



Final 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	June 30, 2010

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 14, 2010, the Alcoholic Beverage Control Board took final action to adopt amendments to 3 VAC 5-50, Retail Operations, creating a new section 3 VAC 5-50-230, defining “dessert wines.”

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 numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The new section 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 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” 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 there are no disadvantages to the public or the Commonwealth, please 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No public comment was received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	230	None	“Dessert wines” shall mean any wine having an alcohol content of more than fourteen

			<p>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>
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Enter any other statement here

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 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.

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