

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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May 22 3 02 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Alcohol Beverage Control Commission TITLE NUMBER: 175
Department of Tax and Revenue

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 NEW 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) Senate Bill 232 (2000 RS)

SECTION 64-7-1(a), PASSED ON March 13, 2000

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 22, 2000

Donald L. Stemple

FILED

MAY 22 3 02 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE

ALCOHOL BEVERAGE CONTROL COMMISSION

**TITLE 175
SERIES 1**

RETAIL LICENSEE OPERATIONS

§175-1-1. General.

1.1. Scope. -- This rule explains and clarifies 175 C.S.R. 1, 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, 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 10, 2000

1.5. Effective Date. -- May 10, 2000

§175-1-2. Definitions.

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed herein, and apply in the singular and in the plural.

2.1. "Advertisement" means any advertisement of alcoholic liquors through the medium of billboards, newspapers, magazines, or similar publications, and display materials or equipment except that this term shall not include: (1) any label affixed to any container of alcoholic liquors or any individual covering, carton or other wrapper of such container, or (2) any editorial or other reading matter in any periodical or publication or newspaper 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, but shall 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 delegate.

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 will be deemed to be 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 and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) alcohol by volume.

2.15. "Immediate family" means and includes, but is not necessarily limited to:

2.15.1. 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 the licensed retailer, each partners and each corporations' directors, officers and employees .

2.16. "Importer" means a person who brings in or carries in goods from a foreign county for the purpose of sale of such goods in this country.

2.17. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where 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 and he/she may contact a licensed retailer for the purpose of selling, offering to sell, soliciting, negotiating or promoting the sale of alcoholic liquor as distilled spirits, or conducting surveys, studies or similar activities pertaining to the sale, distribution or availability of alcoholic liquors or distilled spirits.

2.19. "Licensed retailer" means the person licensed in accordance with 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 any person engaged in the manufacture of any alcoholic liquor, and among others includes 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 any closed or sealed container or receptacle used for holding alcoholic liquor.

2.25. "Person" means any individual, partnership, joint stock company, business trust, association, 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 retail liquor stores.

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, and any highway, street, lane, park or place of public resort or amusement; provided that the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed by the Commissioner to sell alcoholic liquors for consumption on the premises.

2.28. "Retail liquor store" means a store established and operated under the authority of W.Va.Code §60-3A-1 *et seq.* for the sale of 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" shall include 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.

2.32. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits; or other agricultural products, containing sugar and to which no alcohol has been added, and includes, but not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake or other product offered for sale or sold as wine containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume.

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

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

3.1. Alcoholic liquors sold at retail in West Virginia may be sold only at retail liquor stores licensed in accordance with W.Va. Code § 60-3A-12. While legally holding a valid retail license, the licensed retailer 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; provided that a licensed retailer that operates more than one (1) retail liquor store within a market zone may transfer alcoholic liquors only from one such retail liquor store to another within the same market zone. Any other transfers of alcoholic liquors require prior written authorization from the ABCC.

3.1.1. A licensed retailer may sell other merchandise.

3.1.2. 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 10:00 p.m. 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.

3.1.3. A licensed retailer may employ whom he or she pleases so long as statutory prohibitions are not violated.

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

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

3.1.3.c. All employees must be at least sixteen (16) years of age to work in a retail liquor store so long as the Commissioner has provided prior approval to employ such persons. The Commissioner's approval must be requested in the initial application or annual license renewal forms and such approval will not be unreasonably withheld.

3.1.3.d. The authorization to employ persons under eighteen (18) years of age must be clearly stated on the retail liquor license.

3.1.3.e. The age restrictions in this section apply to the minor children of the licensee.

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

3.1.4.a. 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 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.

3.1.4.b. The creditor will be required to pay the shipping and handling charge of \$1.05 per case sold to the ABCC.

3.2. Licensed retailers are required to purchase all distilled spirits and fortified wines through the Alcohol Beverage Control Commissioner. However, nonintoxicating beer, wine other than fortified wine, except for port, sherry and Madeira wines and other alcoholic liquors which are not distilled spirits shall be purchased through a manufacturer authorized to do business within this State.

3.3. Licensed retailers may sell only alcoholic liquors which have been purchased from the Commissioner, wine other than fortified wine which was purchased from licensed distributors or licensed farm wineries, including port, sherry and Madeira wine, and nonintoxicating beer purchased from licensed manufacturers. Any violation of this section may result in the suspension or revocation of the retail licensee's license.

3.3.1. 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, in order that an examination thereof may be made by the Commissioner.

3.3.2. Every retail licensee must keep a record in book form showing the date of all alcoholic liquors, wine and beer received on his or her premises, and from whom received.

3.3.2.a. Every retail licensee shall also 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).

3.3.2.a.1. In the case of sales to a private club, the club must be identified by name, address and ABCC license number, and the full name of the person receiving the order must be clearly listed.

3.3.2.b. Records required to be maintained by this section shall 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.

3.5. The following acts are prohibited from occurring at a retail liquor store.

3.5.1. The sale of more than ten (10) gallons of alcoholic liquor to a person at one time without approval of the Commissioner, except that:

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

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

3.5.2. The sale of or offer to sell any alcoholic liquor in other than the original package or

container.

3.5.3. The sale or gift, or to permit the sale or gift, or the procurement of any alcoholic liquor for or to any person under age twenty-one (21) or who is visibly intoxicated.

3.5.4. The consumption of any alcoholic liquors on the premises by any person.

3.5.5. The alteration, change or misrepresentation of the quality, quantity or brand name of any alcoholic liquor.

3.5.6. Permitting any person under age 18 to sell, furnish or give alcoholic liquor to any other person.

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

3.5.8. Permitting any person to break the seal on any package or bottle of alcoholic liquor.

3.5.9. Permitting 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.

3.5.10. 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 as contained in the Wholesale Spirits Catalog to the retailer. For the purposes of determining this minimum price, the retailer shall multiply the wholesale cost of the product by one hundred ten percent (110%).

3.5.11. The sale of alcoholic liquors or fortified wine through a window at a drive-in or drive-through retail establishment.

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

4.1. Each retail liquor store is subject to the following procedures.

4.2. The ABCC on a quarterly basis will provide each retail liquor store with the "Wholesale Spirits Catalog." Effective dates of the spirits catalog will be February 1, May 1, August 1 and November 1 and will include all price changes imposed by distillers, importers, suppliers, and others. Price changes may occur no more often than four (4) times per twelve (12) month period. Distillers, importers, suppliers and others are hereby required to provide such price increases at least sixty (60) days prior to the commencement of the next quarter. Failure to provide advance notice may result in the delisting of certain or all of the products of the distiller, importer, supplier or other purveyor of alcoholic liquors. The updated copy of the spirits catalog will be provided approximately two weeks in advance of each effective date.

4.2.1. The Wholesale Spirits Catalog contains all alcoholic liquor products normally available from the ABCC in addition to complete product information and pricing structure. Following is a line by line explanation of the spirits catalog.

4.2.1.a. "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.

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

4.2.1.c. 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.

4.2.1.d. Column 3 - "Proof." Indicates the alcoholic proof of the product.

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

4.2.1.f. 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.

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

4.2.2. Any mischarges due to an error in a spirits catalog will be adjusted accordingly at the earliest possible date after discovery of same.

4.3. Special order spirits.

4.3.1. Not all brands or spirit sizes are physically stocked 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.

4.3.2. The "Special Order" form as developed and provided by the ABCC must be used to order non-listed alcoholic liquors.

4.3.3. A Uniform Special Order Fee not exceeding ten dollars (\$10.00) per case may be charged for each case specially ordered.

4.3.4. When the Special Order is received at the ABCC warehouse, the order will be automatically added to the retail liquor stores 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.

4.3.5. There will be no refunds or return on any Special Order product unless the product is

deemed to be unsalable by ABCC.

4.4. Official Notice of Price Change.

4.4.1. ABCCs spirit suppliers are authorized to adjust product prices on a quarterly interval as quarters are defined by Section 4.2. of this rule. Retail liquor stores will be notified of wholesale price changes by use of 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.

4.4.2. 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 the date of a price change, and any date thereafter, will be invoiced at the new price until such time the product changes price again. The Official Notice of Price Change should be used to update prices on the Wholesale Spirits Catalog until updated versions are issued. The order date determines what wholesale price will be charged to the retailer.

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

4.5.1. Distillers and Importers occasionally give temporary price reductions called SPA, or special purchase allowance, on certain products for a limited period of time. These price reductions may be passed on to the retail liquor stores on a dollar-for-dollar basis.

4.5.2. Retail liquor stores will be notified approximately two (2) weeks in advance of upcoming temporary price reductions. Notification will be made by use of the Official Notice of Price Change. Also, a flyer will be issued containing the period of time that the product will be eligible for purchase at discount. Ordering by the retail liquor store must take place during the temporary price reduction period to take advantage of the discount.

4.5.2.a. The SPA price reduction reflected in the Wholesale Spirits Catalog will be allowed on orders whether or not the retailer specifically requests it.

4.6. Payment for purchases.

4.6.1. The licensed retailer is required to pay for the alcoholic liquors prior to delivery of all liquors into the retail liquor store. Payment must be made by an electronic funds transfer which will be 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 must be received at the ABCC at least twenty-four (24) hours prior to shipping of the alcoholic liquors.

4.6.2. In order to utilize electronic funds transfers, the licensed retailer is required to provide to the ABCC necessary written authorization to debit the retailers' checking account for purchases of alcoholic liquors. The licensed retailer, at the time of initial licensing, must provide to the ABCC the properly completed authorization form when electronic funds transfers are to be utilized.

4.6.2.a. An EFT may be made only for the amount of the purchase.

4.6.2.b. Delivery of alcoholic liquors purchased by methods other than EFT will not occur if the money order, certified check or cashier's check is not received at least twenty-four (24) hours prior to the shipping date.

4.6.2.c. Any EFT which is not completed due to nonsufficient funds will preclude further processing of liquor orders to the licensee by ABCC until payment is actually received. In any calendar year where the Commissioner receives two (2) nonsufficient fund responses to a properly executed EFT from a licensee's bank account, further liquor orders of the licensee will only be shipped after the Commissioner's receipt of a certified check, cashier's check or money order for the full amount of the order at least twenty-four (24) hours prior to delivery.

4.6.3. In those situations where 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.

4.7. Ordering alcoholic liquors.

4.7.1. Each retail liquor store will be assigned a specific day of the week, during which alcoholic liquors may be ordered 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. The days will be adjusted for any week which has a holiday, and notification of such adjustments will be provided to each retailer. Extenuating circumstances may also occasionally adjust the order day schedule for a week.

4.7.1.a. 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.

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

4.7.3. Orders may be changed at any time up to 2:30 p.m. of the retail liquor store's regular order day.

4.7.4. An order to be delivered must contain at least five (5) cases.

4.7.5. Telephone order placement procedure.

4.7.5.a. 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.

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

4.7.5.c. Full cases must be ordered first by giving first the merchandise code from the catalog and then the quantity of full cases.

4.7.5.d. The retail liquor store will be given 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. Out-of-stock product may be reordered by the retail licensee on its next order date.

4.7.6. Order pick-up procedure ("will-call").

4.7.6.a. The 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 should not be used to circumvent the regular ordering procedure.

4.7.6.b. Alcoholic liquor sold in this manner will be sold only in full case lots not exceeding ten (10).

4.7.6.c. Items sold in this manner must be ordered 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.

4.7.6.d. When ordering, the store name and account number must be provided.

4.7.6.e. Prior to loading, payment must be completed by usage of a money order, EFT, certified check or cashier's check.

4.7.6.f. No claims 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 I.) signifying acceptance of the order.

4.8. Delivery of alcoholic liquors.

4.8.1. Deliveries are made Monday, Tuesday, Wednesday, and Thursday on a regular basis and generally between the hours of 6:00 a.m. and 6:30 p.m. and are dependent upon the assigned ordering day and the distance of the retail liquor store from the ABCC warehouse. Deliveries may only be made to the retail liquor store, not to a warehouse or other location where alcoholic liquors are stored: Provided, that 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.

4.8.2. 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.

4.8.3. The transport driver will provide the retail liquor store with a complete set of the Invoice Forms in order that the delivery can be checked 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 and then only when the claim complies with any additional requirements provided in Section 4.9 of this rule. With the exception of 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.

4.8.4. 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 adjustments or corrections made. The transport driver will transport any claims made for breakage, shortage and overage on the Invoice Form, Exception Section, and Retailer Claim Form (Appendix II).

4.8.4.a. Delivery Breakage. - Any product that is broken during delivery or during unloading will be rectified by the transport driver who will complete the "Invoice Exception" portion of the Invoice Form detailing the breakage, a copy 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.

4.8.4.b. 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. A copy of these forms will be retained by the transport driver and the retailer. 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.

4.8.4.c. 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 case or cases. There will be no credit in this instance because the retail liquor store was not billed for the product on the invoice.

4.8.4.d. No further adjustments may be made after all invoices and Invoice Exceptions have been signed.

4.9. Misordered product and defective product discovered after delivery.

4.9.1. Misordered product. - (Product received in error due to wrong order number or not ordered.)

4.9.1.a. Returns of misordered products will be authorized if the following procedures are adhered to:

4.9.1.a.1. The ABCC warehouse must be notified 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 the item(s) on any day except the day delivery actually occurred.

4.9.1.a.2. The entire quantity of the misordered product may be returned.

4.9.1.a.3. There will be no return authorized for "Special Order, " "Decanter Collector Series" or one-time buy offerings.

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

4.9.1.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 and return the misordered product to the warehouse.

4.9.1.a.6. The ABCC will process the claim and apply a credit memo to the next order after the claim has been approved.

4.9.2. Concealed shortage - bottle(s) missing inside full case.

4.9.2.a. The original carton in which the product was delivered must be saved. Credit will not be issued if the carton is unavailable for inspection by the ABCC.

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

4.9.2.c. The ABCC representative will provide a copy of the Invoice Form and Retailer

Claim Form to the retail licensee.

4.9.2.d. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.9.3. Dry breakage - breakage discovered inside full case.

4.9.3.a. The following must be returned to the ABCC warehouse:

4.9.3.a.1. 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 will follow shipping instructions for glass and shards of glass that may be dangerous.

4.9.3.a.2. Carton in which breakage was discovered.

4.9.3.a.3. No credit will be issued without the above-mentioned items being available for inspection by the ABCC.

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

4.9.3.c. The ABCC will provide a copy of the Invoice Form and Retailer Claim Form, to the retail licensee.

4.9.3.d. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.9.4. Defective or spoiled merchandise - product discovered by the retail liquor store or returned by a consumer as unsalable.

4.9.4.a. The unsalable product (or reasonable part thereof) must be returned 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.

4.9.4.b. The ABCC will dispose of the product. A credit memo will be applied to the next order.

4.9.4.c. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.9.5. Wrong product in case - mismarked case

4.9.5.a. The case and the entire contents must be set aside and then the entire case must be returned to the ABCC warehouse.

4.9.5.b. The ABCC will send all documentation, Invoice Form and Retailer Claim Form, to the warehouse where pickup of the mismarked case will be scheduled as soon as possible.

4.9.5.c. 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.

4.9.5.d. The ABCC will process the claim and a credit will be applied to the next order after the claim has been approved.

4.10. Credit pricing policy.

4.10.1. Every attempt will be made to issue credit based on the price the retail liquor store was invoiced 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 for the product will be used for credit purposes.

4.10.2. ABCC will not be 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 prohibit inducements by manufacturers, directly or indirectly, for any licensed retailer to purchase any alcoholic liquors from the manufacturer to the exclusion, in whole or in part, of such products which are sold or offered for sale by another manufacturer, when such inducements are in any of the following manners:

5.1.1. By 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;

5.1.2. By acquiring any interest in the 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;

5.1.3. By 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: Provided, That a manufacturer may furnish to a licensed retailer items of nominal value for in-store display or sales purposes and which may only be used within the licensed retail liquor store.

5.1.4. By paying or crediting the licensed retailer or his or her immediate family for any advertising, display, or distribution services;

5.1.5. By guaranteeing any loan for the repayment of any financial obligation of the licensed retailer or his or her immediate family; or

5.1.6. By requiring the licensed retailer to take and dispose of a certain quota of any distilled spirits.

5.2. Interest in the retail license. - The 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 is owned, occupied or in any manner used by the licensed retailer or his or her immediate family.

5.2.1. This prohibition includes the officers, partners, employees, other representatives, and the immediate family of any such individuals, of the manufacturer.

5.2.2. Also prohibited is any such interest acquired by a separate corporation in which the manufacturer or its officers, partners, employees or other representatives, and the immediate family of any such individuals, hold any ownership interests or with which such persons are otherwise affiliated.

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

5.3.1. Manufacturers 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 any other of his or her businesses or those of his or her immediate family.

5.3.2. The foregoing prohibition also applies to any interest acquired by corporate officials, partners and employees or other representatives, or the immediate family of any such individuals, of the manufacturer and to any interest which is acquired by a separate corporation in which the manufacturer or its officers, partners, employees or other representatives, or the immediate family of any such individuals, hold any ownership interest or in which they are otherwise affiliated.

5.3.4. A manufacturer is prohibited from acquiring a mortgage on a licensed retailer's real or personal property or on the real or personal property of the licensed retailers' immediate family.

5.3.5. A manufacturer is prohibited from the renting of display space or shelf space at a retail liquor store.

5.4. Furnishing things of value.

5.4.1. A manufacturer may not furnish, give, rent, or lend to the licensed retailer or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value. However, a manufacturer may sell to the licensed retailer goods that are to be resold to the general public and which are not alcoholic liquors so long as the licensed retailer must pay the normal sale price for these goods. This prohibition shall not apply to signs and other display-related materials, provided that such signs and materials are of negligible monetary value. The manufacturer or retailer must have prior written approval from the Commissioner.

5.4.2. 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.

5.4.3. The sale of any equipment, supplies or fixtures to a licensed retailer by a manufacturer must take place at the current market value and there may be no special price advantage to purchasing from one manufacturer as opposed to another manufacturer.

5.4.4. The manufacturer may not provide any assistance (financial, legal, administrative or influential) to the licensed retailer in the licensed retailer's acquisition of the retail license required to operate a license retail liquor store.

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

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

5.5. Paying for advertising, display or distribution service.

5.5.1. 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.

5.6.1. 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.

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

5.7.2. No person except a licensed representative may contact a licensed retailer, or any employee thereof, or enter a retail liquor store for the purpose of selling, or offering to sell, or soliciting, negotiating or promoting the sale of alcoholic liquor or distilled spirits, or for the purpose of 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 hereby 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, shall 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 these rules; provided that these provisions shall not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication, 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.

6.4.1. Responsible advertiser. - The advertisement shall state the name and address of the producer, manufacturer, bottler, importer or wholesaler responsible for its publication. Street name and number may be omitted in the address.

6.4.2. Class, type and distinctive designation. - The advertisement 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.

6.4.3. Alcoholic content. - The alcoholic content shall be stated in the manner and form in which it appears on the labels of alcoholic liquors being advertised.

6.4.4. Percentage of neutral spirits and name of commodity. - In the case of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits have been used in the production, there shall be stated in the advertisement the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated in the advertisement the name of the commodity from which such neutral spirits or gin has been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised.

6.4.5. "Line" or "Brand" advertisements. - Where an advertisement does not mention a specific product but merely refers to a class of distilled spirits such as "Whiskey" and the advertiser markets more than one brand of distilled spirits of that class, or where the advertisement refers to several classes of distilled spirits (such as "Whiskey," "Brandy," "Rum," "Gin," "Liquor," etc.) marketed under a single brand, the only mandatory information prescribed by Section 6.4 of this rule that applies to the advertisement is the name and address of the responsible advertiser.

6.5. Lettering.

6.5.1. Conspicuousness of mandatory statements. - 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:

6.5.1.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.

6.5.1.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.

6.5.1.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.

6.5.1.d. Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6. Prohibited statements. - Generally.

6.6.1. Restrictions. - An advertisement shall not contain:

6.6.1.a. Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards, when no medals or awards have been given or where the medals or awards were not given on a competitive or comparative basis are prohibited.

6.6.1.b. 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."

6.6.1.c. Any statement, design, device or representation that is obscene, lewd or indecent.

6.6.1.d. Any statement, design, device or representation of, or relating to, analyses, standards or tests, irrespective of falsity 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."

6.6.1.e. Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, that is likely to mislead the consumer.

6.6.1.e.1. Nothing in this section shall prohibit 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 dissatisfied with the contents of this package."

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

6.6.1.f. 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 such statement is required or specifically authorized by the laws or regulations of such government; and if a municipality, county, state or federal permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

6.6.2. Statements inconsistent with labeling. - The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling.

6.6.3. Curative and therapeutic effects. - The advertisement shall 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."

6.6.4. Place of origin. - The advertisement shall 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.

6.6.5. Flags, seals, coats of arms, crests and other insignia. - No advertisement shall 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 the Armed Forces of the United States; nor shall any advertisement 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, or 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.

6.7.1. Restrictions - An advertisement for distilled spirits shall not contain:

6.7.1.a. 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 labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form as they appear upon the label.

6.7.1.b. Statements of age. - An advertisement for distilled spirits shall 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 labels 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 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. - wine.

6.8.1. Restrictions. - An advertisement for wine shall not contain:

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

6.8.1.b. Any statement, design, device or representation which relates to alcoholic content or tends to create the impression that a wine is "Unfortified" or has been "Fortified," or 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 these rules to appear as a part of the designation of the product).

§175-1-7. Transportation.

7.1. Transportation permits.

7.1.1. Before any person shall transport, 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, such person shall 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) conditioned that such 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, or in default thereof forfeit to the state school fund the sum of one hundred dollars (\$100.00) for each breach recoverable by motion upon ten (10) days notice in any court having jurisdiction of the parties. Each person transporting such 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.

7.1.2. Any wine distributor or wine retailer, licensed pursuant to the provisions of W.Va. Code §60-8-3, any private club licensed pursuant to the W.Va. Code §60-7-5, any representative licensed under the provisions of W.Va. Code §60-4-22, and any retail licensee licensed under the provisions of W.Va. Code §60-3A-12, by virtue of their license, may 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.

7.1.2.a. 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.

7.1.2.b. 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.

7.1.2.c. A licensed retailer, upon picking-up alcoholic liquors at the ABCC warehouse, may transport such alcoholic liquors to the retail liquor store for which the alcoholic liquors were purchased. In such situations, the receipt provided by the ABCC warehouse shall be the written approval provided by the ABCC.

7.1.3. All permits provided for herein shall be issued for the period of the calendar year, and the fee therefor shall not be prorated.

7.1.4. A person may transport in this State up to ten (10) gallons of alcoholic liquors that is 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.



**STATE OF WEST VIRGINIA
ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

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

CECIL H. UNDERWOOD
GOVERNOR

DONALD L. STEMPEL
COMMISSIONER

ROBIN CAPEHART
SECRETARY OF TAX & REVENUE

May 20, 2000

Judy Cooper, Director of Rules
Secretary of State's Office
Capitol Building
Charleston, WV 25305

Dear Judy:

Enclosed is the printed final rule for Title 175-1, Retail Liquor Store Licensee Operations, and a copy of same on a disk. Also enclosed is the printed final rule for Title 175-2, Private Club Licensing, and a copy of same on a disk.

These rules were passed by the Legislature on March 13, 2000, in Senate Bill 232. Since we have had such difficulty with getting our corrections to "hold" on the "save" command, I am enclosing a copy of the draft/proofed copies which were given to me by Senate Judiciary to correct. Jane Charnock, Gene Hal Williams, our attorneys, and I have had a very difficult time with this function of the computer. Therefore, I "recorrected" or corrected again these rules to include all the editing they required. I pray this time they held.

I will return from vacation May 30th or maybe earlier -- just depends. Anyhow, Commissioner Stemple and Jane Ann Reed, his secretary, can reach me if you have any questions. As I mentioned to you on the telephone, Mother required constant supervision while in the hospital and when she was released on Wednesday evening, my aunt telephoned from Cleveland to tell me that my uncle had died and they were coming home for the burial. It was Friday.

With real appreciation for all your help and expertise, I am

Sincerely yours,

Betty Peters White

OFFICE OF THE SECRETARY OF STATE
MAY 22 3 34 PM '00
FILED