

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

Form #2

Do Not Mark In This Box

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2005 JUL 22 A 11: 54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Alcohol Beverage Control Administration TITLE NUMBER: 175

RULE TYPE: Procedural CITE AUTHORITY: W.Va. Code 60-2-16, 60-3A-23

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: 175C.S.R.10, Mini-Distilleries

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 22, 2005 AT 12:00 noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Ron Moats

Alcohol Beverage Control
Administration

322 70th Street, S.E.

Charleston, WV 25304-2900

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

44.60

Proposed Procedural Rule

Title 175, Series 10

Alcohol Beverage Control Administration

Summary of Proposal

Enrolled Committee Substitute for H.B. 2522 passed on April 9, 2005 and now codified in Chapter 60, Articles 1, 4 and 6 of the West Virginia Code establishes a new license for the manufacture of alcoholic liquor. This license is for a “mini-distillery” and grants the privilege of manufacturing liquor up to 20,000 gallons a year. In addition, the new license permits the manufacturer to sell their manufactured product to customers on their premises as well as offer complimentary samples. Since the manufacture, sale and consumption of liquor is a regulated activity, certain activities and procedures need to be established where the WV ABCA can exercise their responsibility for regulation, oversight and control of the distribution of the liquor manufactured at these distilleries.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 175 C.S.R. 10

Type of Rule: Legislative Interpretive Procedural

Agency: Alcohol Beverage Control Administration

Address: 322 70th Street, S.E.
Charleston, WV 25304-2900

Phone Number: 558-2481 Email: rmoats@abcc.state.wv.us

Fiscal Note Summary

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

This measure will have minimum impact on costs and revenues. Administrative costs will not exceed five hundred dollars (\$500.00) in the first year. This measure may result in a modest increase in sales tax, not to exceed five thousand dollars (\$5000.00) in fiscal year '06.

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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		500.00	500.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues		100.00	100.00

Rule Title: 175 C.S.R. 10

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

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

Administrative costs will not exceed five hundred dollars (\$500.00) in the first year. There are only two mini-distilleries in the state at the present time.

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.

There may be a modest increase in sales tax.

Date: 7/7/2005

Signature of Agency Head or Authorized Representative

~~Walter J. Hight~~ - Comptroller
Walter J. Hight - Commissioner
7-13-05

PROCEDURAL RULE

FILED

ALCOHOL BEVERAGE CONTROL COMMISSION

2005 JUL 22 A 11: 54

**TITLE 175
SERIES 10**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

MINI-DISTILLERIES

§175-10-1. General.

1.1. **Scope.** -- This rule provides the procedure whereby a mini-distillery shall comply with bailment procedures, retail operations, production and sales reporting of activities on the licensed premises.

1.2. **Authority.** -- W.Va. Code §60-2-16; §60-3A-23.

1.3. **Effective Date.**

1.4. **Filing Date.**

§175-10-2. Incorporation.

2.1. The amendments to W.Va. Code as enacted in Enrolled Committee Substitute for House Bill 2522 on April 9, 2005 are incorporated herein by reference.

2.2. West Virginia Legislative Rule 175 C.S.R 1 and 6 are incorporated herein by reference.

§175-10-3. Definitions.

3.1. "Bailment" for purposes of this rule means the transfer of possession through actual or constructive delivery but not ownership to the Alcohol Beverage Control Commission, of alcoholic liquor manufactured at a mini-distillery for a limited time or specific purpose.

3.2. "Proof Gallons" means a gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

3.3. "Gallon" means the liquid measure equivalent to the volume of 231 cubic inches.

3.4. "Commissioner" refers to the Commissioner of the West Virginia Alcohol Beverage Control Commission.

3.5. "Year" for purposes of gallons produced and sold shall mean a calendar year.

175-10-4. Bailment Policy and Procedures.

4.1. The Commissioner must take actual or constructive possession of all alcoholic liquor manufactured for sale by every mini-distillery.

4.2. Constructive possession is available only on the alcoholic liquor manufactured at the mini-distillery for retail sale at the mini-distillery or for serving complimentary samples.

4.2.1. Alcoholic liquor manufactured at a mini-distillery for retail sale or sampling at the mini-distillery must be purchased from the Commissioner but may be constructively delivered to the Commissioner and remain on the mini-distillery premises without actual delivery to the Commissioner.

4.2.2. The mini-distillery electing to use constructive delivery shall report all production to the Commissioner, identifying the amount of alcoholic liquor to remain on premises for retail sale.

§175-10-5. On-Premises Sampling; Sales.

5.1. Complimentary samples of alcoholic liquor manufactured at the mini-distillery may not exceed 1.5 ounces of liquor, per customer, per day.

5.2. No person while on the premises of any mini-distillery shall break the seal on any package of alcoholic liquor, other than the licensee, for on-premises sampling.

5.3. The retail price for on-premises sale of alcoholic liquor manufactured at a mini-distillery may not be less than one hundred ten percent (110%) of the wholesale cost of the product as contained in the Wholesale Spirits Catalog to a retailer.

5.4. Retail sales of alcoholic liquor manufactured at the mini-distillery are for consumption by the purchaser and resale by the purchaser is prohibited.

§175-10-6. Licensing.

- 6.1. Licenses are issued for a calendar year and must be displayed on the premises in a prominent location.
- 6.2. The fee for a mini-distillery license is fifty dollars (\$50.00) for the license period and may not be pro-rated.
- 6.3. A licensed mini-distillery will be assigned a retail permit for purposes of retail sale for off premises consumption.
- 6.4. Forms for licensing and renewal may be obtained on the West Virginia Alcohol Beverage Control Commission web site accessible at www.wvabca.com or contacting the offices at 304-558-2481.

§175-10-7. Reports.

- 7.1. The mini-distillery shall report monthly to the Commissioner the total retail sales of alcoholic liquor sold at the licensed premises.
 - 7.1.1. Total retail sales information shall be submitted on forms provided by the Commissioner or in a manner approved by the Commissioner.
 - 7.1.2. The mini-distillery shall submit to the Commissioner, with this report, ten percent of the total retail liquor sales at the mini-distillery each month.
 - 7.1.3. Total gross sales reports and payment of the ten percent of the total retail liquor sales shall be submitted by the mini-distillery to the Commissioner on or before the 15th day of the month following the month for which the report is made.
- 7.2. The mini-distillery shall report monthly to the Commissioner the total gallons of alcoholic liquor produced at the distillery. For the purpose of this report gallons will mean proof gallons.
 - 7.2.1. Total production information shall be submitted on forms provided by the Commissioner or in a manner approved by the Commissioner. The mini-distillery may provide a true copy of the Monthly Report of Processing Operations filed with the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF F 5110.28), in lieu of the Commissioner's report.

7.2.2. Total production information shall be submitted by the mini-distillery to the Commissioner on or before the 15th day of the month following the month for which the report is made.

§175-10-8. Informational Signs.

8.1. Notices to the public related to the possible dangers of consumption of alcohol during pregnancy shall be displayed in plain view at the main entrance to areas where alcohol is sold for off-premises consumption and tasting areas.

8.2. A blood-alcohol chart, provided by the Commissioner, shall be posted in an open and prominent place within the distillery.

§175-10-9. Days and hours mini-distillery may sell, serve samples.

9.1. Mini-distillery may not sell liquor or offer for sampling on Sundays, Christmas or any primary or general statewide election day or between 10:00 p.m. and 8:00 a.m. on weekdays and Saturdays.

ABCC-WS-3
 Form ABCA-MUD-LIQWNE rev. 05/2005
 Acceptable forms of payment for license
 fee is: Cashier's Check, Certified Check,
 or Money Order



Licensing Period: _____ to _____

License Number _____

West Virginia Alcohol Beverage Control Administration

322 70th Street, SE Charleston, WV 25304-2900
 (304) 558-2481

Non-Retail Liquor and Wine License Application

<input type="checkbox"/> Wine Supplier Answer Questions 1-16 License Fee: \$0.00	<input type="checkbox"/> Wine Distributor Answer Questions 1-16 Complete Sect. I & II License Fee: \$2500.00	<input type="checkbox"/> Farm Winery Answer Questions 1-16 Complete Sect. I & III License Fee: \$50.00	<input type="checkbox"/> Mini Distillery Answer Questions 1-16 Complete Sect. I & III License Fee: \$50.00	Applying As: <input type="checkbox"/> Individual <input type="checkbox"/> Ltd. Liability <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Ltd. Partnership <input type="checkbox"/> Association
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1. Licensee (Entity): _____ 4. Business FEIN: _____
 2. Business Name: _____ 5. Bus. Telephone: _____
 3. Mailing Address: _____ 6. Physical Business Address: _____

 City State Zip City State Zip
 7. Contact Person: _____ Telephone Number: (____) _____

1. Has applicant or any officer been:
 a. Convicted of a felony? Yes _____ When: _____ If yes, attach sheet to explain. No _____
 b. Convicted of a violation of federal or state alcohol laws? Yes _____ If yes, attach sheet to explain. No _____
 c. Convicted of a criminal offense (misdemeanor) within the last 5 years? Yes _____ If yes, attach sheet. No _____
 d. Refused any type of alcohol license or permit in any state? Yes _____ State: _____ If yes, attach sheet. No _____

2. Has applicant or any officer had:
 a. A hearing before the WVABCA Commissioner? Yes _____ Explain: _____ No _____
 b. Any type of WVABCA license or permit sanctioned? Yes _____ Explain: _____ No _____

3. Has applicant been refused any type of alcohol license or permit in any state? Yes _____ Explain: _____ No _____

4. Does the applicant, officers, directors or any blood relative own any real estate, buildings or equipment used by any WV retail licensee? Yes _____ Attach a written explanation and give name, address and interest. No _____

12. Does applicant, partner, member, stockholder, director, or any blood relative hold any interest in a licensed retailer in West Virginia? Yes _____ Attach a written explanation and give name, address and interest. No _____

13. Date and State your business incorporated or organized: _____
Please include corporate charter or organization papers

14. Do you have a Special Tax Stamp from Alcohol & Tobacco Tax & Trade Bureau? Yes _____ Applied for _____ No _____

15. If non-resident business, date of certificate of authority to do business in WV: _____
Please include copy of certificate of authority

16. Supply the following information about the owners, officers, directors and manager:

Title: _____ Name: _____ Res. Address: _____ _____ Phone :(____) _____ % Ownership: _____ DOB: _____ SSN: _____ - _____ - _____ WV Resident: Y / N US Citizen: Y / N	Title: _____ Name: _____ Res. Address: _____ _____ Phone :(____) _____ % Ownership: _____ DOB: _____ SSN: _____ - _____ - _____ WV Resident: Y / N US Citizen: Y / N	Title: _____ Name: _____ Res. Address: _____ _____ Phone :(____) _____ % Ownership: _____ DOB: _____ SSN: _____ - _____ - _____ WV Resident: Y / N US Citizen: Y / N
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Use a separate sheet, if necessary. *If not a native US citizen, please attach a written explanation of when and where naturalized.

Section I: To be completed by Wine Distributors, Farm Wineries, and Mini Distilleries.

A. County which business is located: _____

B. Does the applicant own the premises to be licensed? Yes: _____ No: _____ If no, does applicant hold a valid lease? Yes _____ No _____ Expiration date of lease: _____
 Property owner name/address: _____

C. Do the premises to be licensed conform to Health, Fire and Zoning Regulations? Yes: _____ No: _____

Section II: To be completed by Wine Distributors.

A. Has applicant entered into any exclusive franchise agreement with a manufacturer, producer, processor, distributor, or supplier of wine whereby the applicant has been given the exclusive right within West Virginia or in any given territory within West Virginia to distribute the product(s) of such manufacturer, producer, processor, distributor or supplier which are to be sold or distributed in West Virginia? Yes _____ No _____ If yes, explain _____

Section III: To be completed by Farm Wineries and Mini Distilleries.

A. Annual productive capacity is _____ gallons.

B. Is applicant, directly or indirectly, by means of signs, equipment, money, property or otherwise, giving aid or assistance to the holder of any retail beer or intoxicating liquor permit issued by the authority of this State? Yes _____ No _____ If yes, explain: _____

C. Does applicant own or control any real or personal property, which is rented, leased or used by the holder of any retail beer or intoxicating liquor permit issued by the authority of this State? Yes _____ No _____ If yes, explain: _____

D. Is your place of business in a section zoned by a county or municipality? _____ If so, state district: _____

E. Give numbers and classification of former beer, wine and spirituous liquor permits, if any: _____

F. Name nearest church or school and state distance in feet there from: _____

G. Is place of business located in business, residential, or rural neighborhood? _____

Should the applicant fail to fully carry out and fulfill in every respect the laws of West Virginia, then the Commissioner shall have the right to terminate or revoke this license or permit and declare forfeited the penalty of the bond (if a bond is required for the selected license type). However, it is agreed and understood by and between the parties hereto that before such bond shall be forfeited a hearing shall be held in the Office of the West Virginia Alcohol Beverage Control Commissioner in the City of Charleston, Kanawha County, West Virginia, after ten (10) days written notice to the applicant, setting forth the charge or charges and the time and place of hearing thereon and which said notice shall be served the applicant by registered mail at the address hereinabove set forth.

- Instructions for signing:
- 1) Partnership/Limited Partnership: Must be signed by all partners.
 - 2) Ltd Liability Company: Must be signed by all members, if member managed. Must be signed by manager, if manager managed.
 - 3) Association: Must be signed by all members.
 - 4) Corporation: Must be signed by an officer in the corporation.
 - 5) Individual: Signature of that individual.

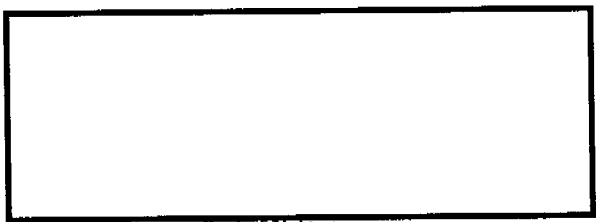
Note: All changes in ownership interest during the license year must be reported immediately to the WV ABCA Commissioner.

STATE OF _____
 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: _____ Signature: _____ Title: _____
 Date: _____ Signature: _____ Title: _____
 Date: _____ Signature: _____ Title: _____
 Date: _____ Signature: _____ Title: _____

Given under my hand and official seal this _____ day of _____, _____



Seal of Notary

 Signature of Notary Public Commission Expires _____



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
322 70th Street, SE
Charleston, West Virginia 25304-2900

INSTRUCTIONS FOR NON-RETAIL WINE & LIQUOR LICENSE APPLICATION
(FORM # ABCC-WS-3)

1. Please read the instructions carefully. All questions are to be answered in full. Your accuracy and thoroughness in completing the application form will assist us in processing the application and preventing unnecessary delays.
2. False representations made in application or failure to comply with Chapter 60 of the West Virginia Code (State Control of Alcoholic Liquors) and rules and regulations promulgated thereunder may result in denial, revocation, or suspension of the license.
3. Any person holding any interest in a Wine Supplier, West Virginia Licensed Wine Distributor, or West Virginia Farm Winery may not hold any interest in a retail wine establishment or a private wine restaurant.
4. Any person holding any interest in a West Virginia Distillery or a West Virginia Mini-Distillery may not hold any interest in a retail liquor, private club, or private wine restaurant establishment.
5. License fees must be paid by **certified check, cashier's check, company check, or money order**. Personal check or cash will not be accepted.
6. Licensing Periods:
 - Wine Supplier license period begins on May 1 and ends on April 30 of each year.
 - Distillery license period begins January 1 and ends on December 30 of each year.
 - Mini Distillery license period begins January 1 and ends on December 30 of each year.
 - Wine Distributor and Farm Winery license period begins on July 1 and ends June 30 of each year. If the license is issued for less than a full year, the fee may be prorated as follows:

<u>License Application Submitted</u>
July 1 through June 30
January 1 through June 30

<u>License Fee</u>
Full License Fee
½ of License Fee

7. The application must be signed as follows:
 - If an individual, by the owner.
 - If a firm, each member of the firm.

- If a partnership, each member of the partnership.
- If an association, each member of the governing board.
- If a corporation, by either it's president or a vice president.

ALL SIGNATURES MUST BE NOTARIZED

7. Documents which must accompany application:

- If an Association - a copy of the Certificate of Authority and Agreement of Association
- If a Limited Liability Corporation - a copy of the Certificate of Authority and Articles of Organization
- If a Corporation - a copy of the Certificate of Authority and Articles of Organization
- A copy of the applicant's federal basic permit, as required under the Federal Alcohol Administration Act.
- If applying as a resident Distillery or Mini Distillery; submit copies of all documents which have been submitted to the Bureau of Alcohol, Tobacco, and Firearms, along with documentation of ATF's inspection report and approval.

8. 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. Form and instructions are available by calling the toll-free number at 800-937-8864 or available through download at <http://www.ttb.gov/alcohol/permits.htm>

9. Distilleries, Mini Distilleries, and Wine Distributors (wholesalers) are required to buy a Special Tax Stamp from the Internal Revenue Service. Additional information and application for the Special Tax Stamp can be made on TTB Form 5630.5 or you can request a packet with the form and instructions by calling the toll-free number at 800-937-8864 or available through download at http://www.ttb.gov/taxes_and_permits/fed_tax_stamp.htm

10. Wine Supplier & Distributor Bonds - Please see bond instructions for proper completion.

- Wine Suppliers - Applicants must complete bond form #ABCC-WS-3-B in the amount of \$25,000.00.
- Wine Distributors - Applicants must complete bond form #ABCC-WS-1-B in the amount of \$10,000.00.

12. All completed applications, with supporting documents, and the required license fees, are to be returned to:

West Virginia ABC Administration
Wine Division
322 70th Street, S.E.
Charleston WV 25304

13. If there are additional questions concerning the proper completion of an application, inquiries can be made to the Alcohol Beverage Control Commissioner at (304) 558-2481 between the hours of 8:30 a.m. and 4:30 p.m. e.s.t. Monday through Friday.

EFFECTIVE DATES
JAN 1, 2006 - DEC 31, 2006
2006



State of West Virginia

Office of West Virginia Alcohol Beverage Control Commissioner, ss:
This is to certify that the undersigned, in pursuance of the authority vested in the Commissioner by

LICENSE NUMBER
00-W-200-000000

Chapter 60, Article 4 of the West Virginia Code

has this day granted in the name and for the place of business set out below this

LICENSE TO ENGAGE IN THE BUSINESS OF
MINI DISTILLERY
LICENSE FOR THE LIMITED MANUFACTURE AND SALE OF ALCOHOLIC LIQUORS

«FIELD7»
«FIELD8»

«FIELD9»
«FIELD10»
«FIELD11»
MAILING ADDRESS

«FIELD12»
«FIELD13»
«FIELD14»
PHYSICAL ADDRESS

Notice: This is issued only to the entity named above for use as specified, and cannot be abandoned, loaned, rented, or leased, and is not assignable or transferable and must be returned upon sale or closure of establishment. Post in a conspicuous place at the location for which issued.

Given under my hand this,
the _____ day of _____

Commissioner



<PRINT CONTROL NUMBER HERE>

VALID ONLY IF IMPRESSION SEAL IS PRESENT



STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION

322 70th Street, SE
Charleston, West Virginia 25304-2900

JOE MANCHIN III
GOVERNOR

DALLAS S. STAPLES
COMMISSIONER

JOHN C. MUSGRAVE
ACTING CABINET SECRETARY

July 19, 2005

FILED
2005 JUL 22 A 11:53
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Honorable Betty Ireland
Secretary of State
Main Capitol Complex
Charleston, WV 25305

Dear Secretary:

Enclosed is the Procedural Rule 175-10.

If more information is required, please feel free to let us know.

Sincerely,

RONALD M. MOATS
ADMINISTRATIVE SERVICES MANAGER IV

Attachment as stated