order entered following a hearing before the Commissioner has a right to seek judicial review in the Circuit Court of Kanawha County, West Virginia or in accordance with the provisions of W. Va. Code §29A-5-460-8-18.

9.3.b. The judgment of the ~~Circuit Court of Kanawha County, West Virginia~~ circuit court 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.*

9.3.c. The Attorney General and his or her assistants shall provide legal counsel and services for the Commissioner in all proceedings in circuit court and the Supreme Court of Appeals without additional compensation.