



Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5 -50
Regulation title	Retail Operations
Action title	Definition of Dessert Wines
Date this document prepared	March 13, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Chapter 172 of the 2008 Acts of Assembly amended the provisions of subsection A 12 of § 4.1-210 of the Code of Virginia, adding “dessert wines as defined by Board regulation” to the types of alcoholic beverages which may be sold and sold and served by holders of limited mixed beverage restaurant licenses. This action creates a new section, defining “dessert wines” for the purposes of the act.

Legal Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

There are no acronyms or technical terms used in the document.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 172 of the 2008 Acts of Assembly amends § 4.1-210 of the Code of Virginia and requires the Alcoholic Beverage Control Board to define “dessert wines” for the purposes of that section. The authority to promulgate a regulation is mandatory, but the content of the regulation is discretionary.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The new section to be promulgated provides a definition of “dessert wines” which holders of limited mixed beverage restaurant licenses will be authorized to sell and serve. The board is required to define the term by statute. The goal of the new section is to provide a broad definition, to enable licensees to sell and serve most wine products consumers desire to drink with dessert, while at the same time allowing easy compliance with and enforcement of the regulation. Limited mixed beverage restaurants are not subject to the full food sale requirements of other mixed beverage restaurants. The General Assembly has determined that such restaurants should sell a limited number of liqueurs mixed with coffee or other drinks, as well as dessert wines. The proposed regulatory action is necessary to protect the health, safety, or welfare of citizens by insuring that the alcoholic beverage products offered for sale fall within the limits prescribed by the legislature.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

“Dessert wines” shall mean any wine having an alcohol content of more than fourteen percent by volume, any wine whose label indicates that it contains more than two percent residual sugar, or any wine described on its label as a “dessert,” “late harvest,” or “ice” wine.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantages to the affected businesses and the Commonwealth are that it will enable licensees to sell and serve most wine products consumers desire to drink with dessert, while at the same time allowing easy compliance with and enforcement of the regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to W. Curtis Coleburn, Chief Operating Officer, Post Office Box 27491, Richmond, Virginia 23261, curtis.coleburn@abc.virginia.gov, fax number (804) 213-4411. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and	None
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enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Persons holding limited mixed beverage restaurant licenses.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There is currently one business affected. It is a small business.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	None
Beneficial impact the regulation is designed to produce.	To enable limited mixed beverage restaurant licensees to sell and serve most wine products consumers desire to drink with dessert, while at the same time allowing easy compliance with and enforcement of the regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The board has not identified any viable alternatives to the proposed regulatory action.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or

simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulation contains no compliance or reporting requirements. It will allow affected businesses and agency enforcement personnel to easily determine whether a wine product falls within the “dessert wine” definition by reading the product label. The Board has not identified any simpler regulatory method.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Virginia Hospitality & Travel Association	Support the action	
Virginia Retail Merchants Association	Support the action	

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action is not expected to have any impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation

and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
	230	None	<p>“Dessert wines” shall mean any wine having an alcohol content of more than fourteen percent by volume, any wine whose label indicates that it contains more than two percent residual sugar, or any wine described on its label as a “dessert,” “late harvest,” or “ice” wine. The intent is to develop a definition broad enough to cover most wines consumed with dessert, while enabling licensees and agents of the board to easily identify those authorized by reference to product labels. While the federal definition of “dessert wines” only includes wines having an alcohol content greater than 14%, there are today other sweet wines commonly consumed with dessert with a lower alcohol content. These include wines described as “late harvest” or “ice” wines. The regulation is designed to include more sweet wines than the federal definition, so long as licensees and enforcement agents can determine whether a wine qualifies by reference to information contained on the product label.</p>

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here