

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

Form #6

Do Not Mark In this Box

2008 MAY -2 PM 2:16

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Alcohol Beverage Control Commission TITLE NUMBER: 175

CITE AUTHORITY §60-3A-18 and §60-8-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

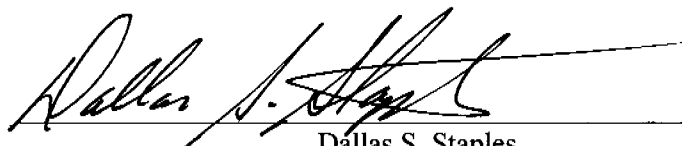
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Retail Licensee Operations

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA
LEGISLATURE. AUTHORIZATION IS CITED IN (house or senate bill number)
SB 417 SECTION Chapter 64, Article 7, Section 1 (a), PASSED ON
March 8, 2008 THIS RULE IS FILED WITH THE SECRETARY OF STATE.
THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: May 2, 2008.


Dallas S. Staples
WVABCA Commissioner

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TITLE 175
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSION

THURSDAY -2 PM 2:45

SERIES 1
RETAIL LICENSEE OPERATIONS

WEST VIRGINIA
LEGISLATIVE CENTER

§175-1-1. General.

1.1. Scope. -- This rule explains and clarifies, the process for ordering, transporting and advertising alcoholic liquors by licensed retailers. This rule also explains and clarifies the permissible activities of a licensed retailer and the relationship between the manufacturer of alcoholic liquors and a licensed retailer.

1.2. Authority. -- W. Va. Code §§60-3A-6 and 64-7-1.

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

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

§175-1-2. Definitions.

As used in this rule, and unless the context clearly requires a different meaning, the following terms have the following meaning and 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" means ethyl alcohol, whatever its origin, and includes synthetic ethyl alcohol but not denatured alcohol.

2.3. "Alcoholic liquor" or "liquor" means alcohol, beer, fortified wine and distilled spirits, and any liquid or solid capable of being used as a beverage. The term alcoholic liquor does not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

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

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2.5. "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

2.6. "Brewery" means an establishment where beer is manufactured or in any way prepared.

2.7. "Case Lot" means a complete case of distilled spirits.

2.8. "Department" means the West Virginia Department of Tax and Revenue.

2.9. "Distilled spirits" means ethyl alcohol, ethanol or spirits, or 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, neutral spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than 24% of alcohol by volume is considered distilled spirits.

2.10. "Distillery" or "distiller" means an establishment where alcoholic liquor other than wine and beer is manufactured or in any way prepared.

2.11. "Electronic funds transfer" or "EFT" means the transfer electronically of funds from one bank account to another bank account without the necessity of a personal or business check to initiate the transaction.

2.12. "Equipment" means all functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retail licensee's business.

2.13. "Federal law" means the laws and regulations of the United States and any court decisions interpreting them.

2.14. "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%).

2.15. "Immediate family" means and includes, but is not necessarily limited to: spouse, brother, sister, son, daughter, mother, mother-in-law, father, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, uncle, aunt or cousin of a licensed retailer, a partner, and a corporation's directors, officers and employees.

2.16. "Importer" means a person who brings in goods from a foreign country for sale in this country.

2.17. "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.

2.18. "Licensed representative" means a manufacturer's representative licensed under the provisions of W.Va. Code §60-4-22. A licensed representative may contact a licensed retailer for the purpose of selling, offering to sell, soliciting, negotiating or promoting the sale of alcoholic liquor or distilled spirits, or conducting surveys, studies or similar activities pertaining to the sale, distribution or availability of alcoholic liquors or distilled spirits.

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2.19. "Licensed retailer" means a person licensed under W.Va. Code § 60-3A-1, *et seq.* to operate a retail liquor store.

2.20. "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

2.21. "Manufacturer" means a person engaged in the manufacture of any alcoholic liquor, including, among others, a producer, bottler, importer, processor, broker, wholesaler, distributor, supplier, distiller, rectifier, winemaker or brewer.

2.22. "Neutral spirits" means ethyl alcohol of 190 proof or higher used especially for blending other alcoholic liquors.

2.23. "Nonintoxicating beer" means any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing at least one half of one percent (.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater.

2.24. "Original package" means a closed or sealed container or receptacle used for holding alcoholic liquor.

2.25. "Person" means an individual, partnership, joint stock company, business trust, association, limited liability company, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.26. "Product" means alcoholic liquors whether located in the ABCC warehouse or on or off the premises of a retail liquor store.

2.27. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including, but not limited to, establishments that provide lodging, sell food for consumption on or off the premises which includes but is not limited to vessels, parks, airports, highways, streets, lanes, parks or places of public resort or amusement. The term "public place" does not include any place or any portion thereof which qualify and are licensed by the Commissioner to sell alcoholic liquors for consumption on the premises.

2.28. "Retail liquor store" means an establishment licensed and operated under the authority of W. Va. Code §60-3A-1 *et seq.* to sell alcoholic liquor in the original package for consumption off the premises.

2.29. "Sale" means any transfer, exchange of goods or services in exchange for money, currency, checks, credit cards, or barter in any manner or by any means, for a consideration, and includes all sales made by principal, proprietor, agent or employee.

2.30. "Selling" means solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.31. "Spirits" means any alcoholic liquor obtained by distillation and mixed with potable water and other substances in solution including, but not limited to brandy, rum, whiskey, cordials and gin.

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2.32. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar to which no alcohol has been added. Fortified wine and any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code are not included in the definition of "wine" for the purpose of this rule.

2.33. "Winery" means an establishment where wine is manufactured or prepared.

§175-1-3. Authorized Retail Licensee Activities.

3.1. Only a retail liquor store licensed in accordance with W. Va. Code §60-3A-12 may sell alcoholic liquors at retail in West Virginia. A licensed retail liquor store may, in addition to selling alcoholic liquors for consumption away from the premises of the retail liquor store, do all things common and ordinary in the operation of such an establishment. A licensed retailer that operates more than one (1) retail liquor store within a market zone may transfer alcoholic liquors only from one retail liquor store to another within the same market zone. Any other transfers of alcoholic liquors require prior written authorization from the ABCC.

3.1.a. A licensed retailer may sell other merchandise.

3.1.b. A licensed retailer may establish the hours during which the business is open to the public. However, alcoholic liquors and fortified wine, may not be sold on Sundays, Christmas, or any primary or general statewide election day, or between 12:00 p.m., midnight, and 8:00 a.m. on weekdays and Saturdays; wine may not be sold between 2:00 a.m. and 1:00 p.m. on Sundays or between 2:00 a.m. and 7:00 a.m. on weekdays and Saturdays.

3.1.c. A licensed retailer may employ whom he or she pleases so long as:

3.1.c.1. An employee must be at least eighteen (18) years of age in order to sell alcoholic liquors to customers.

3.1.c.2. An employee must be at least twenty-one (21) years of age to take delivery of alcoholic liquor at the ABCC warehouse.

3.1.c.3. A retail liquor store may employ a person between sixteen (16) and eighteen (18) years of age to work in a retail liquor store if the Commissioner has beforehand provided written approval to employ such persons. The Commissioner's approval must be requested in the initial application or annual license renewal form and such approval will not be unreasonably withheld. The authorization to employ persons under eighteen (18) years of age must be clearly stated on the retail liquor license.

3.1.c.4. The age restrictions in this section apply to the minor children of the licensee.

3.1.d. A licensed retailer may purchase any equipment deemed necessary to the operation of the retail liquor store and in so doing may enter into appropriate contracts and financing agreements;

3.1.d.1. At the Commissioner's discretion to purchase or authorize another person to purchase, all or any portion of the liquor inventory of the retail licensee, the creditor or retail

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licensee shall sell the inventory as directed by, and upon the terms determined by the Commissioner. The creditor will be paid the price of the sale of the retail liquor store's inventory.

3.1.d.2. The creditor is required to pay the applicable shipping and handling charge set by the Commissioner.

3.1.e. A creditor, when foreclosing on the assets of a licensed retailer, is required to abide by W. Va. Code §60-3A-29.

3.2. A licensed retailer is required to purchase all distilled spirits and fortified wines through the Commissioner. However, nonintoxicating beer, port, sherry and Madeira wines, wine other than fortified wine and other alcoholic liquors which are not distilled spirits shall be purchased through a manufacturer authorized to do business within this state.

3.3. A licensed retailer may only sell alcoholic liquors which have been purchased from the Commissioner, wine other than fortified wine which was purchased from a licensed distributor or licensed farm winery, including port, sherry and Madeira wine, and nonintoxicating beer purchased from a licensed manufacturer. Any violation of this section may result in the suspension or revocation of a retailer liquor store's license.

3.3.a. Every licensed retailer shall maintain records of all purchases, sales, receipts, and other pertinent papers required by the Commissioner. All records shall be preserved for at least four (4) years. The Commissioner may inspect the books, accounts and records of any licensed retailer relating to the purchase and sale of any alcoholic liquors and examine, under oath, any officer, agent or employee of any licensed retailer. The Commissioner may require the production, within this state, at the time and place he may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof for the purpose of examination by the Commissioner.

3.3.b. Every retail licensee must keep a record in book form showing the date all alcoholic liquors, wine and beer were received on his or her premises, and from whom the product was received. In addition a retail liquor store licensee shall maintain records showing the merchandise code and quantity for each sale to a religious organization or to a private club as defined in W. Va. Code §60-7-2(a). In the case of sales to a private club, the retail liquor store licensee must identify each club by name, address and ABCC license number, and provide the full name of the person receiving the order.

3.3.c.. Records required to be maintained pursuant to this subsection may not be destroyed, erased or altered for at least four (4) complete calendar years or until the year the retail licensee is audited and accepted by the Department of Tax and Revenue.

3.4. Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by W. Va. Code §60-6-24 (Appendix I.); and the fetal alcohol syndrome warning of birth defects in the manner prescribed by W. Va. Code §60-6-25 (Appendix II.).

3.5. A licensed retail liquor store may not:

3.5.a. Sell or permit the sale of more than ten (10) gallons of alcoholic liquor to a person

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at one time without approval of the Commissioner, except that:

3.5.a.1. A religious organization may purchase more than ten (10) gallons of wine for sacramental purposes;

3.5.a.2. This prohibition does not apply to purchases of private clubs as defined in W. Va. Code §60-7-3.

3.5.b. Sell or offer to sell or permit the sale or offer to sell any alcoholic liquor in other than the original package or container.

3.5.c. Sell, give or procure, or permit the sale, gift, or procurement of any alcoholic liquor for or to any person under age twenty-one (21) or who is visibly intoxicated.

3.5.d. Permit the consumption of any alcoholic liquors on the retail liquor store premises by any person.

3.5.e. Alter, change or misrepresent or permit the alteration, change or misrepresentation of the quality, quantity or brand name of any alcoholic liquor.

3.5.f. Permit any person under age eighteen (18) to sell, furnish or give alcoholic liquor to any other person.

3.5.g. Purchase or otherwise obtain alcoholic liquors in any manner other than that authorized in W. Va. Code §60-3A-1, *et seq.*, and this rule.

3.5.h. Permit any person to break the seal on any package or bottle of alcoholic liquor.

3.5.i. Permit any person other than a retail licensee or a regular employee thereof to unpack, shelve, arrange, shift, or otherwise manipulate bottles or other receptacles containing distilled spirits, except for the purpose of purchasing same.

3.5.j. Sell or permit the sale of alcoholic liquors or fortified wine purchased from the ABCC at a price which is less than one hundred ten percent (110%) of the wholesale cost of the product. For the purposes of determining the minimum price, the retailer shall multiply the wholesale cost of the product contained in the Wholesale Spirits Catalog by one hundred ten percent (110%).

3.5.k. Sell or permit the sale of alcoholic liquors or fortified wine through a window at a drive-in or drive-through retail establishment.

§175-1-4. Alcoholic Liquors - Ordering, Receiving and Paying.

4.1. The ABCC will provide each retail liquor store with the "Wholesale Spirits Catalog" on a quarterly basis. The Wholesale Spirits Catalog includes all price changes imposed by distillers, importers, suppliers and others. The Commissioner shall provide price changes no more often than four (4) times per twelve (12) month period, on the effective dates of February 1, May 1, August 1 and November 1. Distillers, importers, suppliers and others are required to provide notice of price increases at least sixty (60) days prior to the beginning of the next quarter. Failure to provide advance notice of price changes may result in the Commissioner delisting

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certain or all of the products of the noncompliant distiller, importer, supplier or other purveyor of alcoholic liquors. The Commissioner will provide a licensed retail liquor store with an updated copy of the Wholesale Spirits Catalog approximately two weeks in advance of each effective date.

4.1.a. In addition to complete product information and pricing structure, the Wholesale Spirits Catalog will contain all alcoholic liquor products normally available from the ABCC. Following is a line by line explanation of the spirits catalog.

4.1.a.1. "Class Code." This line indicates the type of product in the respective listing; i.e., "bottled-in bond." Products are listed alphabetically and by ascending size within their respective class.

4.1.a.2. Column 1 - "Brand Name." An abbreviated twenty-five (25) character description of the distilled spirit.

4.1.a.3. Column 2 - "Unit Size." The product bottle size is listed in metric measurement.

Metric Conversion Table

Metric Size	Converted to Ounces
.50 ml.	1.7 oz.
.200 ml.	6.8 oz.
.375 ml.	12.7 oz.
.500 ml.	16.9 oz.
.750 ml.	25.4 oz.
1. Liter	33.8 oz.
1.75 Liter	59.2 oz.

4.1.a.4. Column 3 - "Proof." Indicates the alcoholic proof of the product.

4.1.a.5. Column 4 - "Case Pack." Indicates the number of bottles in a full case.

4.1.a.6. Column 5 - "Merchandise Code." This is the code number which identifies the product and is to be used when ordering from ABCC. The number can range from one (1) to four (4) digits in length.

4.1.a.7. Column 6 - "Case Price Wholesale." The wholesale price charged for a full case.

4.1.b. The Commissioner will correct any mischarges due to an error in the Wholesale Spirits Catalog at the earliest possible date after discovery of the error.

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4.2. Special order spirits.

4.2.a. The ABCC warehouse does not stock all brands or spirit sizes at the ABCC warehouse. Those brands or sizes must be ordered through the Special Order Program. Any spirit product ordered through the Special Order Program must be ordered in case lots only.

4.2.b. A licensed retail liquor store must use the "Special Order" form, developed and provided by the ABCC, to order non-listed alcoholic liquors.

4.2.c. The Commissioner may charge a Uniform Special Order Fee not exceeding ten dollars (\$10.00) per case for each case specially ordered.

4.2.d. When a Special Order is received at the ABCC warehouse, the order will be automatically added to the retail liquor store's next order. The Special Order dollar amount including service and handling charges may be included in the dollar total provided to the retail liquor store when it accepts delivery of the regular order in which the special order is included for delivery.

4.2.e. The Commissioner will not refund price, fees, or costs or accept returns on any Special Order product unless the product is deemed to be unsalable by ABCC.

4.3. Official Notice of Price Change.

4.3.a. The ABCC's spirit suppliers are authorized to add product and price changes on a quarterly interval as provided by subsection 4.1. of this section. Retail liquor stores will be notified of wholesale price changes by an "Official Notice of Price Change." Price change notices generally will be provided to the licensed retailer two (2) weeks in advance of the change. Official Notice of Price Change will be provided, regardless of whether the change is permanent or temporary.

4.3.b. The price change sheet will contain the code number and corresponding product that is changing price, the old wholesale price, new wholesale price and the effective date of the change. Any product ordered on or after the date of a price change will be invoiced at the new price until the product changes price again. The Official Notice of Price Change shall be used to update prices until an updated version of the Wholesale Spirits Catalog is issued. The order date determines the wholesale price to be charged to the retailer.

4.4. Temporary price reductions -- Special Purchase Allowances (SPA).

4.4.a. Distillers and importers may occasionally give temporary price reductions called special purchase allowances or SPAs on certain products for a limited period of time. The Commissioner may pass on these price reductions to retail liquor stores on a dollar-for-dollar basis.

4.4.b. The Commissioner will notify retail liquor stores approximately two (2) weeks in advance of upcoming temporary price reductions by an Official Notice of Price Change. The Commissioner will also issue a flyer containing the period of time that the product will be eligible for purchase at discount. The retail liquor store must order during the temporary price

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reduction period to take advantage of the discount.

4.4.c. A SPA price reduction reflected in the Wholesale Spirits Catalog will be allowed on orders regardless of whether or not the retailer specifically requests it.

4.5. Payment for purchases.

4.5.a. A licensed retailer is required to pay for alcoholic liquors prior to delivery to the retail liquor store. Payment must be made by an electronic funds transfer (EFT) initiated by the ABCC on the business day following the retailer's order day, or by a money order, certified check or cashier's check which the ABCC must receive at least twenty-four (24) hours prior to shipping.

4.5.b. In order to utilize electronic funds transfers, the licensed retailer shall provide to the ABCC the necessary written authorization to debit the retailer's checking account for purchases of alcoholic liquors at the time of initial licensing.

4.5.c. An EFT may be made only for the amount of the purchase.

4.5.d. The ABCC will not deliver check or cashier's check is not received at least twenty-four (24) hours prior to the shipping date.

4.5.e. An EFT is not completed due to nonsufficient funds the ABCC will not process any other liquor orders by the licensee until payment is received.

4.5.f. When a licensed retailer picks up alcoholic liquors at the ABCC warehouse, only a money order, EFT, certified check or cashier's check may be used as payment.

4.6. Ordering alcoholic liquors.

4.6.a. Each retail liquor store will be assigned a specific day of the week to order alcoholic liquors from the ABCC. Alcoholic liquors ordered on Monday or Tuesday will be delivered on the following Wednesday or Thursday, respectively, and alcoholic liquors ordered on Thursday or Friday will be delivered on the following Monday or Tuesday, respectively. Additional days will be added to the delivery schedule for any week in which a holiday occurs. The ABCC will notify the licensed retail liquor store of such amendments. Extenuating circumstances may also occasionally adjust the order day schedule for a week.

4.6.b. The Commissioner may modify the time of the day and the days of the week during which alcoholic beverages may be ordered from the ABCC. Notice shall be provided to each retailer at least thirty (30) days prior to the changes taking effect.

4.6.c. Orders for alcoholic liquors must be placed by telephone between the hours of 8:30 a.m. and 3:30 p.m. on the assigned order days. Orders will not be accepted after 3:30 p.m. Orders may be tape recorded or otherwise documented when received.

4.7.d. Are licensed retail liquor store may change an order at any time up to 2:30 p.m. of the retail liquor store's regular order day.

4.6.e. the ABCC will not deliver an order for fewer than five (5) cases.

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4.6.f. Telephone order placement procedure.

4.6.f.1. The retail liquor store must call the Order Department at the telephone number provided between 8:30 a.m. and 3:30 p.m. on the assigned order day.

4.6.f.2. The retail liquor store must provide the store's name and last four (4) digits of the account number.

4.6.f.3. Full cases must be ordered by first giving the merchandise code from the catalog and then the quantity of full cases.

4.6.f.4. The ABCC will give the retail liquor store a dollar total of delivered cost when the order has been placed, a confirmation that all items are in the ABCC warehouse and available for shipment and an invoice number for the order. The retail liquor store may reorder out-of-stock product on its next regular order date.

4.6.g. Order pick-up procedure ("will-call").

4.6.g.1.. A retail liquor store may order alcoholic liquors and pick up its order at the ABCC warehouse. This procedure is available only as a supplement to the regular ordering procedure and may not be used to circumvent the regular ordering procedure.

4.6.g.2.. The ABCC will sell alcoholic liquor only ordered for pick up in full case lots.

4.6.g.3. A retail liquor store must order items for pickup between the hours of 8:30 a.m. and 3:30 p.m. All orders will be processed for pickup on the following work day.

4.6.g.4.. When ordering, the retail liquor store must provide the store name and account number.

4.6.g.5.. The retail liquor store must pay for the order, by prior to loading, completing payment by money order, EFT, certified check or cashier's check.

4.6.g.6. No claim for breakage or shortage will be honored after the order has been loaded. The licensed retailer shall give to the warehouse a signed receipt, "Invoice, State of West Virginia Alcohol Beverage Control Administration" (Appendix III.), signifying acceptance of the order.

4.7. Delivery of alcoholic liquors.

4.7.a. The ABCC will deliver Monday, Tuesday, Wednesday, and Thursday on a regular basis. Orders will generally be delivered between the hours of 6:00 a.m. and 6:30 p.m., depending upon the retail liquor store's assigned ordering day and the distance of the retail liquor store from the ABCC warehouse. Deliveries will be made only to the retail liquor store and not to a warehouse or other location where alcoholic liquors are stored. The Commissioner may, for good cause shown, permit a retail licensee holding three or more private club licenses to receive and store alcoholic liquors at warehouses or sites off premises.

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4.7.b. Transport drivers will assist in unloading the alcoholic liquors at the retail liquor store. The order must be placed inside the door of the retail liquor store.

4.7.c.. The transport driver will provide the retail liquor store with a complete set of Invoice Forms so that the retail liquor store can check the delivery for accuracy. All alcoholic liquors must be kept separate from the store's normal reserve until the delivery is completed and checked for accuracy. "Dry" breakage claims or other defects discovered after the driver has left will not be accepted unless reported to the ABCC within twenty-four (24) hours after delivery to the retail liquor store and then only when the claim complies with any additional requirements provided in subsection 4.9 of this section. Except for concealed shortages or dry breakage, no claims for shortages or breakage will be allowed if the broken or shorted goods are not identified and noted on the Invoice Form before the driver has left the retail liquor store.

4.7.d. Both the transport driver and the authorized representative of the retail liquor store must sign the Invoice Form after it has been checked and any amendments or corrections made. The transport driver will return any claim made for breakage, shortage and overage on the Invoice Form, Exception Section, and Retailer Claim Form (Appendix IV.) to the ABCC warehouse.

4.7.e. Delivery Breakage. - Any product that is broken during delivery or during unloading will be the responsibility of the transport driver, who will complete the "Invoice Exception" portion of the Invoice Form detailing the breakage, a copy of which will be retained by the retail liquor store. The Invoice Exception will be processed by the ABCC and a credit memo will be applied to the next order after the claim has been approved.

4.7.f. Short Delivery. - This occurs when a case that was ordered is not delivered. The transport driver and the retailer will complete their sections of an Invoice Exception Form for the shortage and they will also complete a Retailer Claim Form (Appendix V.). A copy of these forms will be retained by the transport driver and the retailer. The ABCC will process the Invoice Exception and apply any applicable credit memo to the retail liquor store's next order.

4.7.g. Over Delivery. - Returned to Warehouse. An over delivery will be returned to the warehouse. The transport driver will complete the Invoice Exception portion of the Invoice Form and return the overage to the ABCC warehouse. There will be no credit in this instance because the retail liquor store was not billed for the product on the invoice.

4.7.h. No further changes may be made after all invoices and Invoice Exceptions have been signed.

4.8. Misordered product and defective product discovered after delivery.

4.8.a. Returns of product received in error due to wrong order number or not having been ordered will be authorized if the following procedures are adhered to:

4.8.a.1. The retail liquor store must notify the ABCC warehouse of a product received in error within twenty-four (24) hours following the date of delivery. Claims made after twenty-four (24) hours following delivery will not be approved. The transport driver is not authorized to return items on any day except the day delivery actually occurred.

4.8.a.2. The retailer may return the entire quantity of the misordered product.

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4.8.a.3. The retailer may not return "Special Orders," "Decanter Collector Series" or one-time buy offerings.

4.8.a.4. Appropriate warehouse personnel will schedule pickup of the alcoholic liquors to be returned.

4.8.a.5. The driver, when picking up the misordered product, will verify the code and quantity, leave a copy of the Invoice Form and Retailer Claim Form with the retail liquor store and return the misordered product to the warehouse.

4.8.a.6. The ABCC will process the claim and apply a credit memo to the retail liquor store's next order after the claim has been approved.

4.8.b. Concealed shortage.

4.8.b.1. To receive credit for bottles missing inside full case, the retail liquor store must save the original carton in which the product was delivered. Credit will not be issued if the carton is unavailable for inspection by the ABCC.

4.8.b.2. The ABCC will dispose of the carton and record the concealed shortage on a "Concealed Shortage and Defective Merchandise" report.

4.8.b.3. The ABCC representative will provide a copy of the Invoice Form and Retailer Claim Form to the retail licensee.

4.8.b.4. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.8.c. Dry breakage.

4.8.c.1. To return and receive credit for breakage discovered inside full case the retail liquor store must return the breakage to the ABCC warehouse:

4.8.c.1.A. The neck of the broken bottle with cap/seal, label intact, any piece of glass where the seal or symbol is recognizable, or any label. The retailer must follow shipping instructions for glass and shards of glass that may be dangerous.

4.8.c.1.B.. The carton in which the breakage was discovered.

4.8.c.1.C. No credit will be issued without the above-mentioned items being available for inspection by the ABCC.

4.8.c.2. The ABCC will dispose of the carton and bottle neck and record the breakage on a "Concealed Shortage and Defective Merchandise" report.

4.8.c.3. The ABCC will provide the retail liquor store with a copy of the Invoice Form and Retailer Claim Form.

4.8.c.4. The ABCC will process the claim and apply a credit to the retailer's next

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order after the claim has been approved.

4.8.d. Defective or spoiled merchandise.

4.8.d.1. To obtain a credit for a product discovered by the retail liquor store or returned by a consumer as unsalable (or unused portion) the retail liquor store must return the product to the ABCC warehouse. No credit will be issued if the product is not returned to the ABCC warehouse accompanied by an Invoice Form and Retailer Claim Form.

4.8.d.2. The ABCC will dispose of the unsalable product and apply a credit memo to the retail liquor store's next order. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.8.e.. Wrong product in case.

4.8.e.1. To obtain a credit for a mismarked case the retail liquor store must set aside and return the case and the entire contents to the ABCC warehouse.

4.8.e.2. The ABCC will send all documentation, Invoice Form and Retailer Claim Form, to the warehouse where pickup of the mismarked case from the retail liquor store will be scheduled as soon as possible.

4.8.e.3. When the transport driver picks up the mismarked case, a copy of the Invoice Form and Retailer Claim Form, will be left at the retail liquor store.

4.8.e.4. The ABCC will process the claim and a credit will be applied to the retail liquor store's next order after the claim has been approved.

4.9. Credit pricing policy.

4.10.a. The ABCC will make every attempt to issue credit based on the invoice price the retail liquor store was charged for that product. In the event that such price cannot be determined, the retail liquor store will be credited using the price found on the most recent invoice containing that particular product. If the actual purchase price or the most recent price paid by the retail liquor store cannot be determined, the current wholesale price will be used for credit purposes.

4.10.b. The ABCC is not responsible for any breakage, shortage or spoiled product which was caused by the owner/manager, employees or customers of a retail liquor store.

§175-1-5. Manufacturer Prohibitions.

5.1. Improper inducements. - Federal and state law prohibits a manufacturer from providing inducements, directly or indirectly, to any licensed retailer to purchase alcoholic liquors from the manufacturer to the exclusion, in whole or in part, of products sold or offered for sale by another manufacturer. Prohibited inducements include:

5.1.a. Acquiring or holding any interest in any license with respect to the retail liquor store or any other premises which is owned, occupied or used in any manner by the licensed retailer or his or her immediate family;

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5.1.b. Acquiring any interest in real or personal property which is owned, occupied, or in any manner used by the licensed retailer or his or her immediate family in the conduct of the retail liquor store or any other of his or her businesses;

5.1.c. Furnishing, giving, renting, lending, or selling to the licensed retailer or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value, except that a manufacturer may furnish to a licensed retailer items of nominal value for in-store display or sales purposes for use only within the licensed retail liquor store.

5.1.d. Paying or crediting the licensed retailer or his or her immediate family for any advertising, display, or distribution services;

5.1.e. Guaranteeing any loan for the repayment of any financial obligation of the licensed retailer or his or her immediate family; or

5.1.f. Requiring the licensed retailer to take and dispose of a certain quota of any distilled spirits.

5.2. Interest in the retail license. - A manufacturer may not acquire or hold any interest in any license required to be obtained by the licensed retailer or his or her immediate family, with respect to the retail liquor store or any other premises which are owned, occupied or in any manner used by the licensed retailer or his or her immediate family. This prohibition applies equally to:

5.2.a. The licensed retail liquor store's officers, partners, employees, other representatives, and their immediate family;

5.2.b. Any separate corporation in which the manufacturer or its officers, partners, employees or other representatives, and their immediate family hold any ownership interests or with which such persons are otherwise affiliated.

5.3. Interest in real or personal property of the licensed retailer.

5.3.a. A manufacturer may not acquire or hold any interest in real or personal property which is owned, occupied, or in any manner used by the licensed retailer or his or her immediate family in the conduct of the retail liquor store or of other businesses of the licensee and his or her immediate family. This prohibition also applies to:

5.3.a.1. Any interest acquired by the manufacturer's corporate officials, partners and employees or other representatives, or their immediate family; and

5.3.a.2. To any interest which is acquired by a separate corporation in which the manufacturer or its officers, partners, employees or other representatives, or their immediate family hold any ownership interest or in which they are otherwise affiliated.

5.3.b. A manufacturer may not acquire a mortgage on a licensed retailer's real or personal property or on the real or personal property of the licensed retailer's immediate family.

5.3.c. A manufacturer may not rent display space or shelf space at a retail liquor store.

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5.4. Furnishing things of value.

5.4.a. A manufacturer may not furnish, give, rent, or lend to a licensed retailer or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value. The prohibition does not apply to sales of goods by a manufacturer to a licensed retailer of goods that are to be resold to the general public and which are not alcoholic liquors so long as the licensed retailer pays the normal sales price for the goods.

5.4.a.1. This prohibition also applies to any similar activity which occurs through a third party, such as a retailer association or display company, where the benefits resulting to the licensed retailer may be considered as providing the licensed retailer with a thing of value without the payment of an appropriate purchase price.

5.4.a.2. This prohibition does not apply to signs and other display-related materials that are of negligible monetary value. As long as the manufacturer or retailer has prior written approval from the Commissioner.

5.4.b. A manufacturer must sell any equipment, supplies or fixtures to a licensed retailer at the current market value and may not provide a special price advantage for purchasing from one manufacturer as opposed to another manufacturer.

5.4.c. A manufacturer may not provide any assistance (financial, legal, administrative or influential) to a licensed retailer in acquiring the license required to operate a license retail liquor store.

5.4.d. A manufacturer may not furnish any exterior advertising signs, but may provide interior signs to the licensed retailer. The manufacturer may advertise by billboards which display alcoholic liquors, wine or nonintoxicating beer, but may not identify any licensed retailer in or on the advertisement.

5.4.e. A manufacturer may not furnish things of value to the licensed retailer at less than the normal sale price, such as nonalcoholic mixers and pouring racks which the licensed retailer may market or sell in his or her business.

5.5. Paying for advertising, display or distribution service. A manufacturer may not provide a licensed retailer with free advertisement, exterior display or distribution services, or any similar types of services.

5.6. Quota sales. A licensed retailer may not be required to purchase any alcoholic liquors in order to purchase nonalcoholic liquors or other products from a manufacturer.

5.7. Other.

5.7.a. A manufacturer may not touch, disturb or otherwise interfere with the product or displays of another manufacturer.

5.7.b. No person except a licensed manufacturer's representative may contact a licensed retailer, or any employee thereof, or enter a retail liquor store for the purpose of:

5.7.b.1 Selling or offering to sell;

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5.7.b.2. Soliciting, negotiating or promoting the sale of alcoholic liquor or distilled spirits; or

5.7.b.3. Conducting a survey, study or similar activity pertaining to the sale, distribution or availability of alcoholic liquors or distilled spirits.

§175-1-6. Advertising.

6.1. General prohibition. - All advertising of alcoholic liquor 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 prohibited. Federal law which provides guidelines relative to acceptable and prohibited advertising of alcoholic liquors must be followed.

6.2. Permissible media. - Printed advertising of alcoholic liquor in West Virginia shall be limited to billboards, newspapers, magazines and similar publications. Radio and television may not be utilized to advertise alcoholic liquors.

6.3. Application. - No person engaged in business as a producer, processor, broker, manufacturer, bottler, importer, wholesaler or retailer of alcoholic liquors or wine, directly or indirectly or through an affiliate, may publish or disseminate or cause to be published or disseminated in any billboard, newspaper, magazine or similar publication any advertisement of alcoholic liquors or wine, unless the advertisement is in conformity with this rule. This prohibition does not apply to the publisher of a newspaper, magazine or similar publication or the standardized outdoor advertising company which owns a billboard, unless such publisher or outdoor advertising company is engaged in business as a producer, manufacturer, bottler, importer, wholesaler or retailer of alcoholic liquors or wine, directly or indirectly or through an affiliate.

6.4. Mandatory statements.

6.4.a. Responsible advertiser. - An advertisement for alcoholic liquors shall state the name and address of the producer, manufacturer, bottler, importer or wholesaler responsible for its publication.

6.4.b. Class, type and distinctive designation. - An advertisement for alcoholic liquors 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. - An advertisement shall state the alcoholic content of the product advertised in the manner and form the information appears on the label.

6.4.d. Percentage of neutral spirits and name of commodity. - An advertisement of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits shall state the percentage of neutral spirits used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which the information appears on the labels of the product advertised. An advertisement of neutral spirits or of gin produced by a process of continuous distillation, shall state the name of the commodity from which the neutral spirits or gin have been distilled substantially in the manner

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and form in which the information appears on the label.

6.4.e. "Line" or "Brand" advertisements. - An advertisement that does not mention a specific product but merely refers to a class of distilled spirits such as "Whiskey" or refers to several classes of distilled spirits (such as "Whiskey," "Brandy," "Rum," "Gin," "Liquor," etc.) marketed under a single brand, the only information required by subsection is the name and address of the responsible advertiser.

6.5. Lettering. Statements required by this rule 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. In particular:

6.5.a. Required information shall be stated against a contrasting background and in type or lettering that is at least the equivalent of eight (8) point type.

6.5.b. Required information shall be 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.c. Where an advertisement relates to more than one product, the required information shall appear in a manner as to clearly indicate the particular products to which it is applicable.

6.5.d. Required information may not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6. Prohibited statements. - Generally.

6.6.a. Restrictions. - An advertisement may not contain:

6.6.a.1. Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards that were not given on a competitive or comparative basis is prohibited;

6.6.a.2. Any statement that is disparaging of a competitor's product. For example, an advertisement may not contain statements such as "Contains no neutral spirits or alcohol" or "This rum will not turn dark in the bottle;"

6.6.a.3. Any statement, design, device or representation that is obscene, lewd or indecent;

6.6.a.4. Any statement, design, device or representation of, or relating to, analyses, standards or tests, regardless of truth, 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.a.5. Any statement, design, device or representation of, or relating to, any guaranty, regardless of truth, that is likely to mislead the consumer. However, nothing in this section prohibits 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

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dissatisfied with the contents of this package."

(Blank to be filled in with the name of person making guaranty.);

6.6.a.6. Any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government unless the such statement is required or specifically authorized by the laws or regulations of such government; if a municipality, county, state or federal permit number is stated, the permit number may not be accompanied by any additional statement relating thereto.

6.6.b. Statements inconsistent with labeling. - An advertisement may not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling;

6.6.c. Curative and therapeutic effects. - An advertisement may not contain any statement, design or device representing that the use of any distilled spirits 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 such as "_____ is good for you" or "Conducive to well-being;"

6.6.d. Place of origin. - An advertisement may not represent that the distilled spirits were manufactured in, or imported from, a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer.

6.6.e. Flags, seals, coats of arms, crests and other insignia. - No advertisement may contain 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 entity. No advertisement may 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 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.

6.7. Prohibited statements - distilled spirits.

6.7.a. Restrictions - An advertisement for distilled spirits may not contain:

6.7.a.1. The words "Bond," "Bonded," "Bottled In Bond," "Aged In Bond" or phrases containing these or synonymous terms, unless the words or phrases appear upon the label of the distilled spirits advertised and are stated in the advertisement in the manner and form as they appear upon the label; and

6.7.a.2. Statements of age. - An advertisement for distilled spirits may not contain any statement, design or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any statement, design or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear

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on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label or an advertisement for rum that is four (4) years or more old may contain general inconspicuous age, maturity or other similar representations, e.g., "Aged In Wood," "Mellowed In Fine Oak Casks."

6.8. Prohibited statements. - An advertisement for wine may not contain:

6.8.a. 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. A 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 may be made nor may any use be made of such a statement that may convey the impression that the wine has been made or matured under United States government or state government supervision or in accordance with United States government or state government specifications or standards;

6.8.b. Any statement, design, device or representation which relates to alcoholic content or tends to create the impression that a wine is "Unfortified", has been "Fortified," 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).

§175-1-7. Transportation.

7.1. Transportation permits. Any person, including any common carrier hired by a direct shipper or a direct shipper as defined in W. Va. Code §60-8-1 *et seq.* and 175 CSR 4, who transports, for hire, any alcoholic liquors to be sold commercially in quantities in excess of one (1) gallon within, into or through the State of West Virginia, shall first give a surety bond, approved by the Attorney General as to form and execution, and by the Commissioner as to sufficiency, payable to the State of West Virginia in the penalty of one thousand dollars (\$1,000.00) on condition that the person will exercise the privileges granted by the permit in conformity with the provisions of the Liquor Control Act and the rules of the Commissioner. A bonded person who defaults on condition of the surety forfeits to the state school fund the sum of one hundred dollars (\$100.00) for each breach, recoverable by the ABCC upon motion with ten (10) days notice in any court having jurisdiction of the parties. Each person transporting alcoholic liquors, in addition to the bond aforesaid, shall pay the Commissioner an annual fee of ten dollars (\$10.00) for the first permit and one dollar (\$1.00) for each duplicate permit issued. In the case of motor carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall accompany the alcoholic liquors at all times during transportation. In the case of air carriers and rail carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall be filed in the principal office of such carrier in this state.

7.2. Any wine distributor or wine retailer, licensed pursuant to W. Va. Code §60-8-3, any private club licensed pursuant to W. Va. Code §60-7-5, any representative licensed under W. Va. Code §60-4-22, and any retail licensee licensed under W. Va. Code §60-3A-12, may by virtue of his or her license, transport within West Virginia any alcoholic beverages that are deemed to be transported in connection with the purpose for which such license was granted without a transportation permit issued by the Commissioner. All shipments by a direct shipper must be made in accordance with the direct shipping requirements in W. Va. Code §60-8-1 *et*

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seq. and 175 CSR 4.

7.3. A licensed retailer who operates more than one (1) retail liquor store within a market zone may transfer alcoholic liquors only from one (1) retail liquor store to another within the same market zone without obtaining written approval from the Commissioner. Two or more such transfers require prior written authorization by the Commissioner.

7.4. A licensed retailer who operates retail liquor stores in more than one (1) market zone may not transfer alcoholic liquors from one market zone to another without first obtaining written approval from the ABCC.

7.5. A licensed retailer, upon picking up alcoholic liquors at the ABCC warehouse, may transport them to the retail liquor store for which the alcoholic liquors were purchased. The receipt provided by the ABCC warehouse is the written approval provided by the ABCC.

7.6. All permits provided for in this rule shall be issued for the period of the calendar year, and the fee therefor shall not be prorated.

7.7. A person may transport in this state up to ten (10) gallons of alcoholic liquors not for resale. Any amount of alcohol to be transported that is in excess of ten (10) gallons requires prior written authorization of the Commissioner.