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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5 -50
<b>Regulation title</b>	Retail Operations
<b>Action title</b>	Definition of Dessert Wines
<b>Date this document prepared</b>	October 7, 2008

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing 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. The second enactment clause of this act provides that “the Alcoholic Beverage Control Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its

enactment.” The purpose of this action is to create a new section, defining “dessert wines” for the purposes of the act.

**Legal basis**

*Other than the emergency authority described above, 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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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 describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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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.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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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. During the development of the permanent regulation, there could be additional types of wines identified as properly considered “dessert wines,” although none have been discovered in research.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	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>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

The board has not identified any viable alternatives to the proposed regulatory action. In drafting the permanent regulation, it will consider any alternatives identified in the public comment process.

**Public participation**

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.*

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The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also 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 for the public comment file 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](mailto: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 day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

### Participatory approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency/board is not using the participatory approach in the development of the proposal pursuant to an authorization to proceed without the participatory approach.

### Family impact

*Assess the potential 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.*

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