



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

FILED IN THE OFFICE OF

SECRETARY OF STATE

THIS DATE June 26, 1981

[Handwritten signature]

Series 4

I, Norwood Bentley III, Commissioner,
Title or Position

West Virginia Alcohol Beverage Control Commission hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- (X) other - specify (Emergency Regulations

*obsolete
emergency rule
valid June 26, 1981
to Nov 30, 1981*

This filing pertains to

Chapters 8 & 60
Articles 8-13 and 60-1,3,4,6,7 and 8
Series IV
Section 1 - 10
Page No. 1 - 64

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

June 26, 1981

Date Submitted

Norwood Bentley III
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL COMMISSIONER

Chapter 60-8

(Series IV)

(Emergency Regulations)

1981

SUBJECT: Emergency Rules and Regulations of the West Virginia Alcohol Beverage Control Commissioner pertaining to the distribution and retail sale of wine.

Section 1. General

(a) Scope- These emergency rules and regulations provide for the implementation of House Bill 1111, Acts of the Legislature of West Virginia, Regular Session, 1981, and apply to the supplying, distribution and retail sale of wine in the State of West Virginia by persons other than the Alcohol Beverage Control Commissioner and the taxation thereof.

(b) Authority- These regulations are issued under the authority of the Code of West Virginia, 1931, as amended and specifically to Chapter 8, Article 13, Section 7; Chapter 60, Article 8; and Chapter 29A, Article 3, Section 14 of said Code.

(c) Effective date- These regulations were promulgated on the 26th day of June, 1981, and become effective upon the date of their filing.

(d) Filing date - These regulations were filed in the office of the Secretary of State of the State of West Virginia on the 26th day of June, 1981.

(e) Nature of Emergency - House Bill 1111, Acts of the Legislature, Regular Session, 1981, was adopted and passed on the 26th day of March, 1981, to become effective ninety days thereafter (90 days) (June 24, 1981).

House Bill 1111 amended various existing provisions of Chapter 60 of the Code of West Virginia, 1931, as amended, amended Chapter 8, Article 13, Section 7, of said Code. (relating to the municipal taxation upon the purchase of intoxicating liquors) and added a new article designated Article 8 to Chapter 60 of said Code relating generally to the sale of wine in West Virginia. Chapter 60, Article 8, Section 23 of said Code relating to the authority, duties and powers of the Alcohol Beverage Control Commissioner with respect to the sale of wine requires that the Commissioner promulgate rules and regulations and further provides that the initial rules and regulations be promulgated within 30 days of the effective date of House Bill 1111.

Since presumably the provisions of House Bill 1111 become operable on the 24th day of June, 1981 and because the Commissioner was without authority to promulgate rules and regulations prior to that date, and in order to provide guidance to those persons licensed pursuant to provisions of Chapter 60, Article 8, the only legal, proper and prudent manner to provide for the orderly regulation of the distribution and retail sale of wine in this State is on an emergency basis under authority granted by the provisions of Chapter 29A, Article 3, Section 14, of the West Virginia Code, 1931, as amended.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL COMMISSIONER

Chapter 60-8

(Series IV)

(Emergency Regulations)

1981

Section 1. General

1.01 Scope - These regulations are adopted and promulgated to:

(a) Establish procedures for the licensing of wine distributors and retailers in the State of West Virginia;

(b) Establish procedures for the registration of all wine by label to be sold at retail in the State of West Virginia by persons other than the West Virginia Alcohol Beverage Control Commissioner;

(c) Establish procedures relating to the collection of taxes levied upon the wholesale and retail sale of wine and establish procedures relating to the refund or credit of certain taxes when authorized;

(d) Establish procedures for filing of reports required of suppliers to West Virginia distributors of wine, as well as those required of such distributors and wine retailers in this State.

(e) Establish procedures for the licensure of agents, brokers and salesmen, whether individuals, firms or corporations, who solicit or negotiate the sale of wine either to the Commissioner or to West Virginia distributors of wine;

(f) Establish procedures for the registration of wineries or wine suppliers who engage in or desire to engage in supplying or providing wine to either the Commissioner or to any West Virginia distributor of wine; and

(g) the general regulation of the operation of wine suppliers, distributors and retailers authorized to do business in this state pursuant to Chapter 60, Article 8 of the West Virginia Code, 1931, as amended.

1.02 Authority - These regulations are promulgated under the authority of Chapter 8, Article 13, Section 7; Articles 1, 3, 4, 6 and 8 of Chapter 60; and Chapter 29A, Article 3, Section 14 of the Code of West Virginia, 1931, as amended.

1.03 Effective Date - These regulations were promulgated and adopted on the 26th day of June, 1981, to become effective upon the filing thereof in the office of the Secretary of State of the State of West Virginia.

1.04 Filing Date - These regulations were filed in the office of the Secretary of State of the State of West Virginia on the 26th day of June, 1981.

1.05 Certification - These regulations are certified authentic by the Alcohol Beverage Control Commissioner of the State of West Virginia.

Section 2. Definitions

2.01 Definition of Terms Used - As used in these regulations, unless the context clearly requires otherwise, the following definition of words or phrases used in these regulations is hereby adopted:

(a) "Average monthly inventory" as used in the definition of "grocery store" in Chapter 60, Article 8, Section 2 of the Code shall be deemed to include and relate to the amount of food, food products and consumable supplies for the table which are maintained in the inventory of a licensed retailer and shall include only those items which are exempt from Consumers Sales and Service Tax under the provisions of Chapter 11 Article 15, Section 11 of the Code and the rules and regulations promulgated pursuant thereto. Such phrase shall not include stock or inventory of non-intoxicating beer or of items which are not exempt from such tax. With respect to grocery stores which have no demonstrable history of inventory maintenance of such products on an average monthly basis, such grocery store shall not be granted licensure as a wine retailer until the applicant can demonstrate such history during the three months next preceding the date on which licensure is granted. With respect to those applicants for licensure as a wine retailer, whose business is primarily seasonal because of their association with or close dependence upon a lodge, resort or similar establishment and the Commissioner so finds, such applicant will be permitted to select any quarter during the twelve month period next preceding the month during which application for licensure is made during which quarter so selected the requisite inventory was maintained by the applicant for each month during such quarter. All other applicants for licensure as a wine retailer, other than those with no demonstrable inventory history or those

with a seasonal history, who are applying as a grocery store must demonstrate the maintenance of the requisite inventory over the twelve month period next preceding the year or part thereof for which licensure is sought.

(b) "Average monthly sales" as used in the definition of "grocery store" in Chapter 60, Article 8, Section 2 of the Code shall be deemed to include and relate to the amount of food, food products and consumable supplies for the table which are sold by a licensed retailer and shall include only the sales of those items which are exempt from consumers sales and service tax under the provisions of Chapter 11, Article 15, Section 11 of the Code and the rules and regulations promulgated pursuant thereto. Such phrase shall not include the sales of nonintoxicating beer or of items which are not exempt from such tax. With respect to grocery stores which have no demonstrable history of sales of such products on an average monthly basis, such grocery store shall not be granted licensure as a wine retailer until the applicant can demonstrate such history during the three months next preceding the date on which licensure is granted. With respect to those applicants for licensure as a wine retailer, whose business is primarily seasonal because of their association with or close dependence upon a lodge, resort or similar establishment and the Commissioner so finds, such applicant will be permitted to select any quarter during the twelve month period next preceding the month during which application for licensure is made during which quarter so selected the requisite sales level was maintained by the applicant for each month during such quarter. All other applicants for licensure as a wine retailer, other than those with no demonstrable inventory history or those with a seasonal history, who are applying as a grocery store must demonstrate the requisite sales over the twelve month period next preceding the

year or part thereof for which licensure is sought.

(c) "Code" shall mean the Code of West Virginia of 1931, as amended.

(d) "Commissioner" shall mean the West Virginia Alcohol Beverage Control Commissioner and, where applicable, any agent, servant or employee of the Commissioner.

(e) "Distributor" shall mean any person, firm, or corporation licensed by the Commissioner to sell wine to a licensed retailer, licensed private club, the Commissioner, to any other licensed distributor, or to any non-resident distributor under the provisions of Chapter 60, Article 8, of the Code, and with respect to the gallonage tax, such term shall be deemed to include farm wineries.

(f) "Food or foodstuffs normally associated with wine" shall exclude (i) any product containing alcohol, other than wine, permitted to be sold at retail pursuant to Chapter 60, Article 8 of the Code, including, but not limited to, nonintoxicating beer, (ii) soft drinks, and (iii) tobacco and tobacco products, and other products associated with the use of tobacco, and shall include any other product exempt from consumer sales and service tax.

(g) "Grocery store" shall include the separate and segregated portion of any other retail store which is dedicated to the sale of food, food products and supplies for the table and which meets all other criteria required of grocery stores.

(h) "Municipal Sales Tax" shall include the tax imposed by any municipality upon all purchases of intoxicating liquors, pursuant to the provisions of Chapter 8, Article 13, Section 7 of the Code, and shall also include taxes imposed upon all purchases of intoxicating liquors, which purchase is made or consummated outside the corporate limits of any municipality and

which said tax is imposed under the provisions of Chapter 60, Article 3, Section 9d of the Code.

(i) "Post-off" shall mean any discount (irrespective of its denomination by the supplier) which a supplier gives to a distributor which relates to a specific brand, class and type of wine or size thereof, which discount is of limited duration, and which bears no relationship to the amount or quantity of such wine purchased by the distributor from the supplier.

(j) "Retailer" shall mean any person licensed by the Commissioner to sell wine at retail for off premises consumption and shall, where applicable, include private clubs licensed under the provisions of Chapter 60, Article 7 of the Code; and shall, with respect to municipal sales tax and consumer sales tax, be deemed to include farm wineries.

(k) "Soft drink" shall mean any product subject to taxation under the provisions of Chapter 11, Article 19, of the Code.

(l) "Supplier" shall mean any manufacturer, producer, processor, distributor or supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor of the Commissioner.

(m) "Wine accessories" shall be deemed to include any product or item directly associated with the use and consumption of wine, e.g., (i) glasses, (ii) carafes, (iii) decanters, (iv) wine racks, (v) books, magazines and other publications devoted principally to foods and wines, (vi) napkins, (vii) items or products similar in nature and/or use to any of the foregoing.

Section 3. Suppliers

3.01 Registration of Suppliers and Sales Representatives - To the extent suppliers are either registered or licensed by the Commissioner to sell wine to the Commissioner or to the extent such supplier has a representative licensed pursuant to the provisions of Chapter 60, Article 4, Section 22 of the Code requiring the licensure of sales representatives, such supplier will be deemed to have qualified and registered pursuant to the provisions of Chapter 60, Article 8, Section 6 of the Code, which requires the registration of persons or firms supplying or furnishing wine to licensed distributors. If a supplier is not currently selling wine to the Commissioner or if a supplier has no representative licensed pursuant to the provisions of Chapter 60, Article 4, Section 22 of the Code, such supplier shall register by having or causing the licensure of its sales representative with the Commissioner. Every supplier must have a representative licensed to solicit or consummate sales in this State. Such licensure and registration shall be effectuated by completion of Application for Representative's License, Alcohol Beverage Control Commissioner Form No. ABC - 181, which form must be completed and acknowledged by a Notary Public in the manner provided in such form; which said form may be amended from time to time as the Commissioner may deem expedient and proper.

The registration of one sales representative shall not preclude the required registration and licensure of other persons acting as sales representative for the same supplier.

Promotional representatives who are not actively or actually engaged in sales solicitations from either the Commissioner or licensed distributors need not register and be licensed under the aforecited statutory provisions.

3.02 Monthly Report of Suppliers; Form; Content -

(a) Chapter 60, Article 8, Section 6 of the Code requires that suppliers shall furnish monthly reports of the total amount of liters sold and shipped by suppliers to licensed distributors in this State. Such report is required to be filed no later than the 15th day of the month following such delivery. Such report shall be made on Monthly Summary Report of Total Liters Sold, Shipped and Delivered to Distributors, West Virginia Alcohol Beverage Control Commissioner Form ABCC-WS-1-F and only one monthly report need be filed by a supplier even though that supplier may have more than one licensed sales representative in the State; which said form may be amended from time to time as the Commissioner may deem expedient and proper.

(b) Such report shall contain the following information:

- (1) The name and address of the supplier;
- (2) The name and address of the licensed West Virginia representative of the supplier. (If the supplier has more than one licensed representative, the licensed representative primarily responsible for the State of West Virginia only need be given, and if all representatives are of equal status, then the name of only one representative need be given);
- (3) The month for which the report is being made;
- (4) The name or names of all distributors to whom deliveries were made, the address of all such distributors and the Alcohol Beverage Control Commissioner License number of such distributors;
- (5) The total number of liters sold and delivered to such distributor;

(6) The identification of the person preparing the report on behalf of the supplier and the business telephone number of such person;

All such reports shall be acknowledged before a Notary Public in the manner provided upon such form.

3.03 Invoices Required; Copies to Commissioner; Content - Two copies of all invoices of all shipments made during the month for which the report is made shall be forwarded to the Commissioner at the time of shipment to a licensed distributor. The invoice shall identify the licensed distributor to whom such shipment is made, the items so shipped by label identification and the quantity stated in liters and the alcohol content of each item so sold, shipped and delivered to such distributor.

3.04 Post-offs Permitted; Limitations and Restrictions - Post-offs shall be permitted subject to the limitations and restrictions herein. No supplier shall offer to any distributor in this State any post-off which is conditioned upon either (i) a requirement that the distributor pass through such post-off to any retailer, (ii) that the distributor participate in such post-off in such a way that the distributor is required to match, either in whole or in part, such post-off, or (iii) that the distributor is, in any way, compelled or induced to violate the provisions of Section 4.19 of these regulations relating to minimum markup. Every post-off shall be offered under equal terms and conditions to every licensed distributor carrying the product of the supplier to which the post-off applies.

Nothing herein shall be construed so as to prohibit the participation by a distributor in any post-off offered by a supplier or from

passing on to any retailer such post-off so long as the same meets the provisions of this regulation and so long as such post-off is passed on to all retailers, in whole or in part, equally.

3.05 Sales to Retailer by Supplier Prohibited - No supplier shall sell or furnish wine to a licensed retailer except through a licensed distributor or the Commissioner.

Section 4. Wine Distributors

4.01 Licensure Application - Form - The application for licensure as a wine distributor shall be upon forms designated, Application for Wine Distributor License, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1 which shall be provided by the Commissioner and shall contain such information as may be required by these regulations; which application form may be amended from time to time by the Commissioner as the Commissioner may deem expedient and proper.

4.02 License Application - Content - The application for licensure as a wine distributor shall contain and include the following:

(a) The name and address of applicant and shall state whether the applicant is an individual, corporation, partnership, association or other business entity;

(b) The business trade name of the applicant;

(c) The exact location of the principal place of business;

(d) The number and exact location of all warehouses to be operated by the applicant for the purpose of distribution of wine;

(e) The date upon which the applicant began the operation of the business;

(f) Whether the applicant is the owner of all business premises for which the license is issued, and if not, shall state whether the applicant is the actual and bona fide lessee of any or all such premises and shall include the lessor's name and address for each business premises so leased.

(g) An indication whether or not the applicant intends to carry on the business for which he is to be licensed for himself or under his immediate supervision or direction, and if not, shall state the name, age and address of the person who will manage or conduct the affairs of the

distributorship sought to be licensed;

(h) A statement as to whether or not the place of business for which the license is sought conforms to all applicable health and fire laws and regulations and whether the premises for which the license is sought conforms to existing zoning ordinances;

(i) A statement as to whether the applicant, if an individual, or whether any partner, member, officer, director or stockholder of the applicant holds or owns any interest in any licensed wine retailer, and if so, the extent and nature of such ownership;

(j) If the applicant is an individual, a statement whether such applicant is a citizen of the United States, a bona fide resident of the State of West Virginia and the length of such residency and whether such applicant has attained the age of 18 years;

(k) If the applicant is a partnership, association or other business entity, as to each member, a statement whether such member is a citizen of the United States, a bona fide resident of the State of West Virginia and the length of such residency and whether such member has attained the age of 18 years;

(l) If the applicant is a corporation, a statement whether the person or persons who are or will be conducting or managing the business of such applicant are citizens of the United States, residents of the State of West Virginia and whether such person or persons have attained the age of 18 years;

(m) A statement whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant;

(i) has been convicted of a felony or other crime involving moral turpitude within three years next preceding the filing date of the application;

(ii) has been convicted of a violation of the liquor laws of any state or the United States within two years next preceding the filing date of the application; or

(iii) had any license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;

(n) A statement as to whether the applicant has entered into any exclusive franchise agreement with any manufacturer, producer, processor, distributor or supplier of wine to the extent that the applicant has been granted the exclusive right within the State of West Virginia or within any given territory thereof to distribute the product or products of such manufacturer, producer, processor, distributor or supplier;

(o) If the applicant is a corporation, the names, addresses and corporate title of all officers, which statement shall include the name, address and age of all persons having twenty percent (20%) or more of stock or beneficial interest in the applicant; and

(p) Such other information as the Commissioner may from time to time require.

4.03 Licensure Application - Signature and Acknowledgement Required -

All applications shall be signed by the applicant and shall be made under oath and acknowledged or verified. In the case of a partnership the application shall be signed by each of the partners; Provided, That, in the case of a limited partnership, the application shall be signed by each of the general

partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members of the governing board shall sign. In the case of a corporation, each officer and director shall sign.

4.04 Bond - No license shall be issued to any applicant for licensure as a distributor until the applicant therefor has executed a bond in the penal sum of Ten-Thousand-Dollars (\$10,000), payable to the State of West Virginia. The surety of said bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia. Such bond shall be conditioned on the payment of all fees and taxes prescribed by the law and on the faithful performance of, and compliance with, the provisions of Chapter 60, Article 8 of the Code and these regulations. The bond required hereby shall be executed on Wine Distributor Bond, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-B, which form may be changed and amended from time to time by the Commissioner, as he may deem expedient and proper.

4.05 Corporate Charter, Partnership Agreement or Association Bylaws Required - If the applicant for licensure as a wine distributor is a corporation, the applicant shall furnish with its application a copy of its corporate charter, including any amendments thereto. If the applicant is a partnership, limited partnership or association, such applicant shall provide a copy of the partnership agreement or a copy of the association's bylaws.

4.06 Fees - An applicant for licensure as a wine distributor shall remit with the application the annual fee for such license and the annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

If the application is for licensure for less than an entire fiscal year,

then such fee shall be proportionate to the remainder of such year according to the date of application, as follows:

(a) If application be made at any time from July 1 through September 30, such fee shall be for the full fiscal year, or Twenty-Five Hundred-Dollars (\$2500.00);

(b) If the application be made at any time during the period from October 1 through December 31, such fee shall be three-quarters of the annual fee, or Eighteen-Hundred-Seventy-Five Dollars (\$1875.00);

(c) If the application be made at any time from January 1 through March 31, such fee shall be one-half of the annual fee, or Twelve-Hundred Fifty-Dollars (\$1250.00);

(d) If the application be made at any time from April 1 through June 30, such fee shall be one-fourth of the annual fee, or Six-Hundred-Twenty Five-Dollars (\$625.00).

Such fee shall be payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order.

4.07 Investigations - Upon receipt of an application for licensure as a wine distributor and of the fee, bond and other documents required to be provided with such application, the Commissioner shall make a thorough investigation to determine whether the applicant and all locations and premises to be operated by the applicant pursuant to the license applied for qualify for licensure and shall investigate all matters connected therewith, including but not limited to such matters which may affect the public welfare, health and morals.

4.08 Refusal of License - No license shall be issued to any applicant:

(a) That submits an application for licensure that

contains any false statement;

(b) That is affirmatively shown to be not a suitable person in the community or communities in which it operates;

(c) In which any partner, member, manager, officer, director, or stockholder owning twenty percent (20%) or more stock or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part, (i) has been convicted of a felony or other crime involving moral turpitude within three years next preceding the filing date of the application, or (ii) has been convicted of violating the liquor laws of any state or the United States within two years next preceding the filing date of the application or (iii) had any license revoked under the liquor laws of any state or the United States within five years next preceding the filing date of the application; or

(d) Fails to meet the requirements of the liquor laws or the regulations of either this State or of the United States.

4.09 License Not Transferable - A license issued to a distributor shall be valid only for the person, firm or corporation named thereon. Such license shall extend to all warehouses utilized by such person, firm or corporation for the distribution of wine retailers. Such license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent (20%) or more thereof, the Commissioner shall be notified in writing with respect thereto within ten days next succeeding such transfer. If there is a change in the beneficial ownership to the extent of fifty percent (50%) or more thereof, then such license shall be voided and the licensee must make application for a new license. In the event there is transfer in the beneficial ownership of any interest in a licensed distributor, irrespective of the amount thereof, the new owner of such beneficial interest must meet all

of the requirements of the provisions of any and all laws of the United States and any rules and regulations promulgated pursuant thereto and of the laws of the State of West Virginia, including, but not limited to, the provisions of Chapter 60 of the Code and the rules and regulations promulgated pursuant thereto.

4.10 Warehousing; Copies of License to be Posted; Records Required to be Maintained at each Warehouse; Inter-Distributor Comingling of Stock Prohibited -

(a) All licensed distributors must have, prior to licensure as such, sufficient and adequate warehousing facilities for the storage and distribution of wine.

(b) In the event a distributor maintains separate warehouse facilities, a copy of his license must be displayed at each warehouse location.

(c) In the event a licensed distributor has more than one warehouse to which the license applies and from which wine is distributed, for the purpose of any documents, records or other similar thing required to be maintained by such distributor, to that extent, each warehouse shall be regarded as a separate entity and any record, invoice or other document required by law or these regulations to be kept by such distributor shall actually be maintained at each warehouse with respect to all wine received at and/or distributed from such warehouse. Nothing herein shall prevent a distributor from maintaining a duplicate record at his principal place of business with respect to each warehouse operated by him pursuant to the license granted or from including all such transactions of a separate warehouse within and as a part of such distributor's overall accounting system,

if a copy of records, invoices and other documents relating to a particular warehouse are maintained at the warehouse location to which they apply.

(d) Except with respect to inter-distributor transfers that may be authorized by the laws of this State or by these regulations, no licensed distributor shall utilize in any manner the warehouse facilities of another licensed distributor nor shall the wine stock of any distributor be comingled in any way with the wine stock of any other licensed distributor.

4.11 Change of Location - If any distributor desires or intends to change the location of his principal place of business or of any warehouses, or to acquire and utilize an additional warehouse or warehouses for the distribution of wine during the period for which his license is current, such distributor shall notify the Commissioner in writing at least thirty days next preceding the date of such relocation or acquisition and may do so only upon the written approval of the Commissioner.

4.12 Wine Label Registration Required - No wine may be sold by a supplier to a licensed distributor or by a licensed distributor to a licensed retailer until the registration of the label of such wine by the licensed distributor has been approved by the Commissioner.

4.13 Label Registration; Form; Number Required - Application for label registration by a licensed distributor shall be upon forms designated, Wine Label Registration, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-D, which shall be provided by the Commissioner and shall contain such information as may be required by these regulations. Such registration form may from time to time, be amended and changed by the Commissioner as and when he may deem expedient and proper.

Only one registration shall be required irrespective of the number of various sizes of the wine or product to be sold.

4.14 Label Registration - Content - The application for wine label registration shall contain and include the following:

- (a) The distributor's name;
- (b) The distributor's state license number;
- (c) The distributor's federal basic permit number;
- (d) The name and address of the supplier;
- (e) The name of the licensed representative of the supplier; (If the supplier has more than one licensed representative, only the name of the representative dealing primarily with the distributor need be given.);
- (f) The brand name of the wine to be registered;
- (g) The class and/or type of wine to be registered;
- (h) The alcohol content of wine by volume;
- (i) The date upon which such wine label registration application is made; and
- (j) The signature and title of the person actually making or completing such registration on behalf of the licensed distributor.

The label registration form shall be accompanied by unattached labels of all wines to be registered, and ATF Form 1649, Application for and Certification of Label Approval Under Federal Alcohol Administration Act, for each label sought to be registered.

4.15 Label Registration - Fees - A fee of Three-Dollars (\$3.00) for each label submitted for registration shall be remitted at the time of registration. Payment of such fee may be made by either certified check, cashier's check or money order payable to the Alcohol Beverage Control Commissioner.

4.16 Presales Required; Sales by Route Deliverymen Prohibited; Invoices or Purchase Orders Required; Retailer's Right to Refuse - No route deliverymen or other person delivering wine from a distributor to a licensed retailer shall be permitted to sell or to deliver to such retailer any wine which has not been previously ordered by such retailer. All sales of wine from a distributor to a retailer shall be upon order made by such retailer prior to the delivery thereof and all such sales shall be paid for in their entirety upon delivery thereof. No distributor shall transport any wine for which there is no invoice or purchase order.

Notwithstanding the foregoing, any retailer may refuse to accept, upon delivery, any item or items or quantity thereof which has been previously ordered by him; in which case the person delivering such wine shall indicate that fact in writing on each copy of the invoice to the extent of such refusal and the brand class or type and size of wine so refused.

No delivery shall be increased in the amount of wine delivered beyond that which has been previously ordered nor shall there be any substitution of any particular wine for another which has not been previously ordered.

4.17 Credit Sales Prohibited - No credit shall be extended by the distributor to the retailer, either in whole or in part, for any wine product received by a retailer and every delivery of wine to a retailer from a distributor shall be paid for in its entirety no later than the completion of such delivery. All distributors must immediately, and in the regular course of business, deposit in bank all checks given them by retailers for the purchase of wine. No distributor shall through himself, his agents or employees, enter into any agreement or understanding with any retailer to hold any checks so given beyond the time required by this regulation.

The repeated giving of worthless checks by the retailer to the distributor or the repeated acceptance of worthless checks from the retailer by the distributor, shall be prima facie evidence of obtaining and extension of credit and shall, in the discretion of the Commissioner, be grounds for the revocation or suspension of such retailer's or distributor's license.

4.18 Split Case Sales Permitted-Charges - A distributor may decline to distribute wine to a retailer except in full cases, each case containing only one size and type of wine. This shall not be construed to mean that the sale of "split cases" is prohibited. In any instance where a distributor sells a retailer a case of wine which is not entirely of one size and type ("split case"), the price charged by the distributor for the case shall be the total of the charges for each bottle in the split case. The distributor may charge a surcharge in an amount to be determined by him, which shall be applied equally to every retailer to whom such distributor sells split cases. The charge for each bottle in the split case shall be determined by dividing the distributor's regular charge for a full case of that size and type by the number of bottles in such a full case.

4.19 Minimum Markup Required - Until June 30, 1982, there shall be a minimum markup in the price from the distributor to any retailer of thirty percent (30%) over and above the price which the distributor paid for such wine, including and adding thereto the cost of transportation, but excluding and before the imposition of the gallonage tax. From July 1, 1982, through June 30, 1983, such minimum markup shall be twenty percent (20%); and from July 1, 1983, through June 30, 1984, such minimum markup shall be ten percent (10%). Thereafter, there shall be no minimum markup required in the purchase price from a distributor by a retailer.

4.20 Transportation of Wine or Other Alcoholic Beverages by Distributors - A distributor, by virtue of his license as such, may transport within this State any wine permitted to be sold at retail under the provisions of Chapter 60, Article 8 of the West Virginia Code of 1931, which wine has either been consigned to him, or for which the person actually transporting such wine, has either an invoice or purchase order in his possession. A distributor may not transport any other alcoholic liquor without a transportation permit issued by the Commissioner.

4.21 Platform Deliveries Prohibited - Platform deliveries or truck pickups at the licensed premises of a distributor by a licensed retailer are prohibited. This prohibition applies even though such retailer may have been granted a transportation permit by the Commissioner.

4.22 Identification of Distributor Representatives and Employees - All promotional representatives or other persons soliciting sales on behalf of a distributor and every person delivering wine for a distributor must have identification cards provided by such distributor identifying them as the representative or employee of such distributor and must exhibit such identification on demand by any retailer or representative of the Commissioner.

4.23 Samples - Distributors shall be permitted to give a sample to a retailer of any wine not then currently carried in the inventory of such retailer or private club. No sample may be sold by the retailer. All such samples shall be noted on the report required to be filed under the provisions of Chapter 60, Article 8, Section 4; such report to be attached to the Distributor's Summary of Wine Sales and Taxes, and to be made on the Distributor's Monthly Report of Breakage, Leakage, Spoilage and Samples, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-G. Samples may be no greater in amount than 750

milliliters and must be labeled with the word "Sample" clearly printed thereon in at least one inch point type and shall indicate that such product is not for sale.

Only a licensed distributor may give such samples to a retailer. Suppliers and employees and representatives of such suppliers are hereby prohibited from giving samples to retailers. This prohibition shall not preclude an employee or a representative of a supplier from accompanying any distributor or the representative or employee of any distributor at the time such sample is given or delivered to any retailer.

In the event any person, firm or corporation holds more than one wine retailer's license, such person, firm or corporation may receive no more than one sample of any wine bearing the same label nor shall any such retailer receive more than one sample of the same label, class or type of wine.

Section 5. Wine Retailers

5.01 Licensure Application - Form - The application for licensure as a wine retailer shall be upon forms designated "Application for Retail Wine License", Alcohol Beverage Control Commissioner Form No. ABCC-WS-2, which shall be provided by the Commissioner and shall contain such information as may be required by these regulations; which application form may be amended from time to time by the Commissioner as he may deem expedient and proper.

5.02 License Application - Content - The application for licensure as a wine retailer shall contain and include the following:

(a) The name and address of the applicant and shall state whether the applicant is an individual, corporation, partnership, association or other business entity;

(b) The business trade name of the applicant;

(c) The exact location of the business establishment;

(d) Whether the application is for the sale of wine in a bona fide grocery store, a separate and segregated portion of any other retail store dedicated solely to the sale of food, or a wine specialty shop;

(e) The date upon which the applicant began the operation of the business;

(f) Whether the applicant is the owner of the business premises for which the license is sought, and if not, shall state whether the applicant is the actual and bona fide lessee of such premises and shall include the lessor's name and address;

(g) An indication whether or not the applicant intends to carry on the business for which he is to be licensed for himself or under his immediate supervision or direction, and if not, shall state the name, age and address of the person who will manage or conduct the affairs of the retail business sought to be licensed;

(h) A statement as to whether or not the place of business for which the license is sought conforms to all applicable health and fire laws and regulations and whether the premises for which the license is sought conforms to existing zoning ordinances;

(i) A statement as to whether the applicant, if an individual, or whether any partner, member, officer, director or stockholder of the applicant holds or owns any interest in any licensed wine distributor, and if so, the extent and nature of such ownership;

(j) If the applicant is an individual, a statement whether such applicant is a citizen of the United States, a bona fide resident of the State of West Virginia and length of such residence and whether such applicant has attained the age of 18 years;

(k) If the applicant is a partnership, association or other business entity, as to each member, a statement whether such member is a citizen of the United States, a bona fide resident of the State of West Virginia and length of such residence and whether such member has attained the age of 18 years;

(l) If the applicant is a corporation, a statement whether the person or persons who are or will be conducting or managing the business of such applicant are citizens of the United States, residents of the

State of West Virginia and whether such person or persons have attained the age of 18 years;

(m) A statement whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant:

(i) has been convicted of a felony or other crime involving moral turpitude within three years next preceding the filing date of the application;

(ii) has been convicted of a violation of the liquor laws of any state or of the United States within two years next preceding the filing date of the application; or

(iii) had any license revoked under the liquor laws of any state or of the United States within five years next preceding the filing date of the application;

(n) If the applicant is a corporation, the names, addresses and corporate title of all officers, which statement shall include the name, address and age of all persons having twenty percent (20%) or more of the stock or beneficial interest in the applicant;

(o) A statement indicating whether the business premises of the applicant are located within an incorporated municipality or within one mile of the corporate limits of any such municipality. If the business premises of the applicant are located within one mile of the corporate limits of two or more incorporated municipalities, the applicant shall so state and shall indicate the names of all municipalities;

(p) A statement as to whether the applicant is either licensed as an Alcohol Beverage Control Commissioner licensed private club, licensed under the provisions of Chapter 60, Article 7, a Class A nonintoxicating beer retailer, or a Class B nonintoxicating beer retailer, licensed under the provisions of Chapter 11, Article 16 of the West Virginia Code, 1931.

(q) If the application is for a bona fide grocery store or for any other type of retail store with a separate and segregated portion of the store devoted to the sale of food, food products and supplies for the table, such application shall indicate whether the average monthly sales of grocery items, exclusive of wines and nonintoxicating beer, exceed Three Thousand Dollars (\$3,000.00) and whether the average monthly inventory, exclusive of wines and nonintoxicating beer, exceed Three Thousand Dollars (\$3,000.00); and

(4) Such other information as the Commissioner may from time to time require.

5.03 Licensure Application - Signature and Acknowledgment Required -

All applications shall be signed by the applicant and shall be made under oath and acknowledged or verified. In the case of a partnership the application shall be signed by each of the partners; Provided, That, in the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members of the governing board shall sign. In the case of a corporation, the application shall be signed by either its president or a vice president.

5.04 Corporate Charter, Partnership Agreement or Association Bylaws Required - If the applicant for licensure as a wine retailer is a corporation,

the applicant shall furnish with its application a copy of its corporate charter, including any amendments thereto. If the applicant is a partnership, limited partnership or association, such applicant shall provide a copy of the partnership agreement or a copy of the association's bylaws.

5.05 Fees - An applicant for licensure as a wine retailer shall remit with the application the annual fee for such license and the annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

If the application is for licensure for less than an entire fiscal year, then such fee shall be proportionate to the remainder of such year according to the date of application, as follows:

(a) If the application be made at any time from July 1 through September 30, such fee shall be for the full fiscal year, or One-Hundred Fifty-Dollars (\$150.00);

(b) If the application be made at any time during the period from October 1, through December 31, such fee shall be three-quarters of the annual fee, or One-Hundred-Twelve-Dollars and Fifty Cents (\$112.50);

(c) If the application be made at any time from January 1 through March 31, such fee shall be one-half of the annual fee, or Seventy-Five-Dollars (\$75.00);

(d) If the application be made at any time from April 1 through June 30, such fee shall be one-fourth of the annual fee, or Thirty-Seven-Dollars and Fifty Cents (\$37.50).

Such fee shall be payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order.

5.06 Investigations - Upon receipt of an application for licensure as

a wine retailer and of the fee, bond and other documents required to be provided with such application, the Commissioner shall make a thorough investigation to determine whether the applicant and all locations and premises to be operated by the applicant pursuant to the license applied for qualify for licensure and shall investigate all matters connected therewith, including but not limited to such matters which may affect the public welfare, health and morals.

5.07 Refusal of License - No license shall be issued to any applicant:

- (1) That submits an application for licensure that contains any false statement;
- (2) That is affirmatively shown to be not a suitable person in the community or communities in which it operates;
- (3) In which any partner, member, manager, officer, director, or stockholder owning twenty percent (20%) or more stock or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part, (i) has been convicted of a felony or other crime involving moral turpitude within three years next preceding the filing date of the application, or (ii) has been convicted of violating the liquor laws of any state or the United States within two years next preceding the filing date of the application or (iii) had any license revoked under the liquors laws of any state or the United States within five years next preceding the filing date of the application; or
- (4) Fails to meet the requirements of the liquor laws or the regulations of either this State or of the United States.

5.08 License Not Transferable - A license issued to a retailer shall be valid only for the person, firm or corporation named thereon and shall be valid

only for the premises for which the license is sought and issued." Such license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent (20%) or more thereof, the Commissioner shall be notified in writing with respect thereto within ten days next succeeding such transfer. If there is a change in the beneficial ownership to the extent of fifty percent (50%) or more thereof, then such license shall be voided and the licensee must make application for a new license.

In the event there is a transfer in the beneficial ownership of any interest in a licensed retailer, irrespective of the amount thereof, the new owner of such beneficial interest must meet all of the requirements of the provisions of any and all laws of the United States and any rules and regulations promulgated pursuant thereto and of the laws of the State of West Virginia, including but not limited to, the provisions of Chapter 60 of the Code and of the rules and regulations promulgated pursuant thereto.

5.09 Change of Location - If any retailer desires or intends to change the location of the premises for which his license is issued during the period for which his license is current, such retailer shall notify the Commissioner in writing at least thirty days next preceding the date of such relocation and may do so only upon the written approval of the Commissioner.

5.10 Licensure of Wine Retailer as Private Club or Class A Non-Intoxicating Beer Retailer - No person licensed as an Alcohol Beverage Control Commissioner private club or as a Class A nonintoxicating beer retailer shall be issued a wine retailer license if the wine retail business for which the license is sought is to be conducted upon the same premises at which either such private club or Class A nonintoxicating beer retailer establishment is located.

This regulation shall not be construed to prohibit the holder of an Alcohol Beverage Control Commissioner private club license or the holder of a Class A nonintoxicating beer license from holding or being a part owner in any licensed wine retailer whose business premises are totally separate, distinct and apart from the premises of such private club or Class A non-intoxicating beer retailer establishment.

5.11 Connection Between Retailer and Private Club and Class A Non-intoxicating Beer Retailer Prohibited - In the event a licensed wine retailer applicant is located within the same building or structure as an Alcohol Beverage Control Commissioner licensed private club or a Class A nonintoxicating beer retailer, there shall be no internal interconnection or door between the premises of the wine retailer and the premises of the licensed club or Class A nonintoxicating beer retailer.

5.12 When Retailer May Purchase From Commissioner; Conditions Applicable - To the extent that any licensed retailer, whether such retailer is a grocery store as defined in Chapter 60, Article 8 of the Code or is a wine specialty shop as defined therein, such retailer may purchase any wine intended by him to be carried in his inventory for resale from the Commissioner and the Commissioner for such purpose, is hereby designated as a distributor within the meaning of that word as used in Chapter 60, Article 8, Section 20(a) of the Code under the following conditions:

If the retailer can demonstrate to the satisfaction of the Commissioner that the particular wine, by brand, class and type, is not available from any licensed distributor distributing wine in the area wherein the licensed retail establishment is located, such wine may be purchased from the Commissioner either (i) by special order if such wine is not included in the inventory of

the Commissioner subject to the policies of the Commissioner then in effect with respect to specially ordered items, and, in that event the Commissioner shall collect the appropriate gallonage tax which would be imposed upon such purchase if made from a distributor, but shall not collect the municipal sales tax normally imposed upon such sale, which shall be collected and remitted by the retailer when such wine is sold by him, or (ii) if the item is included in the Commissioner's inventory, then such wine may only be purchased by the retailer at the same price the Commissioner would sell such wine to the general public without the collection of the gallonage tax and without the imposition of the municipal sales tax which shall be collected and remitted by the retailer when such wine is sold by him.

For the purpose of this regulation, private clubs shall be regarded as and deemed to be a licensed retailer.

5.13 Transportation of Wine by Retailer - A licensed retailer shall not transport any wine or other alcoholic liquor unless such retailer has been issued a transportation permit so to do by the Commissioner.

5.14 Transfers of Wine Between Retailers Prohibited - No licensed retailer shall transfer wine from one licensed retail establishment to another licensed retail establishment. This prohibition applies even though both retail establishments are owned by the same person, firm or corporation.

5.15 Wine Specialty Shop; Inventory Required - Wine specialty shops shall, in addition to maintaining a representative inventory of wines which is widely representative to include varietal wines, generic wines and wines labeled according to the region or place of production, maintain an inventory of not less than fifteen percent (15%) by actual bottle count of wines which are vintage or vintage dated, which shall be determined by actual

bottle count of the total wine inventory. In addition, wine specialty shops shall at all times have in their inventory available for sale food or food-stuffs which are normally associated with wines and have a representative inventory of wine accessories.

5.16 Separate Cash Registers Required in a Separate and Segregated Portion of Retail Store Other Than Grocery Store - The separate and segregated portion of any retail store other than a grocery store shall maintain separate cash registers for all sales made from such separate and segregated portion of such store, which cash registers shall be capable of separately indicating or including the taxes required under the provisions of Chapter 8, Article 3, Section 7 and Chapter 60, Article 3, Section 9d of the Code.

5.17 Packaging of Wine Sold After Purchase Required - All wine sold by any retailer shall be placed in a paper bag or similar package or container prior to delivery of such wine to the customer or person purchasing such wine. No wine shall be permitted or allowed to be carried from the premises of any retailer by any customer thereof unless the same has been placed in a paper bag or similar package or container. In the event the customer purchases amounts sufficient that placing the wine so purchased in a box or carton is more convenient, such practice shall be allowed and shall not be in violation of this regulation.

All wine purchased at a separate and segregated portion of a retail store other than a grocery store or wine specialty shop shall be packaged in either a paper bag or carton in accordance with this regulation prior to the delivery of such wine to the customer.

Section 6. Wine Gallonage and Municipal Sales Taxes; Reports Required

6.01 Distributor's Purchase Order - All deliveries of wine from a supplier to a distributor or transfer purchases from one licensed distributor to another licensed distributor, or merchandise picked up from retail licensees or sales to private club licensees shall be upon purchase order. Such purchase orders may be made on forms provided by the distributor or may be made on forms provided to the distributor by the supplier. All such forms shall include the following information for each item purchased from the supplier; brand name, unit size, number of cases and bottles, total quantity in extended liters (the unit size multiplied by the number of bottles will give the extended liters), case price, and the total cost of each item purchased. In addition to this information, all purchase orders are to be dated, numbered, and shall identify the consignee and consignor and are to be signed by the distributor or his agent or employee.

The Commissioner shall furnish with each distributor's license a copy of "Purchase Order", Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-H, which is a suggested and recommended form for purchase orders. However, as noted above, such form need not be followed in exact detail or outline so long as the purchase order form used contains the information required herein.

A copy of all purchase orders shall be retained by the distributor for a period of two years for use by the Commissioner for review and audit.

6.02 Distributor's Wine Invoice -

(a) All deliveries of wine from a distributor to a retailer or any other delivery permitted by the provisions of Chapter 60, Article 8 of the Code and regulations promulgated pursuant thereto shall be accompanied by a distributor's wine invoice. Such invoices shall be made on forms provided by the distributor and shall include the following information for each item

purchased from the supplier:

the date of invoice, the date of delivery, the trade name and address of the retailer, such retailer's license number, the number of cases and bottles ordered, and the size of each stated in liters, the identity of the product ordered, stated by brand and type, the total number of liters of each, the unit price of each such brand and type ordered, and the total sales price for each, the total number of liters included upon the invoice, and the total purchase price thereof, less the gallonage tax, the total gallonage tax separately stated, and the total purchase price received by the distributor from the retailer, including the gallonage tax. Such invoice shall also reflect a statement to be executed by the retailer indicating the date of receipt of the wine so purchased and that the same has been received by him and that such retailer has paid in full for all items so received and shall include the name of the person, firm or corporation from whom the shipment is received or by whom the same is delivered. All invoices shall state the mode or method of payment.

The Commissioner shall furnish with each distributor's license a copy of "Distributor's Wine Invoice" Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-I, which is a suggested and recommended form for distributor's wine invoices. However, as noted above, such form need not be followed in exact detail or outline so long as the form contains the information required hereinabove.

A copy of all distributor's wine invoices shall be retained by the distributor and the retailer for a period of two years for use by the Commissioner for review and audit.

(b) With respect to deliveries by distributors which are tax

exempt, separate invoices bearing a separate number sequence shall be maintained, which number shall be preceded by the prefix "TE" and shall, except with respect to taxes, include the information generally contained in the invoice described in paragraph (2) herein above.

A copy of all such invoices shall be maintained by the distributor and the retailer upon the licensed premises for a period of two years and shall be filed in sequential order and separated by the month and year of delivery for use by the Commissioner for review and audit.

6.03 Taxpayer - The term taxpayer shall, with respect to the gallonage tax, and for the purpose of determining the proper party to claim a refund of such tax include only the retailer who pays such tax to a distributor as part of the sales price paid to such distributor. With respect to credit against such tax, the term taxpayer shall include only the distributor claiming the same.

6.04 Gallonage Tax - Chapter 60, Article 8, Section 4 of the Code imposes a gallonage tax of One-Dollar (\$1.00) per gallon on all wine sold by distributors to retailers in this State. However, wine is not sold in the United States except by the metric system. Therefore, there is hereby adopted for the purpose of imposing and collection of the gallonage tax a factor of .26406 cents per liter sold by a distributor to a retailer.

6.05 Imposition of Gallonage Tax Upon Sales to Private Clubs - Chapter 60, Article 7, Section 11 of the Code permits licensed distributors to sell to Alcohol Beverage Control Commissioner licensed private clubs and further provides that all such sales shall be at the same price at which distributors sell wines to retailers licensed pursuant to the provisions of Chapter 60, Article 8. To the extent that Chapter 60, Article 8, Section 4 requires that

the gallonage tax "be added to and constitute a part of the sales price" distributors are required to collect the gallonage tax on all sales of wine made to licensed private clubs, and for the purpose of the gallonage tax, a private club shall be regarded as a retailer.

6.06 Gallonage Tax - Monthly Reporting and Payment of Tax - No later than the sixteenth day of each month, every licensed distributor shall file a written report with the Commissioner which shall be denominated "Distributor's Summary of Wine Sales and Taxes," Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-E. Such form shall reflect the name and address of the distributor, the ABCC license number assigned to such distributor and the month for which the report is made. Such report shall include all sales made by the distributor for the next preceding month and shall include such items and information as may be required by the Commissioner as reflected upon the above-described form which form may be amended from time to time by the Commissioner as he deems expedient and proper.

All such forms shall be furnished by the Commissioner in duplicate and the original thereof (white copy) shall be completed and returned to the Commissioner and the duplicate copy (green copy) retained by the licensed distributor. Such form shall be completed in the manner provided in the memorandum of instruction entitled "Wine Tax Reporting System" Alcohol Beverage Control Commissioner, Form No. ABCC-WS-1-E (Inst.), which said memorandum of instruction may from time to time be amended by the Commissioner as he may deem expedient and proper.

6.07 Report of Breakage, Leakage, Spoilage and Samples - All wines which are rendered unsalable by reason of breakage, leakage, and spoilage, as well as all wine used as samples, or disposed of as samples by the

distributor, shall be noted on "Distributor's Monthly Report of Breakage, Leakage, Spoilage and Samples", Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-G, which form shall be filed with the Distributor's Summary of Wine Sales and Taxes (Form No. ABCC-WS-1-E). Form No. ABCC-WS-1-G shall be completed in the manner and form outlined in the wine tax reporting system memorandum of instruction (Form No. ABCC-WS-1-E Inst.).

Form No. ABCC-WS-1-G shall contain such information as may be required by the Commissioner as reflected therein and may from time to time be amended by the Commissioner as he may deem expedient and proper.

All containers which have been subject to breakage, leakage or spoilage shall be retained by the distributor until permission to dispose of the same has been granted by the Commissioner.

6.08 Tax Exempt Transfers and Sales - The following sales or transfers shall be exempt from the gallonage tax:

- (a) Transfers from one licensed wine distributor to another licensed wine distributor;
- (b) Transfers from one warehouse owned and operated by a distributor to another warehouse owned and operated by the same distributor;
- (c) Sales from a West Virginia licensed wine distributor to a wine distributor or wholesaler in another state;
- (d) Sales made by a West Virginia licensed distributor to the Commissioner.

6.09 Refund of Gallonage Tax by Reason of Casualty Loss - In the event that a retail licensee, while the owner of wine on which the gallonage tax has been paid, loses such wine through fire or other casualty and such wine has been declared by the Commissioner to be unfit for sale, the Commissioner shall

provide for a refund of the gallonage tax paid, but only if the amount of such tax paid on such wine and claimed for refund exceeds Fifty-Dollars(\$50.00). Neither theft nor breakage occurring on the premises of the retail licensee, shall be deemed a casualty within the meaning of these regulations. Any retail licensee having a loss through fire or other casualty for which refund of taxes may be claimed in which the total tax paid on such merchandise exceeds Fifty-Dollars (\$50.00) is required to contact the Commissioner within five calendar days of the occurrence or casualty resulting in such loss for verification thereof. Upon verification of the loss and the reasons therefor, the Commissioner shall take such steps necessary to effect payment in full to the retailer having a claim in excess of Fifty-Dollars (\$50.00). No refund or claim therefor may be granted or considered by the Commissioner for gallonage taxes in an aggregate of less than Fifty-Dollars (\$50.00).

To the extent that any available insurance or other source from which a claim for casualty loss is recoverable, the Commissioner shall be regarded as source of refund of last resort and no such claim for refund will be honored until all other available sources of such coverage has been exhausted or to the extent the same is covered or recoverable by or through any valid and collectible insurance. For the purpose of any refund, each casualty shall be regarded separately from any other casualty and no claim for refund may include more than one casualty.

6.10. Municipal Sales Tax on Wines to be Collected and Remitted to the State Tax Department - All taxes required to be levied and collected on sales of wine made by wine retailers and farm wineries pursuant to the provisions of either Chapter 8, Article 13, Section 7 or Chapter 60, Article 3, Section 9d of the Code shall be remitted to and collected by the State Tax Department and for the purpose of the collection and enforcement of the tax levied by

said section or sections, the State Tax Department has agreed and is hereby designated as the agent of the Alcohol Beverage Control Commissioner. All such taxes shall be deposited with the State Treasury, which shall be responsible for the distribution thereof to the appropriate county or municipality as may be required by the above Code provisions. All assessments, petitions for reassessment and hearings required on petitions for reassessment shall be administered and conducted by the State Tax Department. And any rulings to be made thereon shall be made by the such Department. All statutes, rules and regulations and procedures adopted by the State Tax Department with respect to assessments, reassessments, petitions for reassessment, hearings thereon, administrative appeals, and all matters relating thereto insofar as the same may relate to the imposition and collection of the municipal sales tax are hereby adopted and incorporated herein by reference to the same extent as if the same were set forth here in extenso and shall apply to the imposition and collection of such municipal sales tax.

The provisions of this assignment shall not include the collection of taxes or the allocation or distribution thereof with respect to retail sales made by the Alcohol Beverage Control Commissioner, which shall be responsible for such collection, allocation and distribution of such taxes on sales made by it.

Section 7. Advertising

7.01 Scope of Advertising Regulations - "Advertisement" shall include any advertisement of wine through the medium of radio or television broadcasts or other aural or visual transmissions; or of newspapers, periodicals or other publications; or by any sign or outdoor advertisement, or by any other printed or graphic matter.

7.02 General Rule for Wine Advertising - No person engaged in business as a producer, rectifier, blender, importer, distributor or retailer of wine, directly or indirectly or through any affiliate, shall in this State publish or disseminate or cause to be published or disseminated by radio or television broadcast, or by any other aural or visual device, or in any newspaper, periodical or other publication, or by any sign or outdoor advertisement, or by any other printed or graphic matter, any advertisement of wine, unless such advertisement is in conformity with these regulations.

7.03 Advertising Conditions and Restrictions - Wine advertising which visually depicts a scene or setting where wine is to be served shall include foods and shows that such foods are available and are being used.

or are intended to be used with wine. This shall not apply to the depiction of a bottle of wine, vineyard, winery, label, professional tasting, etc., where emphasis is on the product.

7.04 Restrictions upon content of advertising

Wine advertising shall not:

- (a) Depict or describe the consumption of wine for the effects its alcohol content may produce;
- (b) Make direct or indirect reference to alcohol content or extra strength, except as otherwise required by law or regulation;
- (c) Depict or describe excessive drinking or persons who appear to have lost control or to be inappropriately uninhibited;
- (d) Suggest that excessive drinking or loss of control is amusing or a proper subject for amusement;
- (e) Depict or describe any persons engaged in activities not normally associated with the moderate use of wine and a responsible lifestyle. Association of wine use in conjunction with feats of daring or activities requiring unusual skill is specifically prohibited;
- (f) Depict or describe wine in quantities inappropriate to the situation or inappropriate for moderate and responsible use;
- (g) Depict or describe wine as being essential to personal performance, social attainment, achievement, success or wealth;
- (h) Depict or describe the use of wine as being associated with social, physical or personal problem solving;
- (i) Depict or describe wine as being vital to social acceptability and popularity or as the key factor in such popularity;

(j) Depict or describe or suggest that wine is crucial for successful entertaining;

(k) Show models and personalities in advertisements who appear to be under 25 years of age;

(l) Use music, language, gestures or cartoon characters specifically associated with or directed toward those below the legal drinking age;

(m) Appear in children's or juveniles' magazines, newspapers, television programs, radio programs or other media specifically oriented to persons below the legal drinking age;

(n) Be presented as being related to the attainment of adulthood or the attainment of adult status;

(o) Suggest that a wine product resembles or is similar to another type of beverage or product having particular appeal to persons below the legal drinking age. (For example: milk, soda, soft drinks, candy, etc.);

(p) Use traditional heroes of the young such as those engaged in pastimes and occupations having a particular appeal to persons below the legal drinking age. (For example: Cowboys, race car drivers, rock stars, etc.);

(q) Use amateur or professional sports celebrities, past or present.

(r) Show motor vehicles in such a way as to suggest that they are to be operated in conjunction with wine use. Advertising should in no way suggest that wine be used in connection with driving;

(s) Appear in or directly adjacent to television or radio programs or print media which dramatize or glamorize over-consumption or inappropriate

use of alcoholic beverages ;

(t) Contain any statement that is disparaging of a competitor's product;

(u) Contain any statement, device or representation that is obscene or indecent ;

(v) Contain any statement that is false or misleading in any manner ;

(w) Contain any statement concerning the wine that is inconsistent with any statement on the label thereof;

(x) Contain any statement referring to wine's medicinal values or that may intimate or state that drinking of the advertised product produces good health, effects weight, or like statements;

(y) Degrade the image or status of any ethnic minority or other group ;

(z) Exploit the human form, feature provocative or enticing poses nor be demeaning to any individual.

7.05 Restrictions Upon Advertising by Supplier, Distributor or Retailer.

(a) All advertising of a particular brand or brands of wine and the price thereof, by either a distributor or a retailer, in any media outside the licensed premises is hereby prohibited. This prohibition shall not extend to any retailer or distributor advertising, either inside the licensed premises or outside the licensed premises, the fact that such retailer or distributor sells or distributes wine as the case may be, nor shall this prohibition extend to any retailer or distributor advertising in the yellow pages of any telephone directory or other similiary directory the brands of wine carried by such distributor or retailer.

Nothing herein shall preclude a wine specialty shop from including the word "wine" within its trade name or other name by which the wine specialty shop is licensed or from using its name in an outside sign posted or attached to the exterior of such wine specialty shop.

(b) Advertising of a particular wine product by the manufacturer, supplier or West Virginia licensed distributor thereof shall not include in any way any statement or statements as to any distributor or retailer distributing or retailing such products; nor shall any such advertisement in any way refer to any distributor, retailer, group of distributors or group of retailers; nor shall such advertisement in any way inform the public where such product or products so advertised are available for distribution or retail sales.

(c) Any prohibition contained herein shall not preclude the advertisement of a particular product and price thereof within the interior of any distributor or retailer if such advertisement can neither be seen nor heard from the exterior of such retailer or distributor.

(d) Nothing shall prohibit the owners or managers or other responsible party controlling any shopping center, arcade or similar retail location from noting within any directory or similar list the name of any licensed retailer occupying space within such shopping center, arcade or similar retail location if such reference to the licensed retailer appears in print no larger than the print utilized by other occupants.

7.06 Tastings on Premises of Distributors or Retailers Prohibited -

No employee, representative or agent of any retailer, West Virginia licensed distributor or supplier of wine, or any other person, shall be permitted to hold wine tastings or offer wine for consumption on licensed premises by customers or any other person.

Section 8. Trade practices and conduct of business generally

8.01 Sale or delivery to retailer of certain wine or other products by supplier or distributor prohibited - No supplier or licensed distributor shall sell or deliver to any licensed retailer, whether to the premises for which the retailer's license is issued or otherwise, any wine or other product which such licensed retailer is not authorized by law or regulation to sell.

8.02 Inducement of retailer by supplier or distributor prohibited - Subject to the specific exceptions listed in these regulations, suppliers or distributors are prohibited from inducing the purchases of a retailer by either directly or indirectly furnishing, giving, renting, lending or selling to the retailer any equipment, fixtures, signs, supplies, money, services or other things of value.

8.03 Indirect inducement through third party arrangements - The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by a supplier or distributor to a third party, such as a retailer association or display company, where the benefits resulting from such thing of value flow to individual retailers, is the indirect furnishing of a thing of value and is prohibited. This section does not prohibit third parties from furnishing, giving, renting, lending, or selling equipment, fixtures, signs, supplies, money, services, or things of value to retailers which suppliers and distributors are specifically permitted to provide to retailers by these regulations and which suppliers and distributors are not described as an "industry member" under any applicable law, rule or regulation of either this State or of the United States.

8.04 Loan guarantees prohibited - Any supplier or distributor is prohibited from inducing the purchases of or by a licensed retailer by guaranteeing any loan or the repayment of any financial obligation of such retailer.

8.05 Providing advertisement for benefit of retailer by supplier or distributor prohibited

Any of the following constitutes paying the retailer for advertising and is prohibited:

a. The purchase by a supplier or distributor of advertising in a retail publication to consumers or the general public;

b. Reimbursement by a supplier or a distributor to a retailer for setting up products or other displays;

c. A promotion whereby a supplier or distributor rents display space at a retail establishment; or

d. Any arrangement by which a supplier or distributor participates with a retailer in paying for advertisement of any nature placed by a licensed retailer.

8.06 Free warehousing - The furnishing of free warehousing by a distributor by delaying delivery of wine beyond the time that payment for the product is received from a retailer is prohibited.

8.07 Assistance in acquiring license - A supplier or distributor shall not give legal and administrative assistance to a retailer in connection with the retailer's acquisition of the retailer's license.

8.08 Outside signs

a. Furnished to retailers. The furnishing of outside signs to retailers by a supplier or distributor is prohibited.

b. Benefiting a retailer. The placement by a supplier or distributor of a "billboard" or "spectacular" sign advertising wine on the wall or roof

of a building adjacent to or occupied by a retailer is prohibited.

8.09 Advertising, Display or Distribution Service--General -

Suppliers and distributors are prohibited from inducing the purchases of a retailer by paying or crediting the retailer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.

8.10 Items Intended for Consumers - Except as specifically permitted by these regulations, suppliers and distributors are prohibited from furnishing to retailers things of value for consumers such as trading stamps, non-alcoholic mixtures, pouring racks, or any other thing of value intended to be used by consumers.

8.11 Sale of Equipment - A transaction in which equipment is sold to a retailer by a supplier or distributor, except as specifically permitted by these regulations, is prohibited regardless of how sold. Further, the negotiation by a supplier or distributor of a special price to a retailer for equipment from an equipment company or other person is prohibited.

8.12 Sale or Gift of Signs, Fixtures, Furniture or Other Equipment to Retailer by Supplier or Licensed Distributor prohibited - Except as provided in Section 8.13 of these regulations, no licensed retailer shall acquire by purchase or by any means whatsoever, either directly or indirectly, any signs, fixtures, furniture or other equipment, or advertising specialties or other thing of utilitarian value, used in connection with the conduct of the business of such retailer from any supplier or licensed distributor, whether licensed in this State or not, or from any agent, servant, employee or representative of any supplier or licensed distributor. Nor shall any supplier or licensed distributor or any agent, servant, employee or representative sell or give, either directly or indirectly, or by any means whatsoever, any signs, fixtures, furniture or other equipment used in connection with the conduct of the business of any licensed retailer.

8.13 Material Permitted to be Furnished by Distributor or supplier - Nothing in these regulations shall prohibit a supplier or licensed distributor from furnishing without charge to a licensed retailer bottle or can openers, cork screws, wine display racks, wine posters, placards, designs, devices, including illuminated devices, decorations or graphic displays, bearing advertising matter for use in the interior of the licensed retail premises

or Alcohol Beverage Control Commissioner licensed private club if the same shall have no value to the retailer except as advertisement and if such materials are otherwise without any utilitarian value. The giving or furnishing of such materials shall comply with any restrictions imposed by the laws of the United States or by any rule or regulation promulgated pursuant thereto.

8.14 Stock Rotation - A supplier or a distributor or any agent, representative or employee of a supplier or a distributor, may within thirty days, and not thereafter, from the date of the first delivery of any wine by each such distributor rotate the product or products of such supplier or sold by such distributor upon the shelves of the retailer and may stock the shelves during such period of time or assist the retailer in the stocking of the shelves. No supplier representative or distributor representative shall, in any manner, assist in the fixing of prices or in the affixing of prices upon the product or products to be sold by the retailer nor shall any such representative, in any manner, disturb stock or rotate the product of another supplier or sold by another distributor. No supplier representative nor a distributor representative may rotate stock or assist in the stocking of shelves without the permission of the retailer before these services are performed.

8.15 Quota and Discount Sales Prohibited - A supplier or a distributor is prohibited from inducing the purchases of a retailer by requiring or offering the retailer to take and dispose of any quota of wine. Likewise, discounts offered by a distributor to a retailer, based either upon a dollar

value or quantity of wine purchased, irrespective of whether delivery thereof be effected in a single delivery or multiple deliveries, is prohibited.

8.16 Tie-in Sales Prohibited - Any requirement that a retailer purchase one product of any particular brand, class or type of wine or any size thereof, in order to be able to purchase any other is hereby prohibited. This prohibition includes combination sales if one or more of such product or wine or size thereof may only be purchased in combination with any other product, wine or size and not individually.

8.17 Employment of Persons Under the Age of 18 Years - To the extent that Chapter 60, Article 8, Section 20d of the West Virginia Code of 1931 prohibits persons of less than 18 years of age from selling, furnishing or giving wine to any person on behalf of a licensed retailer or distributor, a licensed distributor or retailer shall not permit persons of less than 18 years of age to operate any cash register or similar device or in any way to participate in the actual sale of wine. This prohibition shall not extend to permitting such person to stock and shelve any product, including wine, or to bag or package any merchandise sold, including wine, or to assist customers by carrying merchandise, including wine, purchased from the licensed premises to their automobile, or any similar type of employment.

A person under 18 years of age, employed by a licensed distributor, shall not be permitted to work in any capacity in the sale or actual delivery of wine to a licensed retailer.

Section 9. Refusal, Suspension or Revocation of License

9.01 Refusal, Suspension or Revocation of License; Applicant or Licensee not a Suitable Person - To the extent that Chapter 60, Article 8, Section 17 of the Code requires that the Commissioner refuse to license any applicant therefor if he finds that "such applicant is not a suitable person," the Commissioner shall refuse to license any applicant or shall revoke or suspend the license of any licensee whom he affirmatively finds not to be of good reputation in the community wherein such license is sought or granted. In considering whether a person is "not a suitable person" the Commissioner may take into account other factors with respect to such person in addition to the reputation of such person in the community wherein licensure is sought or granted. This regulation shall extend to include within its purview the person or persons who manage or conduct the affairs of the applicant or licensee insofar as the same relates to the purpose for which the license is sought or granted hereunder.

9.02 Refusal, Suspension or Revocation of License; Premises not a Suitable Place - If the Commissioner finds that the premises for which licensure is sought is not a "suitable place" or that such premises fails to meet the requirements of any provision of law of this State or of the United States or fails to meet any requirement of these regulations, or is in violation of any zoning ordinance and that no variance has been granted to the extent therefor, or that illegal activities are occurring or are allowed to occur at such premises, the Commissioner shall refuse the application for licensure.

To the same extent, if such foregoing condition is found to exist after licensure has been granted with respect to such premises, the Commissioner may either suspend or revoke any license so granted, or may grant a reasonable time within which to correct any such violation or condition.

condition.

9.03 Refusal, Suspension or Revocation of License; Disqualification of Beneficial Owner or of Persons Managing or Conducting Affairs of Applicant or Licensee - When, by the provisions of any law, a person is prohibited from owning any interest in either a licensed distributor or a licensed retailer, such prohibition shall extend and be deemed to include any beneficial interest in such licensed distributor or licensed retailer. Licensure may be refused at any time it is found by the Commissioner that a person so prohibited is, in fact, a true and actual owner or part owner in such licensed retailer or distributor. Such limitations as to ownership shall also apply with respect to persons who actually, in whole or in part, manage or conduct the affairs for which licensure is sought or granted. If at any time the Commissioner determines that the true, beneficial and actual ownership, management or the conducting of the affairs of a licensed person, firm or corporation is held, controlled, managed or conducted by persons not permitted to do so pursuant to either Federal or State law or regulation, the same shall be grounds for immediate revocation of licensure.

9.04 Dual Ownership Prohibited - No person owning any interest of whatsoever nature or kind in any licensed distributor, including a beneficial interest, nor the spouse or unemancipated child of such person or any child of such person while a resident of the household of such person, whether or not such child has attained his or her majority, shall be or hold a license or own any interest, including a beneficial interest, in any licensed retailer nor shall any such person, spouse or child owning any such interest

in a licensed retailer hold or own any interest, including a beneficial interest, in any licensed distributor.

9.05 Alcohol Beverage Control Commissioner Employees Prohibited from Ownership in a Wine Retailer or Distributor - Neither the Alcohol Beverage Control Commissioner nor any other employee of the Alcohol Beverage Control Commissioner shall have any interest of whatsoever nature or kind, beneficial or otherwise, in any licensed wine retailer or licensed wine distributor, nor shall the spouse or unemancipated child of such Commissioner or of any employee of such Commissioner nor shall any child of any such person, while a resident of the household of such person, whether or not such child has attained his or her majority, hold or own any interest, including a beneficial interest, in any licensed wine distributor or retailer.

9.06 Management or Conduct of Affairs of Licensee by Certain Persons Prohibited - No person, firm or corporation shall be licensed as either a distributor or a retailer, which person allows or permits any person who has (i) been convicted of a felony or other crime involving moral turpitude within three years next preceding the date upon which the application is filed, (ii) been convicted of violating the liquor laws of any state or of the United States within two years next preceding the date upon which the application is filed, or (iii) had any license revoked pursuant to the provision of Chapter 60 of the Code or under the liquor laws of any other state within five years next preceding the date upon which the application is filed, to in any way or in any capacity conduct or manage, in whole or in part, the affairs of the person, firm or corporation sought to be licensed.

In determining compliance with this section, the Commissioner shall make such determination based upon the substantial duties of the person in question and not upon the title or other extraneous factors relating thereto. This regulation shall apply only to the extent that the person, firm or corporation seeking or attaining licensure has such person or persons employed or engaged in either the sale or distribution of wine or the acquisition thereof by the person, firm or corporation seeking licensure or in any substantial way manages or conducts the affairs of the applicant or licensee.

This regulation shall apply to all renewals of licensure and violation of its provisions during any period for which licensure has been granted shall be grounds for immediate revocation.

9.07 Refusal, Suspension or Revocation of License - The Commissioner may refuse to license or may suspend or revoke the license of any supplier, distributor or retailer whom he finds not to be in compliance with the provisions of any law of the United States relating to the sale or distribution of wine or any rule or regulation promulgated pursuant to any such law or not to be in compliance with the laws of this State or of the provisions of Chapter 60 of the Code or of any rule or regulation promulgated pursuant thereto.

Section 10. Severability

10.01 Severability - The sections and subsections of these regulations shall be deemed severable. Should any section or subsection, be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations and all other sections or subsections shall remain in full force and effect, provided such remaining portions are not determined to be inseparable, and to this end these regulations are declared separable.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

ALCOHOL BEVERAGE CONTROL COMMISSIONER

RETAIL SALE OF WINE IN GROCERY STORES AND WINE SPECIALTY SHOPS

Emergency Regulations
1981
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for
Series IV

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