

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF THE SECRETARY OF STATE

FEB 22 4 52 PM '00

FILED

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Alcohol Beverage Control Administration TITLE NUMBER: 175

CITE AUTHORITY § 60-3A-6(c)

AMENDMENT TO AN EXISTING RULE: YES X NO

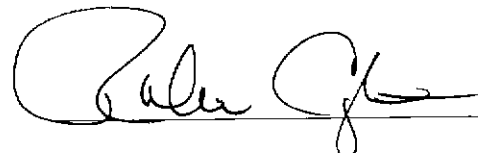
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Licensing of Retail Liquor Stores

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robin C. Capehart, Cabinet Secretary

Alcohol Beverage Control Administration

Title 175, Series 5

FACTS AND CIRCUMSTANCES

The Legislative Rule filed herein, as an emergency rule, had to be effective before it could complete the full legislative cycle because the sale of 10 year franchises to operate a retail liquor store will take place in early 2000, and take effect on July 1, 2000. A Legislative Rule is necessary to establish minimum bids; the number and types of licenses to be authorized in a market zone; bidding procedures; and methodology for selecting successful bidders.

FILED



QUESTIONNAIRE

FEB 23 12 17 PM '00

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: February 22, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) ALCOHOL BEVERAGE CONTROL COMMISSION,

Department of Tax & Revenue, 322 70th Street, S.E., Charleston, West Virginia 25304,

Telephone 304 558-2481

LEGISLATIVE RULE TITLE: TITLE 175 - SERIES 5. LICENSING OF STATE RETAIL

LIQUOR STORES.

1. Authorizing statute(s) citation W.Va. Code §§60-3A-6(c)(2) and 29A-3-1, et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

November 23, 1999

b. What other notice, including advertising, did you give of the hearing?

Class II Legal Advertisements in the Charleston Gazette and the Charleston Daily

Mail. Written notice given to the President, West Virginia Retailer's Association.

Announcements during public meetings of the state retail liquor licensing board.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

Comment period ended at 9:00 a.m. on December 24, 1999.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached None

No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

February 22, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Gene Hal Williams, West Virginia Alcohol Beverage Control Commission, 322 70th Street, S.E.,

Charleston, West Virginia 25304. Telephone 304 558-2481, Extension 206; FAX 304 558-0081.

E-mail: gwilliams@abcc.state.wv.us.

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached _____ N/A



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

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

CECIL H. UNDERWOOD
GOVERNOR

DONALD L. STEMPLER
COMMISSIONER

ROBIN CAPEHART
SECRETARY OF TAX & REVENUE

**EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATION
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
TITLE 175 - SERIES 5**

LICENSING OF RETAIL LIQUOR STORES

**STATEMENT OF THE FACTS AND
CIRCUMSTANCES CONSTITUTING THE EMERGENCY**

This rule explains and clarifies the impact of Enrolled House Bill No. 3023, which was enacted on March 13, 1999 and made effective from passage, on W.Va. Code §60-3A-1, *et seq.*, the "State Retail Liquor License Act". This Act was established by the Legislature in 1990, Chapter 9 and was designed to take the State out of the retail sale of distilled spirits, but to keep it in the wholesale sale of such beverages. Franchises for 10-years were sold to the highest bidders and retail liquor stores were licensed in 98 market zones. These franchises expire on June 30, 2000.

H.B. No. 3023 set in motion a method of selling new 10-year franchises to become effective on July 1, 2000. It also made extensive changes in the law relating to the creation of a State Retail Liquor Licensing Board and assigned it a multitude of duties; the improvement of bidding procedures; establishing a method for creating bid minimums; authorizing the Board to determine the number types of licenses which would be authorized in each market zone; authorizing current

licensees a preference and continuing a preference for bidders who are West Virginia residents; the implementation of all of which required expert collection and evaluation of data by professional C.P.A. firms.

Bids were taken from many firms and an award to the winner was made on August 10, 1999. A contract attorney was selected to write amendments to the existing regulations. On August 6, 1999, which was the deadline for submitting legislative rules to the Legislative Rule-Making Review Committee, there was an inadequate amount of data collected upon which an appropriate legislative rule could have been predicated. Accordingly, the agency determined it necessary to pursue an emergency legislative rule.

Unless the emergency rule is approved, it will be impossible for the sale of the new 10-year franchises to be made in time to take effect on July 1, 2000.

On August 6, 1990, the Secretary of State approved Emergency Regulations for the ABCC which were determined by the Secretary of State to be essential to guide new retail licensees as to the activities authorized for such retail liquor stores. His decision was predicated upon the statutory definition of an emergency for "time limitation".

The decision of the Secretary of State is cited as Emergency Rule Decision 22-90 or ERD 22-90, and the Secretary of State has ruled, in that decision, that it may be cited as precedent.



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

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SUMMARY OF PROPOSED EMERGENCY RULE

This Rule will make it possible for the ABCA and the State Retail Liquor Licensing Board to sell new 10-year franchises to operate retail liquor stores after the existing franchises expire on June 30, 2000. An objective of this Rule is to provide guidelines for the selling of the franchises for a minimum of 19 Million Dollars in the state fund, general revenue which is projected by the Governor's official revenue estimates for fiscal year 2000.

In addition, this rule explains and clarifies the procedures to be used in the establishment of minimum bids for each franchise; the number and types of Class A and Class B licenses to be authorized in each market zone; bidding procedures; award of residential preferences of five percent (5%) of the bid price; award of an additional preference of five percent (5%); and methodology for selecting the successful bidders.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 175 - Series 5 - Licensing of Retail Liquor Stores

Type of Rule: Legislative Interpretive Procedural

Agency: Alcohol Beverage Control Administration

Address: 322 70th Street, S.E.

Charleston, WV 25304

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$0	\$0	\$0	\$0	\$0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	\$252,000	0	0

2. Explanation of Above Estimates: Enrolled H.B. 3023 objectives require increased professional accounting and legal expenses acquired on a contractual basis.

3. Objectives of These Rules: To carry out the intent of the Legislature to have new 10-year retail liquor store licenses be sold before July 1, 2000 in order to receive sales proceeds of at least 19 million dollars for the state fund, general revenue and, in addition, to thereafter fix wholesale prices on an annual basis to produce 6.5 million dollars profit which is deposited to the state fund, general revenue.

Rule Title: Title 175 - Series 5

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: Will result in 25.5 million dollars for deposit in the state fund, general revenue during FY 2000 and 6.5 million dollars for yearly deposits in that fund for nine more years.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None known.

C. Economic Impact on Citizens/Public at Large.
None known.

Date: February 22, 2000

Signature of Agency Head or Authorized Representative:

Ronald L. Stemple

**EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATION
ALCOHOL BEVERAGE CONTROL ADMINISTRATION COMMISSION
TITLE 175, SERIES 5**

LICENSING OF RETAIL LIQUOR STORES

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**EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATION
ALCOHOL BEVERAGE CONTROL ADMINISTRATION COMMISSION
TITLE 175 - SERIES 5**

LICENSING OF RETAIL LIQUOR STORES

PROPOSED RULE

§ 175-5-1. General.

1.1. Scope. This emergency legislative rule explains and clarifies the State Retail Liquor License Act, as stated in W. Va. Code § 60-3A-1, *et seq.*, as extensively amended by Enrolled House Bill 3023 which was enacted by the West Virginia Legislature on March 13, 1999, to take effect from passage. The amendments in this bill necessitate emergency amendments to West Virginia Legislative Rule, Alcohol Beverage Control Commission, Title 175 - Series 5, Licensing Of Retail Liquor Stores.

1.2. Authority. - This emergency legislative rule is promulgated under the authority of W. Va. Code §§29A-3-15 and 60-3A-6(c)(2).

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Type of rule. - This rule is an emergency legislative rule as defined in W. Va. Code §29A-3-15.

1.6. Citation. - This emergency rule may be cited as 175 C.S.R. 5, § ___ (1999).

§175-5-1. Short Title.

This rule shall be known and may be cited as the "State Retail Liquor License Rule."

~~§ 175-5-2. Legislative Findings and Declarations; Legislative Purpose.~~

~~2.1. It is the intent of the Legislature that the sale of liquor at retail should no longer be by the State but rather by retail licensees; that there is a need for the State to control the wholesale sales of liquor; that the health and welfare of the citizens of this State will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and that the operation and efficiency of State government will be improved by removing the State~~

~~from the retail sale of liquor and permitting sales of liquor by retail licensees under licenses~~

~~2.2. It is the purpose of the Legislature in providing for the retail sale of liquor to:~~

~~2.2.1. Continue revenue to the State from the wholesale sale of liquor, by requiring all retail licensees to purchase all liquor (other than wine with an alcohol content of fourteen percent (14%) or less by volume) from the Commissioner and by further requiring all private clubs licensed under the provision of W. Va. Code §60-7-1, et seq., to purchase all liquor (other than wine with an alcohol content of fourteen percent (14%) or less by volume) from retail licensees;~~

~~2.2.2. Provide a system of controls, through limitations on the numbers of retail outlets and application of the police power of the State, to discourage the intemperate use of liquor;~~

~~2.2.3. Preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor; and~~

~~2.2.4. Obtain for the State financial gain from the issuance of retail licenses;~~

§175-5-3. Sale of Liquor by Retail Licensees Permitted; Cessation of Retail Sale of Liquor by State; Exception.

~~3.1. Notwithstanding any provision of the Code of West Virginia of 1931, as amended, to the contrary, The sale of liquor by retail licensees in accordance with the provisions of W. Va. Code §60-3A-1, et seq. and this rule shall be lawful.~~

~~3.2. Upon the opening of a retail outlet in any market zone, the State shall, as soon as practicable, discontinue operating any and all State liquor stores and agency stores within such market zone so long as a retail outlet is in operation in such market zone.~~

3.1. State stores. – In general, the Commissioner may not operate state liquor stores. However, when circumstances prescribed by law exist, the Commissioner may open and operate a state liquor store in a market zone provided the Board gives its prior consent. The Board may consent to the Commissioner opening and operating a state liquor store in a market zone only when no retail outlet is in operation in the market zone and the Board finds that:

3.1.1. A licensee is unable to open a retail outlet in that market zone; or

3.1.2. A licensee is unwilling to open a retail outlet in that market zone; and

3.1.3. The operation of any retail outlet in the market zone is prevented by a matter in controversy that is pending adjudication and the Board determines that the controversy will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer expectations for the availability of liquor in sealed containers.

3.2. Application of Commissioner. -- When the Commissioner desires to operate a state liquor store in a market zone, the Commissioner shall apply to the Board for consent to operate a state liquor store in that market zone. Application shall be made by filing a petition with the chairman of the Board and forthwith mailing or otherwise delivering copies of the petition to the other members of the Board. This petition shall:

3.2.1. Identify the market zone in which the state store will be located, the Commissioner's reason(s) for opening a state store in that market zone and the facts upon which the Commissioner relies, the estimated cost of opening the state store, and the estimated period of time needed to open the store;

3.2.2. Include a map of the market zone and the immediately adjacent market zones that shows state roads, the location of the proposed state liquor store and the locations of retail liquor stores in the adjacent market zones; and

3.2.3. Any other information the Commissioner desires to submit.

Upon receipt of the petition, the chairman shall set a day, time and place for the Board to meet to consider the petition.

3.3. Evidence that licensee is unable or unwilling to open a retail outlet in a market zone.

3.3.1. Failure of a licensee to open a retail outlet in a market zone and operate it in a commercially reasonable manner within one hundred twenty (120) days after June 30, 2000 or the date the retail license is issued to the licensee, whichever occurs last, shall be prima facie evidence that the licensee is unable or unwilling to open a retail outlet in that market zone. In any proceeding before the Board on this issue, the burden of proof shall be on the licensee to show by clear and convincing evidence that the licensee is not unwilling and not unable to open a retail outlet in the market zone.

3.3.2. For purposes of this section, the term "commercially reasonable manner" means that the retail outlet has regularly scheduled business hours on all days of the week [or at least 4 days of the week] during which liquor in sealed containers may be sold to consumers under state law and that those hours reasonably meet expectations of consumers in the market zone desiring to purchase liquor in sealed containers. In any proceeding before the Board on this issue, the burden of proof shall be on the licensee to show by clear and convincing evidence that the licensee is operating the retail outlet in a commercially reasonable manner.

3.3.3. Evidence that a licensee is unable to open a retail outlet includes, but is not limited to:

3.3.3.a. Probative evidence that the licensee is unable to obtain financing necessary to open a retail outlet;

3.3.3.b. Probative evidence that the licensee is unable to obtain liability and fire insurance for the retail outlet; or

3.3.3.c. Probative evidence that the licensee is unable to obtain all necessary permits, stamps and licenses to open a retail outlet; or

3.3.3.d. Evidence that a licensee is unwilling to open a retail outlet includes, but is not limited to:

3.3.3.e. Probative evidence that the licensee failed to make reasonable efforts to obtain, by purchase or lease, a location for the retail outlet or, having a location, the licensee failed to construct a building, or prepare an existing building, to house the retail outlet;
or

3.3.3.f. Probative evidence that the licensee failed to make reasonable efforts to:

3.3.3.f.1. Apply for or obtain financing for the retail outlet;

3.3.3.f.2. Interview or hire employees for the retail outlet;

3.3.3.f.3. Apply for or obtain fire and liability insurance for the retail outlet;

3.3.3.f.4. Apply for all necessary certificates, licenses, permits or stamps to do business at a retail outlet including, but not limited to, the basic permit and retail and wholesale stamps issued by the Bureau of Alcohol, Tobacco and Firearms and a business registration certificate issued by the Tax Commissioner.

3.4. Pending litigation

3.4.1. Whether the operation of any retail outlet in the market zone is prevented by a matter in controversy pending judicial adjudication that will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer expectations regarding the availability of liquor in sealed containers is a fact-specific and case-specific issue to be decided by the Board does not lend itself to governance by a uniform rule.

3.4.2. Deliberate delaying tactics by the licensee, whether the licensee is the plaintiff or the defendant in the litigation, may be evidence that the licensee is unwilling to open a store in the market zone.

3.5 Reasonable consumer expectations. -- Evidence that liquor in sealed containers is not reasonably available to consumers residing in a market zone includes, but is not limited to:

3.5.1. A resolution filed with the Commissioner adopted upon majority vote of the county commission in whose jurisdiction the market zone is located, in whole or in part, finding that liquor in sealed containers is not reasonably available to individuals residing in that market zone and asking the Commissioner to open a state store.

3.5.2. A resolution filed with the Commissioner adopted upon majority vote of the governing body of a municipal corporation located, in whole or in part, in a market zone, finding that liquor in sealed containers is not reasonably available to individuals residing in the market zone and asking the Commissioner to open a state store.

3.5.3. A petition for a state store filed with the Commissioner signed by 25 percent or more of the individuals residing in voting precincts [or magisterial districts] located, in whole or in part, in the market zone based upon the results of the most recently completed decennial census conducted by the United States government.

3.5.4. A petition for a state store filed with the Commissioner signed by a majority of the private clubs located in the market zone.

3.6. When there is no retail outlet operating in a market zone because the current licensee is unwilling or unable to operate a retail outlet in that market zone and the Commissioner receives a resolution or petition filed under section 3.5 of this rule, the Commissioner shall forthwith mail or otherwise deliver a copy of the resolution or petition to each member of the Board. The chairman of the Board, after consultation with the Commissioner, shall then schedule a meeting of the Board to consider the resolution or petition. At this meeting, the Commissioner shall present the Board with the Commissioner's preliminary assessment of the situation including, but not limited to:

3.6.1. Whether or not the absence of any operating retail outlet in a market zone is due to the current licensee or licensees being unable or unwilling to operate a retail outlet or is prevented by a matter in controversy pending judicial adjudication that will continue for some duration and the facts upon which the Commissioner relies;

3.6.2. The estimated cost of setting up and operating a state store in the market zone.

3.6.3. The estimated period of time necessary to set up the state store and begin its operation;

3.6.4. The estimated period of time the state store might be in operation before a retail outlet is opened in that market zone by a licensee;

3.6.5. The Commissioner's evaluation of the claim that liquor in sealed containers is not reasonably available to individuals residing in the market zone;

3.6.6. A map showing the boundaries of the market zone, municipalities located in whole or in part in the market zone, the location of retail outlets in market zones adjacent to the market zone for which the resolution or petition was filed, and state roads located in the market zone for which the petition was filed and in adjacent market zones;

3.6.7. Any other information the Commissioner believes to be relevant; and

3.6.8. Any information the Board or the chairman may request prior to the meeting.

3.7. At the meeting of the Board called to consider a resolution or petition filed under subsection 3.5 of this section, the Board may, upon majority vote:

3.7.1. Direct that one or more members of the Board, or the entire Board, hold a public hearing in the market zone to solicit public comments on whether or not liquor in sealed containers is reasonably available to individuals residing in that market zone. Notice of the public hearing shall be published in the State Register at least 20 days before the day of the public hearing;

3.7.2. Act upon the petition or resolution;

3.7.3. Defer action on the petition or resolution;

3.7.4. Request additional information from the Commissioner, the person who filed the resolution or petition with the Commissioner or any interested person who appeared at the public meeting; or

3.7.5. Take any other action within the power of the Board.

3.8. In the event the Board consents to the Commissioner operating a state store in a market zone, the Commissioner shall, as soon as practicable after a licensee opens a retail outlet in that market zone, discontinue operating that state store as provided in W. Va. Code §60-3A-3(c)

§175-5-4. Definitions. As used in these ~~this~~ emergency ~~regulations~~ rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and the plural.

4.1. "Alcohol" means ethyl alcohol, whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.

4.2. "Alcohol Beverage Control Commissioner," or "ABCC" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his or her delegate.

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

4.4. "Applicant" means any person who bids for a retail license, or who seeks the Commissioner's approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this ~~article~~ the Retail Liquor Licensing Act and this rule.

4.5. "Application" means the form prescribed by the Commissioner which must be filed with the Commissioner by any person bidding for a retail license.

4.6. "Board" means the retail liquor licensing Board created by ~~article~~ W. Va. Code, § 60-3A-5.

4.7. "Class A retail license" means a retail license permitting the retail sale of liquor at more than one retail outlet.

4.8. "Class B retail license" means a retail license permitting the sale of liquor at only one retail outlet.

~~4.9. "Code" means the Code of West Virginia of 1931, as amended.~~

4.9. "Current licensee" means a person who holds a retail license on March 13, 1999, at the time of the reenactment of this section in the year one thousand nine hundred ninety-nine or that person's successor or any person who holds a retail license when it expires at the end of a ten 10-year period.

4.10. "Designated areas" mean one or more geographic areas within a market zone designated as such by the Board.

4.11. "Distilled spirits" means ethyl alcohol, ethanol or spirits, or wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, natural spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than twenty-four percent (24%) of alcohol by volume shall be deemed to be distilled spirits.

4.12. "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy making function.

4.13. "Fortified wine" means any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) by volume.

4.14. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

~~4.15.~~ "Liquor" means alcoholic liquor as defined in W. Va. Code §60-1-5 section five, article one of this chapter, and also includes both wine and fortified wines as those terms are defined in W. Va. Code §60-8-2.

~~4.15.~~ 4.16. "Market zone" means a geographical area designated as such by the Board for the purpose of issuing retail licenses.

~~4.16.~~ 4.17. "Nonintoxicating beer" means any beverage, obtained by the fermentation of barley, malt, hops, or similar products or substitute and containing at least one half of one percent (.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater.

~~4.17.~~ 4.18. "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

~~4.18.~~ 4.19 "Person" means ~~any an individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.~~

~~4.19.~~ 4.20. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including but not limited to establishments that provide lodging and/or sell food for consumption on or off the premises, restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, that the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of W. Va. Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

~~4.20.~~ 4.21. "Retail license" means a license issued under the provisions of W. Va. Code, 60-3A-1, *et seq.*, permitting the sale of liquor at retail.

~~4.21.~~ 4.22. "Retail licensee" means the holder of a retail license.

~~4.22.~~ 4.23. "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of W. Va. Code §60-3A-1, *et seq.*

~~4.23.~~ 4.24. “Secretary” means the Secretary of the West Virginia Department of Tax and Revenue.

~~4.24.~~ 4.25. “State” means the State of West Virginia .

~~4.25.~~ 4.26. “Wine” means any beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake or other product offered for sale or sold as wine containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume.

~~§ 175-5-5. — Creation of Retail Liquor Licensing Board; Members, Terms, Meetings —
— and Officers; General Provisions: —~~

~~5.1. — W. Va. Code §60-3A-5 created continued the . The State Retail Liquor Licensing Board, such Board being is composed of five (5) members, three (3) of whom are appointed by the Governor by and with the advice and consent of the Senate, one (1) of whom being the Secretary of Tax and Revenue, and one (1) of whom being the Commissioner. The Secretary of Tax and Revenue and the Commissioner serve as the chairman and secretary, respectively, of the Board. No more than two (2) of the three (3) members appointed by the Governor may be of the same political party. Beginning with the appointments made to fill vacancies after the amendment to W. Va. Code §60-3A-5 in 1999 one thousand nine hundred ninety nine, a member shall be appointed from each congressional district as delineated in accordance with W. Va. Code §1-2-3 section three, article two, chapter one of this code. No member of the Board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.~~

~~5.2. — The provisions of W. Va. Code §60-3A-5(b) and §175-5-5.2 of this rule apply to the three (3) members appointed by the Governor. They shall be appointed for overlapping terms of three (3) years each and until their respective successors have been appointed and have qualified. , except for the original appointments:~~

~~5.2.1 — For the purpose of original appointments, one (1) member shall be appointed for a term of three (3) years and until his or her successor has been appointed and has qualified. one (1) member shall be appointed for term of two (2) years and until his or her successor has been appointed and has qualified and one (1) member shall be appointed for a term of one (1) year and until his or her successor has been appointed and qualified.~~

~~5.2.1. — Members may be reappointed for any number of terms:~~

~~5.2.2. — Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by West Virginia Constitution Article IV, §5. Vacancies shall be filled by appointment by the Governor in the case of death, resignation, incompetency, neglect of duty, gross immorality or malfeasance in office.~~

~~5.2.3. Members shall receive compensation of one hundred dollars (\$100.00) per day for each day actually engaged in the performance of their duties as Board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.~~

~~5.3. A majority of members of the Board constitutes a quorum and meetings shall be held at the call of the chairman.~~

~~5.4. Staff, office facilities and costs of operation of the Board shall be provided by the Commissioner.~~

§175-5-5. Limitations on Holding Licenses.

5.1. In general. -- A person may hold, directly or indirectly, one or more Class A retail licenses and one or more Class B retail licenses. However, no individual or other person may directly or indirectly hold, for the same market zone, a Class A retail license and a Class B retail license, or more than one Class B retail license.

Example 1. -- In market zone Alpha, a Class A license will be issued, which authorizes the licensee to operate four retail outlets, and two Class B licenses will be issued. ABC Corporation submits the high bid for each of these licenses. However, ABC Corporation may be awarded only one license, which is the maximum number of licenses that any person may hold for market zone Alpha.

Example 2. -- In market zone Bravo, a Class A license will be issued, which authorizes the licensee to operate two retail outlets, and one Class B license will be issued. ABC Corporation submits the high bid for each of these licenses. Again, ABC Corporation may be awarded only one of these licenses because that is the maximum number of licenses that any person may hold for market zone Bravo.

Example 3. -- In market zone Charlie, two Class B licenses will be issued. John Smith, an individual, submits the high bid for one of the Class B licenses. L&S Partnership submits the high bid for the second Class B license. John Smith owns 50 percent of the L&S Partnership. A Class B license may be awarded to either John Smith, the individual, or to L&S Partnership because no individual or other person may directly or indirectly hold more than one Class B license for a market zone.

Example 4. -- In market zone Delta, a Class A license will be issued authorizing the holder to operate two retail outlets. One Class B license will also be issued. ABC Corporation submits the high bid for the Class A license. L&S Partnership submits the high bid for the Class B license. John Smith owns 51 percent of the L&S Partnership and 60 percent of the stock of ABC Corporation. The Class A license may be issued to ABC Corporation or the Class B license may be issued to L&S Partnership. However, the Class A license may not be issued to ABC

Corporation and the Class B license issued to L&S Partnership because no individual or other person may directly or indirectly hold more than one license for a market zone.

5.2. Aggregate limitation rule. -- No individual or other person may directly or indirectly hold a combination of licenses that, in the aggregate, authorizes that person to operate more than 25 percent of the total number of Class A and Class B retail outlets authorized under the provisions of W. Va. Code § 60-3A-1 et seq. to be operated in this state during the 10-year license period that begins July 1, 2000, or July 1, 2010.

Example 1. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow 180 retail outlets to be operated in this state during the 10-year period that begins July 1, 2000. Twenty-five percent (25%) of 180 retail outlets is 45 retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate 55 retail outlets should ABC Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate 50 retail outlets. Due to the 25 percent rule, ABC Corporation may only be issued licenses that allow it to operate no more than 45 retail outlets. Therefore, when ABC Corporation submits its bids, it needs to prioritize them.

Example 2. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow 180 retail outlets to be operated in this state during the 10-year period that begins July 1, 2000. Twenty-five percent (25%) of 180 retail outlets is 45 retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate 25 retail outlets should ABC Corporation be the winning bidder for all of those licenses. D&E Corporation submits bids for Class A and Class B licenses that would authorize it to operate 25 retail outlets should D&E Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate 25 retail outlets and that D&E Corporation would be the winning bidder for licenses authorizing it to operate 25 retail outlets. However, because ABC Corporation and D&E Corporation are wholly owned subsidiaries of Alphabet Corporation, they are disqualified from holding a license that allows them to operate, in the aggregate, more than 45 retail outlets due to application of the 25 percent rule. No individual or other person may directly or indirectly hold a license that authorizes the operation of more than 45 retail outlets.

5.3. Indirect ownership. -- A license is indirectly held by a person when that license is held by:

5.3.1. Members of a family. For purposes of this rule, the family of an individual includes only his or her brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants, whether by birth or adoption;

5.3.2. An individual and a corporation if more than 50 percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual;

5.3.3. An individual and a partnership or limited liability company if more than 50 percent in value of the ownership interests is owned, directly or indirectly, by or for that individual;

5.3.4. A partnership and another partnership if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in each partnership;

5.3.5. A limited liability company and another limited liability company if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in each limited liability company;

5.3.6. A partnership and a limited liability company if the same persons own, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in the partnership and the limited liability company;

5.3.7. Two corporations that are members of the same “controlled group” as that term is defined in section 5.6 of this rule.

5.3.8. A grantor of a trust and a fiduciary of a trust created by that grantor;

5.3.9. A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

5.3.10. A fiduciary of a trust and a beneficiary of that trust;

5.3.11. A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

5.3.12. A fiduciary of a trust and a corporation if more than 50 percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

5.3.13. A corporation and a partnership or limited liability company if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation, and more than 50 percent of the capital interest, or the profits interest, in the partnership or limited liability company;

5.3.14. An S corporation and another S corporation if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of each corporation;
or

5.3.15. An S corporation and a C corporation, if the same persons own, directly or indirectly, more than 50 percent in value of the outstanding stock of each corporation;

5.4. Constructive ownership of stock. -- For purposes of applying section 5.3 of this rule, when determining the ownership of stock:

5.4.1. Stock owned, directly or indirectly, by or for a corporation, partnership, limited liability company, estate, or trust shall be considered as owned proportionately by or for its shareholders, partners, members, or beneficiaries;

5.4.2. An individual shall be considered as owning the stock owned, directly or indirectly, by or for his or her family;

5.4.3. An individual owning (otherwise than by the application of subsection 5.4.2 of this section) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his or her spouse;

5.4.4. The family of an individual shall include only his or her brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants, whether by birth or adoption; and

5.4.5. Stock constructively owned by a person by reason of the application of subsection 5.4.1 of this section shall, for the purpose of applying subsections 5.4.1, 5.4.2 or 5.4.3 of this section, be treated as actually owned by that person. However, stock constructively owned by an individual by reason of the application of subsections 5.4.2 or 5.4.3 of this section shall not be treated as owned by him or her for the purpose of again applying either of these paragraphs in order to make another the constructive owner of the stock.

5.5. Constructive ownership in the case of partnerships and limited liability companies. -- For purposes of determining ownership of a capital interest, or profits interest, in a partnership or limited liability company, the principles of section 5.4 shall apply, except that:

5.5.1. Subsection 5.4.3 of this rule shall not apply, and

5.5.2. Interests owned, directly or indirectly, by or for a C corporation shall be considered as owned by or for any shareholder only if the shareholder owns, directly or indirectly, 5 percent or more in value of the stock of that corporation.

5.6. Controlled group of corporations defined: special rules applicable to controlled groups. -- For purposes of this rule, the term "controlled group of corporations" means any group of:

5.6.1. Parent-subsidiary controlled group. -- One or more chains of corporations connected through stock ownership with a common parent corporation if:

5.6.1.a. Stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of

all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection 5.7.1 of section 5.7) by one or more of the other corporations; and

5.6.1.b. The common parent corporation owns (within the meaning of subsection 5.7.1 of section 5.7) stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

5.6.2. Brother-sister controlled group. -- Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subparagraph 5.7.2 of section 5.7) stock possessing:

5.6.2.a. At least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of the stock of each corporation, and

5.6.2.b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each corporation.

5.6.3. Combined group. -- Three (3) or more corporations each of which is a member of a group of corporations described in subsections 5.6.1 or 5.6.2 of this section and one of which:

5.6.3.a. Is a common parent corporation included in a group of corporations described in subsection 5.6.1 of this section, and also

5.6.3.b. Is included in a group of corporations described in subsection 5.6.2 of this section.

5.7 Rules for determining stock ownership of controlled group.

5.7.1. Parent-subsidiary controlled group. -- For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection 5.6.1 of section 5.6), stock owned by a corporation means:

5.7.1.a. Stock owned directly by the corporation, and

5.7.1.b. Stock owned with the application of subsections 5.8.1, 5.8.2 and 5.8.3 of section 5.8.

5.7.2. Brother-sister controlled group. -- For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection 5.6.2 of section 5.6), stock owned by a person who is an individual, estate, or trust means:

5.7.2.a. Stock owned directly by such person, and

5.7.2.b. Stock owned with the application of section 5.8 of this rule..

5.8. Constructive ownership of stock of corporation.

5.8.1. Options. -- If any person has an option to acquire stock, the stock shall be considered as owned by the person. For purposes of this paragraph, an option to acquire an option, and each one of a series of options, shall be considered as an option to acquire the stock.

5.8.2. Attribution from partnerships and limited liability companies. -- Stock owned, directly or indirectly, by or for a partnership or limited liability company shall be considered as owned by any partner or member having an interest of 5 percent or more in either the capital or profits of the partnership or limited liability company in proportion to his or her interest in capital or profits, whichever proportion is the greater.

5.8.3. Attribution from estates or trusts.

5.8.3.a. Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in the stock, to the extent of his or her actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary and the maximum use of the stock to satisfy his or her rights as a beneficiary.

5.8.3.b. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under I.R.C. §§ 671 through 679 (relating to grantors and others treated as substantial owners) shall be considered as owned by the person.

5.8.4. Attribution from corporations. -- Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of section 5.7 of this rule) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in the corporation.

5.8.5. Spouse. -- An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year:

5.8.5.a. The individual does not, at any time during such taxable year, own directly any stock in the corporation;

5.8.5.b. The individual is not a director or employee and does not participate in the management of such corporation at any time during the taxable year;

5.8.5.c. Not more than 50 percent of the corporation's gross income for the taxable year was derived from royalties, rents, dividends, interest, and annuities; and

5.8.5.d. The stock in the corporation is not, at any time during the taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his or her children who have not attained the age of 21 years.

5.8.6. Children, grandchildren, parents, and grandparents.

5.8.6.a. Minor children. -- An individual shall be considered as owning stock owned, directly or indirectly, by or for his or her children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his or her parents.

5.8.6.b. Adult children and grandchildren. -- An individual who owns (within the meaning of subsection 5.7.2 of section 5.7), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

5.8.6.c. Adopted child. -- For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

§ 175-5-6. General Powers and Duties of Board and Commissioner.

6.1. ~~The Board shall create,~~ Based upon a definitive evaluation and analysis of relevant economic and demographic factors in each county of the State, the Board shall create market zones in each county and provide for the issue of retail liquor store licenses in each market zone, within the State for the issuance of Class A and Class B retail licenses, and, if deemed necessary or desirable by the Board, to create one or more designated areas within such market zones for the issuance of Class B retail licenses.

6.2. The Commissioner shall:

6.2.1. Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and time table for investigating, processing and approving applications;

6.2.1.a. The prescribed form which has been designed and used for this purpose is attached at Appendix A.

6.2.2. Develop a form of retail license to be issued to each retail licensee under the provisions of W. Va. Code §60-3A-12;

6.2.2.a. The prescribed form which has been designed and used for this purpose is located at Appendix B.

6.2.3. Disseminate to the public information relating to the issuance of retail licenses;

6.2.3.a. The Commissioner has advertised on a state-wide coverage plan on two occasions giving details about the procedure to be used in the making of sealed, competitive bids for 10-year franchises as retail liquor store owners. These advertisements contain particulars as to how a person can receive a bid package containing all the information a bidder would need in order to make a bid on a retail store. Advertisements were also made in newspapers offering readers an opportunity to send the Commissioner their written comments relating to the Emergency Rule which had been filed in the office of the Secretary of State's office. The Commissioner has made himself accessible to all news media personnel who want to interview him. In addition, full particulars relating to the bidding procedures have been made available on the ABCC Web-site.

6.2.4. Promulgate standards for advertising the sale, availability, price and selection of liquor;

6.2.4.a. Standards for advertising are set forth in West Virginia Legislative Rule, Alcohol Beverage Control Administration, Title 175 - Series 1, Section 6, Retail Store Operations the provisions of which are incorporated herein by reference.

6.2.5. Set minimum standards for retail outlets regarding the amount and variety of alcoholic liquors which they must offer for sale at each retail outlet;

6.2.5.a. This matter is under study and review and is awaiting the identity of successful bidders on the new 10-year licenses in order to present them with an opportunity to make recommendations to the Commissioner.

6.2.6. Enforce the provisions of W. Va. Code §60-3A-1, *et seq.*, and this rule.

6.2.7. Impose civil penalties upon retail licensees;

6.2.7.a. The procedures to be followed by the Commissioner in imposing civil penalties upon retail licensees are set forth and explained in Section 26 of this rule and in W.Va. Code §60-3A-26.

6.2.8. Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of ~~such each~~ retail licensee with the provisions of W. Va. Code §60-3A-1, *et seq.*, and any rules promulgated by the Board or the Commissioner pursuant to the provisions of W. Va. Code §60-3A-6(c)(2).

6.2.9. Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of W. Va. Code §§60-3A-26 or ~~60-3A-27~~ or 60-3A-28 and §§175-5-26 or ~~175-5-27~~ or 175-5-28 of this rule which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees and shall be enforced in the manner specified in W. Va. Code §29A-5-1 with like effect as if §29A-5-1 was set forth in extenso in W. Va. Code §60-3A-1, *et seq.*, and this rule.

6.2.10. Settle, through the hearing procedure provided in §175-5-28a disputes relative to the boundaries of market zones and designated areas within market zones.

6.3. ~~The Board and the~~ Commissioner shall each:

6.3.1. Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under W.Va. Code §60-3A-1, *et seq.*, and this rule; and

6.3.2. Adopt, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of ~~West Virginia W. Va. Code article~~ §60-3A-1, *et seq.*, and this rule as they may deem necessary or desirable for the public interest in carrying out the provisions of ~~the Retail Liquor License Act and this rule. said article and these rules.~~ Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1, *et seq.*] of the W. Va. Code, the provisions of all of which are incorporated in this rule by reference.

§175-5-7. Market Zones; Class A and Class B Retail Licenses.

~~7.1. The Board shall determine the number of and establish market zones for the retail sale of liquor within this State. For each market zone so established, the Board shall designate whether one (1) Class A retail license or one (1) or more Class B retail licenses, or both, shall be issued for the zone.~~

~~7.1.1. Each Class A retail license shall permit the holder thereof to operate such number of Class A retail outlets as the Board shall have authorized for that market zone.~~

~~7.1.2. If the Board determines to issue one (1) or more Class B licenses, the number of Class B retail licenses to be issued by the Commissioner within the market zone shall not exceed fifty percent (50%) of the number of retail outlets authorized for the Class A retail license for such market zone. Provided, That in a market zone where the number of retail outlets authorized under the Class A retail license is an odd number, the number of Class B retail licenses which may be issued in such market zone shall be rounded up to the next highest whole number following that number which is equal to fifty percent (50%) of the number of retail outlets authorized under such Class A retail license.~~

7.1 Market zones. -- The Board shall create, based on economic and demographic factors, market zones within this state for the issuance of Class A and Class B retail licenses. The 98 market zones established by the Board in 1990 may not be modified by the Board unless the modification is authorized by the Legislature.

7.2 Class A licenses and Class A retail outlets.--

7.2.1 Class A licenses. -- In each market zone established under W. Va. Code § 60-3A-6, one Class A retail license may be issued unless the Board determines that a market zone is not suited for a Class A retail license.

7.2.2. Retail outlets. -- The Board shall determine the maximum number of retail outlets the holder of the Class A license may operate in a market zone.

7.2.3. Criteria the Board shall consider when determining whether or not a market zone is suited for a Class A retail outlet includes, but is not limited to:

7.2.3.a. The population and other demographics of the market zone during the ninth year of then current decennial license period;

7.2.3.b. The projected changes in the population and other demographics of the market zone during the next decennial license period;

7.2.3.c. The population and other demographics of the market zone at the time licenses were issued for then current decennial license period;

7.2.3.d. Whether for the current decennial license period a Class A license was issued, the number of retail outlets the Class A licensee was authorized to operate and the number of Class A retail outlets in operation in the ninth year of the current decennial license period.

7.3. When the Board determines that a market zone is not suited for the issuance of a Class A license, the Board shall determine the number of Class B licenses that may be issued for that market zone.

7.4. Class B Licenses. General rule. -- The number of Class B licenses issued for a market zone may not exceed 50 percent of the number of Class A retail outlets authorized for that market zone except as provided in subsection 6.4 of this section. When the number of Class A retail outlets is an odd number, the number of Class B licenses for that market zone may be rounded up to the next highest number.

Example. -- The holder of the Class A license for market zone ZZZ is authorized to operate 3 retail outlets in that zone. Fifty percent of 3 is 1.5, which the Commissioner may round up to 2, the next whole number.

7.5. Designated areas. -- If the Board deems it to be necessary or desirable, the Board may create one or more designated areas within a market zone for the issuance of Class B retail licenses. A single Class B license may be issued for each designated area. However, the total number of Class B licenses issued for a market zone, including all designated areas in a market zone, may not exceed 50 percent of the number of Class A retail outlets authorized for that market zone, rounded to the nearest whole number, as provided in section 7.1 of this rule.

7.5.1. Criteria the Board shall consider when determining whether to designate one or more areas within a market zone for issuance of a Class B license includes, but are not limited to, the demographics of the market zone, the location of Class A and Class B retail outlets in the market zone, state roads in the market zone, and whether alcoholic liquor in sealed containers is reasonably available to consumers in a proposed designated area.

7.6. Exceptions. -- Exceptions to the general rule stated in section 7.4 of this rule include the following:

7.6.1. When the Board determines that a market zone is not suited for issuance of a Class A license, the Board shall determine the number of Class B licenses that may be issued for that market zone.

7.6.2. No later than 60 days prior to the receipt of the bids for retail licenses for each decennial license period, the Board may authorize the Commissioner to issue an additional Class B license in a market zone for next decennial license period when the Board determines that

7.6.3. Each outlet authorized to operate in the market zone has been open and in operation for not less than 12 months prior to the date of the Board's determination under this section;

7.6.4. Changes in economic and demographic factors including, but not limited to, substantial population increases within the market zone, clearly demonstrate the need for an additional retail outlet or outlets within the market area to meet an increase in consumer demand; and

7.6.5. The issuance of one additional Class B license in the market zone will not significantly impair the efforts to procure \$19 million from sale of retail liquor licenses for the 10-year period beginning July 1, 2000.

7.7. When the number of retail outlets a Class A licensee may operate in a market zone is reduced as provided in W. Va. Code § 60a-27a(b), the Board may authorize the Commissioner to issue a Class B license to the highest bidder for each retail outlet forfeited by the holder of the Class A license.

Example. – A Class A licensee is authorized to operate 3 retail outlets in a market zone. The licensee only operates 1 retail outlet. The Commissioner may reduce the number of retail outlets the Class A licensee may operate by 2, the number of retail outlets not being operated by the Class A licensee. The Board may authorize the Commissioner to issue 2 Class highest B licenses, one for each Class A retail outlet forfeited by the Class A licensee, to the bidders for those licenses.

7.8. An applicant who becomes a successful bidder for a Class A2, A3, A4, or A5 10-year retail license to become effective on July 1, 2000 shall be required to open all authorized retail stores for each of such licenses within ninety (90) days following July 1, 2000 or within ninety (90) days following the date upon which he or she or it is issued a Class A retail license, whichever comes last. The holder of such a license shall operate each of the authorized retail stores for a minimum period of one year

7.9. No person may hold a combination of licenses that, in the aggregate, authorizes the operation of more than twenty-five percent (25%) of the total number of retail outlets authorized to operate in the State.

§ 175-5-8. Retail License Application Requirements; Retail Licensee Qualifications.

8.1. — Prior to or simultaneously with the submission of a bid for a retail license, following selection of the successful bidders, they shall file an "Application For Retail Liquor Store License" with the Commissioner, stating under oath the following:

8.1.1. If the applicant is an individual, his or her name and residence address;

8.1.2. — If the applicant is a corporation, limited partnership, partnership or association:
If the applicant is other than an individual:

8.1.2.a. — The name and business address of the applicant;

8.1.2.b. — The State of its incorporation or organization;

8.1.2.c. — The number, either federal employer number or social security account number, it uses for tax identification;

~~8.1.2.d. The names and residence addresses of each executive officer and Director or general partner of such entity, other principal officer, partner or member of the entity;~~

~~8.1.2.e. A copy of the entity's charter or other agreement under which the entity operates;~~

~~8.1.2.f. The names and residence addresses of any person owning, directly or indirectly, at least twenty percent (20%) of the outstanding stock, of or partnership, or other interests in such applicant.~~

~~8.1.2.g. The market zone or market zones county or counties where the applicant is considering the conduct of liquor sales, if successfully licensed; and~~

~~8.1.3. That the applicant has never been convicted in this State or any other State of any felony or other crime involving moral turpitude or convicted of any felony in this or any other State court or any federal court for a violation of any State or federal liquor law, and if the applicant is other than an individual, that none of its executive officers, other principal officers, partners or members, or any person owning, directly or indirectly, at least twenty percent (20%) of the outstanding stock, partnership or other interests in the applicant has been convicted; and~~

~~8.1.4. The application shall include a Statement by the applicant consenting to the conduct of a background investigation by the Commissioner.~~

8.1.5. Except for the questions in subdivisions 8.1.2.c. and 8.1.2.g., all of the information required by the provisions of section 8.1. through and including subsection 8.1.4. can be answered on the "Application For Retail Liquor Store License" form, a copy of which is attached as Appendix A. The exceptions can be answered by attaching a copy of the corporate charter or other agreement under which the entity operates to the "Application For Retail Liquor Store License" and by listing the name of the market zone and county in the mailing address located in question number 4 on that form.

~~8.2. An applicant shall provide to the Commissioner any additional information as the Commissioner may request;~~

~~8.2.1. A certified copy of the applicant's application for the Wholesale Dealers In Liquor Tax Stamp must be filed with the application for a retail liquor license.~~

~~8.2.2. If the applicant for a retail license holds a Federal Basic permit, the Wholesale Dealers In Liquor Tax Stamp and/or the Retail Dealers In Liquor Tax Stamp, only the applications upon which such permit and tax stamps were issued must be submitted with the application for the retail license.~~

8.3. Whenever a change occurs in any information provided to the Commissioner, the applicant change shall immediately be reported to the change to the Commissioner in the same manner as originally provided.

~~8.4. The Commissioner shall disqualify each bid submitted by an applicant under W. Va. Code §60-3A-10 and §175-5-10 of this rule, and no applicant shall be issued or be eligible to hold a retail license under this article section, if:~~

~~8.4.1. The applicant has been convicted in this State of any felony or other crime involving moral turpitude or convicted of any felony in this or any other State court or any federal court for a violation of any State or federal liquor law; or~~

~~8.4.2. Any executive officer Director or general partner applicant, or other principal officer, partner or member of the applicant, or any person owning, directly or indirectly, at least twenty percent (20%) of the outstanding stock, of or partnership, or other interests in the applicant, has been convicted in this State of any felony or other crime involving moral turpitude or convicted of any felony in this or any other State court or any federal court for a violation of any State or federal liquor law.~~

~~8.5. Federal rules require a person who purchases alcoholic liquors for resale to obtain a basic permit and certain tax stamps Retail Stamp from the Bureau of Alcohol, Tobacco and Firearms by paying a Retail Special Occupation Tax in the amount of \$250.00 annually beginning July 1st of each year. If more than one retail outlet is operated by that person, the Retail Stamp shall be purchased for each outlet.~~

~~8.5.1. A basic permit will be issued if:~~

~~8.5.1.1. Such person (or in the case of a corporation, any of its officers, Director s or principal stockholders) has not, within five (5) years prior to the date of application been convicted of a felony under federal or State law, and has not, within three (3) years prior to the date of application been convicted of a misdemeanor or under any Federal law relating to liquor, including the taxation thereof; and~~

~~8.5.1.2. Such person, by reason of his business experience, is likely to commence business as a retail licensee within a reasonable period and to maintain such business activities in conformity with Federal law; and~~

~~8.5.1.3. The business activities proposed are not in violation of the laws of West Virginia.~~

~~8.5.1.4. In order to obtain the basic permit for wholesalers and retailers of alcoholic liquors, an applicant must provide the Bureau of Alcohol, Tobacco and Firearms with the name, including trade name or names, if any, and the address of the applicant, the kind of permit applied for and the location of the business; whether the applicant is an~~

individual, a partnership or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each shareholder owning ten percent (10%) or more of the corporate stock.

~~8.5.2. The retail licensee will be required to purchase the following federal tax stamps:~~

~~8.5.2.1. A person who purchases alcoholic liquors for resale and such resales will be wholesale sales, such as to private clubs, is required to register for and obtain a wholesale dealer in liquors tax stamp. The tax stamp must be obtained before engaging in any business which will involve the wholesale sale of alcoholic liquors. The cost of this tax stamp is \$500 per year.~~

8.5. A person who purchases alcoholic liquors for resale and such resales will be retail sales, such as sales to consumers, is required to register for and obtain a retail dealer in liquors tax stamp from the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms This stamp must be obtained before engaging in any business which will involve the retail sales of alcoholic liquors. The cost of this tax stamp is two hundred and fifty dollars (\$250) per year.

8.5.1. Current licensees who are successful bidders will have an opportunity to have this stamp renewed and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms will notify those licensees as to when they must renew.

8.5.2. Successful bidders who are not current licensees shall be required to submit Bureau of Alcohol, Tobacco and Firearms Form ATFF 5630.5, Special Tax Registration And Return, to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962 and enclose a check or money order for Two Hundred Fifty Dollars (\$250.00) to pay the Retail Special Occupation Tax which will result in the issue of a Retail Dealer In Liquors Tax Stamp. This stamp must be purchased for and displayed in each retail store before a retail licensee can engage in the retail sale of liquor.

~~8.5.3. An applicant must apply for the basic permit and register for the foregoing dealer Classifications and Federal tax stamps in a manner sufficiently timely so that such documents will be provided within twenty (20) days after the applicant is notified of being the successful bidder.~~

8.6 The Commissioner shall not issue a retail license to an applicant which does not hold a license issued by the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and

Firearms pursuant to Federal law to sell liquor at wholesale.

8.6.1. Current licensees who are successful bidders and who hold a Federal Wholesaler's Permit and Wholesale Dealer In Liquors Tax Stamp will have an opportunity to have this stamp renewed and the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms will notify those licensees as to when they must renew.

8.6.2. Successful bidders who are not current licensees shall be required to obtain a Wholesaler's Basic Permit by submitting Bureau of Alcohol, Tobacco and Firearms Form ATFF 5100.24 Application For Basic Permit Under The Federal Alcohol Administration Act and mailing it to ATF, 550 Main Street, Cincinnati, OH 45202-3263. If this Permit is issued, the successful bidder shall submit an ATF F Form 5630.5, Special Tax Registration and Return, to qualify for a Wholesale Dealer In Liquors Tax Stamp and mailing it along with a check or money order for Five Hundred Dollars (\$500.00) made payable to "Bureau Of Alcohol, Tobacco and Firearms" to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962. Questions about this matter can be answered by telephoning ATF, 1/800/398-2282 at its Cincinnati, OH office.

8.6.3. A "NOTICE TO ALL BIDDERS FOR RETAIL LICENSES -- FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS REQUIRED" is attached as Appendix C

§ 175-5-9. Investigation of Applicants for Retail License; Notification to Approving or Denying Application; General Provisions Relating to Licensing.

9.1. Upon receipt of ~~an~~ a completed application for a retail license and such supplemental information as the Commissioner may require, the Commissioner may conduct such investigation of an applicant as deemed necessary or desirable in determining whether the applicant is qualified to receive a retail liquor store license.

~~9.1.1. The applicant, upon submitting an application, is deemed to consent to the ABCC conducting a complete investigation of the applicant.~~

9.1.1. The Commissioner, after initial examination and evaluation of the application in accordance with his authorized discretion, can determine that an Initial Inspection Report is warranted and, accordingly, have one made by a staff investigator using the "West Virginia Alcohol Beverage Control Commission Licensing Division Initial Inspection Report Form", a copy of which is attached as Appendix D.

9.2. Upon completion of any investigation of an applicant, the Commissioner shall inform such applicant in writing whether the application has been approved or denied, and shall post a copy of the decision in the Commissioner's office.

9.3. When an application is denied, the Commissioner shall provide the applicant with the reasons for the denial, including specific findings of fact, and the applicant shall be entitled

to a hearing before the Commissioner if the hearing is requested within five (5) days after the decision ~~is~~ issued. Any such hearing shall be held as specified in W. Va. Code §60-3A-28 and §175-5-28 of ~~these~~ this rule but the decision after hearing shall, ~~notwithstanding the provisions of W. Va. Code §60-3A-28 and §175-5-28 of these~~ this rule be final and binding and not subject to judicial review, as provided in W. Va. Code §60-3A-9, notwithstanding the provisions of W. Va. Code §60-3A-28 and §175-5-28 of this rule.

9.3.1. The Commissioner's decision shall be served on the licensee by certified mail, return receipt requested, or by personal service in accordance with Rule 4, West Virginia Rules of Civil Procedure for The Trial Courts of Record, the provisions of which are incorporated in this rule by reference.

9.3.2. The requirement that the hearing must be requested "within five (5) days after the decision is issued" shall mean within five (5) days following the date upon which actual notice is received by the licensee.

9.3.3. In computing the five (5) days following actual notice of the Commissioner's decision, the licensee does not have to include: (1) the day on which he receives the actual notice; (2) any legal holidays; (3) days on which there is a special election, primary election or a general election; and (4) if the 5th day falls on a Saturday, Sunday or a legal holiday, the prescribed 5th day is the first time the next day is not a Saturday, Sunday or a legal holiday. Reference is made to W. Va. Code §2-2-1 for a complete explanation of how to compute the five (5) days, and to W. Va. Code 2-2-2 for further elaboration on how to count the five (5) days.

9.3.4. The hearing request must be in writing and must ~~provide grounds for the hearing; include a basis for the applicant's belief that the decision of the Commissioner is in error.~~

9.3.5. Within ten (10) days after receipt of the hearing request, the Commissioner shall schedule a hearing and provide at least twenty (20) days' notice of the hearing. ~~Such~~ The notice shall be in writing and state the date, time and place of hearing.

9.3.6. The Commissioner ~~shall~~ must render his decision within twenty (20) days after completion of the hearing.:

9.4. An applicant shall provide all information required by W. Va. Code ~~article~~ §60-3A-1, ~~et seq.~~, and this ~~regulations~~ rule and shall satisfy all requests for information pertaining to qualification and in the form specified by the Commissioner. By filing an application, an applicant waives liability to any damages resulting from any disclosure or publication in any manner of any material or information acquired during inquiries, investigations or hearings.

§175-5-10. Bidding Procedure.

~~10.1. The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of W. Va. Code § 60-3A-10 and Section 175-5-10 of these rules.~~

~~The bidding procedure and timetable for the issuance of retail licenses shall be announced by public notice published as a Class II-O legal advertisement in compliance with the provisions of W. Va. Code article 59-3, and the publication area for such publication shall be each market zone within which a retail outlet shall be located. The second publication of such notice must appear on or before May 29, 1990.~~

10.1. The issuance of retail licenses shall be based on sealed competitive bids in accordance with provisions as follows:

10.1.1. Bids for the issuance of retail licenses shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of W. Va. Code Section §59-3-2, and the publication area for the publication shall be each market zone within which a retail outlet shall be located.

10.1.2. The second publication of the notice shall appear more than sixty (60) days next preceding the final day for submitting bids.

10.1.3. Each bid shall indicate the market zone for which the retail license is sought and whether the bid is for a Class A retail license or a Class B retail license.

10.1.3.a. A "BID FORM" is attached as Appendix F and a 2-page "INSTRUCTIONS TO COMPLETE BID FORM" is attached as Appendix E.

10.1.4. If the Board has created one or more designated areas for the market zone, the bid shall indicate whether it is for the Class B retail license to be issued for any designated area.

10.1.5. No bid shall be altered or withdrawn after the appointed hour for the opening of bids.

10.1.6. Subject to the provisions of W. Va. Code §60-3A-10b, each retail license shall be awarded to the highest bidder.

10.1.7. In market zones where two or more Class B retail licenses are authorized (other than for a designated area or areas), the licenses shall be awarded to those persons submitting the highest bids.

10.1.8. No bid shall be considered unless the bond required by W. Va. Code §60-3A-11 is submitted with the bid. However, if the bid bond is cash or negotiable securities, the bidder shall follow the procedure set forth in §175-5-11.2. of this rule.

10.1.9. All bids for a retail license may be rejected by the Board if the Board determines that the highest bid is inadequate, in which event the Commissioner shall begin anew the bidding process for that retail license.

10.1.10. Bidders submitting bids on forty-five (45) or more of the authorized retail stores shall submit in the bid package a prioritized list of the stores in numerical order for which they have bid. In the event that such bidders are not successful bidders on any of their listed, prioritized stores, such stores shall be removed from the list in descending order, and may be replaced in ascending order with any retail stores listed above number forty-five (45) on their list and for which they are successful bidders. For each Class A license listed, the number of stores authorized thereunder shall be listed as separate numbers. For example, a listing of an A-3 license bid, shall be prioritized as three separate stores.

~~10.2. Prior to the advertisement for bids for a retail license, the Commissioner shall determine whether the current lessor for any existing State liquor store or stores within the applicable market zone or designated area will agree to accept the eventual Class B retail licensee as lessee for the remaining term of the lease. Should such lessor agree to accept the eventual Class B retail licensee, such re-7.2. tail licensee shall have the option to assume such lease. In market zones where there are two (2) or more Class B retail licensees, the retail licensee who or which submitted the highest responsible bid shall have the option to assume such lease and, if such retail licensee does not assume such lease, lease, then the retail licensee who or which submitted the next highest responsible bid for a retail license in such market zone shall have the option to assume such lease.~~

10.2. Each person desiring to submit a bid shall file the bid with the West Virginia Secretary of Administration, Purchasing Division, 2019 Washington Street, East, P.O. Box 50130, Charleston, West Virginia 25305-0130 prior to March 3, 2000 at 1:30 o'clock p.m. The Purchasing Division will safeguard the bids and will conduct the opening of the bids on March 3, 2000 at 1:30 o'clock p.m. It will also determine if the bids have been submitted in compliance with the bidding requirements established by the provisions of W.Va. Code §§60-3A-10 and 60-3A-10b. For this purpose, the Secretary of Administration, Purchasing Division will be acting as the agent of the Commissioner by virtue of a Memorandum of Understanding between the Commissioner and the Secretary of Administration.

10.2.1. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the bid opening process is completed by the Purchasing Division, its Director, shall, by Affidavit, certify the name of each bidder, the amount bid, and whether the bid was submitted timely and in correct form, and have the State Police Department of Public Safety deliver all of the bids and the Affidavit to the Commissioner's office or to his designee.

10.2.2. After the award of the retail license, the Commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record shall be open to public inspection in The Commissioner's office. It shall be open to public inspection during normal business hours of the Commissioner. These documents shall not be destroyed without the written consent of the Legislative Auditor.

~~10.3. Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the Board has created one (1) or more designated areas for such market zone, whether the bid is for the Class B retail license to be issued for any such designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of bids. Each retail license shall be awarded to the highest responsible bidder. In market zones where two (2) or more Class B retail licenses are authorized (other than for a designated area or areas), such licenses shall be awarded to those persons submitting the highest responsible bids.~~

~~10.3.1 Lump sum bids for all Class A retail licenses in the State will be permitted.~~

~~10.3.2 Lump sum bids for more than one (1) but less than all Class A retail licenses in the State will not be permitted.~~

~~10.3.3 A bid submitted for all Class A licenses will be evaluated by the State Retail Liquor Licensing Board by comparing this bid to the sum of each of the highest qualified Class A license bids received for each of the individual market zones. If the lump sum bid is higher than the total of such individual highest bids, the Board will award all Class A licenses in the State to the highest qualified lump sum bidder. Conversely, if the sum of the individual bids is equal to or greater than all lump sum bids, then the Class A licenses will be awarded to the persons submitting the highest qualified bid in each of the market zones.~~

~~10.3.4 A bid for more than one (1) Class A license but less than all Class A licenses in the State must designate the Class A licenses bid upon and allocate the bid amount for each such Class A license.~~

10.3. Notification of successful bid and deadline, specified by the Commissioner, for bid payment shall be by certified mail, return receipt requested, or by personal service in accordance with Rule 4, West Virginia Rules of Civil Procedure for Trial Courts of Record, the provisions of which are incorporated into this rule by reference.

10.3.1. If the successful bidder fails to pay to the Commissioner the bid price within the deadline date specified by the Commissioner, the bid bond provided for in W.Va. Code §60-3A-11 and §175-5-11 of these this rule shall be forfeited and such the bidder shall not be issued the retail license.

10.3.2. Such A bid bond shall not be forfeited but shall be released if the successful bidder fails to qualify for the Federal Wholesaler's Basic Permit or the wholesale dealer in liquors tax stamp and the retail dealer in liquors tax stamp, unless the bidder provided false information to the federal government or to the Commissioner and such false information was the basis for denial of such the basic permit in which case the bid bond will shall be forfeited.

10.3.3. In either event, the Commissioner shall then issue the retail license to the next highest bidder for such retail license or reject all bids and start anew the bidding procedure for such the retail license.

~~10.4. No bid shall be considered unless the bond required under W. Va. Code § 60-3A-11 and Section 175-5-11 of this rule is submitted to the Commissioner. All bids for a retail license may be rejected by the Board if the Board determines that the highest responsible bid is inadequate, in which event the Commissioner shall begin anew the bidding process for that retail license.~~

10.4. Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in W. Va. Code § 60-3A-12, shall be paid to the Commissioner by money order, certified check, or cashier's check. Payment shall arrive in the Commissioner's office no later than 4:00 p.m. on Thursday, May 25, 2000.

~~10.5. For each ten (10) year license period, the Board may determine that the interest of the State is best served by receiving alternate bids in one (1) or more market zones where the Board has authorized both a Class A license and one (1) or more Class B licenses. In such case, the Commissioner shall advertise the zone both for a Class A license and one (1) or more Class B licenses, and also for only Class B licenses; in the second alternative the number of Class B licenses shall be the sum of the authorized Class A license locations and the number of Class B licenses offered for the market zone.~~

~~10.5.1 When alternate bidding is authorized by the Board for a market zone, the Commissioner shall total the apparent successful bids for the Class A license and the Class B license(s) in alternate one and shall total the apparent successful bids for Class B licenses in alternate two. If the total of the apparent successful bids is higher in alternate one, then the Commissioner shall award the Class A license and the authorized number of Class B licenses. If however, the total of the apparent successful bids in alternate two is higher than the total for alternate one, the Commissioner shall award only the Class B licenses authorized in alternate two and no Class A license shall be issued.~~

10.5. All retail licenses shall be signed by the Commissioner in the name of the State.

~~10.6 Each person desiring to submit a bid must file the same with the Commissioner and the Commissioner must have date-stamped the bid as having been received on or before 1:00 p.m. EDT on Tuesday, August 28, 1990. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour shall constitute sufficient reason for the rejection of a bid. After the award of the retail license, the Commissioner shall indicate upon the successful bid that it was the successful bid. Subsequent to the awarding of all retail liquor licenses, a copy of each successful bid and the respective bidder's application shall be maintained as a public record, shall be open to public inspection in the Commissioner's office and shall not be destroyed without the written consent of the legislative Auditor.~~

10.7. In the event two or more bids for the same retail license are for the same amount, the following procedure will be followed to determine the successful bidder.

10.7.1. Such bidders shall be notified to meet at the Commissioner's office at a specified date and time.

10.7.2. At the time of the meeting, the names of the affected bidders which shall have been written on paper, shall be placed in a hat or similar container.

10.7.3. The Commissioner shall then draw from the hat one of the pieces of paper and the bidder named thereon shall be declared to be the successful bidder.

~~10.8—Prior to the issuance of the retail license to the successful bidder, the bid price, as specified in W. Va. Code § 60-3A-12 and Section 175-5-12 of this rule shall be paid to the Commissioner by money order, certified check or cashier's check or wire transfer. All retail licenses shall be signed by the Commissioner in the name of the State of West Virginia.~~

~~10.9—Notification of successful bid and deadline for bid payment shall be by certified mail, return receipt requested. If the successful bidder fails to pay to the Commissioner the bid price within twenty (20) days of the Commissioner's notification to do so, the bid bond provided for in W. Va. Code § 60-3A-11 and Section 175-5-11 of this rule shall be forfeited and such bidder shall not be issued the retail license. Provided, That such bid bond shall not be forfeited but shall be released if the successful bidder fails to qualify for the Federal Basic Permit or the wholesaler or retailer tax stamp unless the bidder provided false information to the federal government or the Commissioner. The Commissioner shall then issue the retail license to the next highest responsible bidder for such retail license or reject all bids and start anew the bidding procedure for such retail license.~~

~~10.10—If the successful bidder has paid the entire bid price and then fails to qualify for the Federal Basic Permit, the Wholesale Dealer In Liquors permit or the Retail Dealer In Liquors permit, the amount of the bid price will be refunded unless the successful bidder provided false information to the federal government or to the Commissioner and such false information was the basis for denial of such permit. In such a situation the amount paid by the successful bidder will be retained by the Commissioner and deposited in the State General Fund.~~

§175-5-10a. Preference for resident bidders.

10a.1. In determining the highest responsible bidder for purposes of W. Va. Code § 60-3A-10a, and §175-5-10a of this rule, the Board shall afford a five percent (5%) preference for West Virginia resident bidders. ~~which~~. This preference shall be computed by multiplying the bid price submitted by each resident bidder by 1.05; adding five percent of the bid price to the bid price submitted by the resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license.

10a.1.1. This preference shall not be used to be a part added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.

10a.2. For purposes of W. Va. Code §60-3A-10a and this section, a bidder shall be ~~deemed to be~~ considered a West Virginia resident if the bidder:

10a.2.1. ~~Has~~ Being an individual, has resided in West Virginia for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened; or: ~~if the bidder is a corporation~~

Example 1. The minimum bid for a Class A retail license is \$300,000. Two bids are received. A West Virginia resident bidder submits a bid of \$305,000 and a nonresident submits a bid of \$310,000 for that license. The bid is awarded to the West Virginia resident bidder. [\$300,000 + \$15,250.00 (which is 5% of \$305,000) equals \$315,250.00 which is greater than the bid of \$310,000 submitted by the nonresident bidder.]

Example 2. The minimum bid for a new Class B retail license is \$200,000. Two bids are received. A West Virginia resident bidder submits a bid of \$200,000 and a nonresident submits a bid of \$215,000 for that license. The bid is awarded to the nonresident bidder. [\$200,000 + \$10,000 (which is 5% of \$200,000.00) equals \$210,000, which is less than the bid of \$215,000 submitted by the resident bidder.]

Example 3. The minimum bid for a new Class B retail license is \$200,000. Two bids are received. A West Virginia resident bidder submits a bid of \$190,000 and a nonresident submits a bid of \$205,000 for that license. The bid is awarded to the nonresident bidder because the resident bidder failed to bid the minimum bid amount. The 5 percent resident bidder preference does not apply in this example.

10a.2.2. Being a person other than an individual, has had its headquarters or principal place of business in this State for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened.

~~10a.2.1.1. has had its headquarters or principal place of business in this State for at least the four (4) years immediately prior to such date; or~~

~~10a.2.1.2. that each of the principal officers, Director-s and shareholders who own ten percent (10%) or more of the corporate shares of the corporation have resided in West Virginia for at least four (4) years immediately prior to the date upon which the bid is opened; or~~

~~10a.2.1.3. if the bidder is a partnership, that each partner owning a ten percent (10%) or more partnership interest in a partnership formed for the purpose of obtaining a retail liquor license have resided in West Virginia for at least four(4) years immediately prior to the date upon which the bid is opened; and~~

~~10a.2.1.4. if separate corporations form a new corporation for purposes of obtaining a retail liquor license, each corporation has had its headquarters or principal place of business in this State for at least four (4) years immediately prior to the date upon which the bid is opened; or~~

~~10a.2.1.5. if a parent corporation forms a subsidiary corporation for the purpose of obtaining a retail liquor license, such parent corporation has had its headquarters or principal place of business in this State for at least four (4) years immediately prior to the date upon which the bid is opened; and~~

~~10a.2.2. meets the requirements set forth in W. Va. Code §5A-3-44 relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.~~

10a.3. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.

Example 1. ABC Corporation is a Delaware corporation whose corporate headquarters has been located continuously in West Virginia since July 1, 1990. ABC Corporation is a West Virginia resident for purposes of the preference allowed by W. Va. Code § 60-3A-10a and this section.

Example 2. D & E Corporation is incorporated under the laws of West Virginia. Its corporate headquarters is located in Alpha state. D & E Corporation is not a West Virginia resident for purposes of the preference allowed by W. Va. Code § 60-3A-10a and this section.

Example 3. A corporation, whether incorporated in West Virginia or in another state, that operates retail outlets in this state but does not have its headquarters in this state is not a West Virginia resident.

Example 4. A partnership, limited liability company or other legal entity that is not a corporation, whether formed under the laws of this or another state, that operates one or more retail outlets in this state but does not maintain its headquarters or principal place of business in this state is not a West Virginia resident for purposes of the resident vendor preferences allowed under W. Va. Code §§ 60-3A-10a and 60-3A-10b of this rule.

10a.4. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened, did as follows:

10a.4.1. Had registered in accordance with W. Va. Code §11-12-1, et seq., ["Business Registration Tax"] to transact business within the State of West Virginia;

10a.4.2. Maintained its headquarters or principal place of business in this State;

10a.4.2.a. Whether or not the person other than an individual maintained its headquarters or principal place of business in this State for the required period can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, that the period of time the person's headquarters or principal place of business was continuously located in this State met the time requirement, as of the date the affidavit is signed and properly acknowledged, and stating that that address will remain the same as of the date on which the bids are to be opened. In addition to the submission of an affidavit, the person shall also be required to provide documentary proof that that person has complied with all other requirements specified in section 10a.4 of this rule

10a.4.3. Had actually paid, and not just applied to pay, county personal property taxes on the equipment used in the regular course of its business activity; and

10a.4.4. Had actually paid, and not just applied to pay, required business taxes imposed by W.Va. Code §11-1-1, et seq.; a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCA Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential. An "Authorization to Release Information" form prepared by the West Virginia State Tax Commissioner is attached as Appendix G.

10a.5. A bidder who is an individual shall be able to meet the four year continuous residency requirement by providing the Commissioner with documentary proof that he/she has resided continuously in West Virginia for four years during the 48 month period immediately preceding the filing of the bid. Copies of receipts from the Sheriff of a County indicating payment of personal property taxes and/or real estate taxes for each of the four years which indicate a West Virginia address for the bidder; copies of Department of Motor Vehicle documents such as a Driver's License, Registration Card, and Certificate of Title indicating a West Virginia address for the bidder during those four years; copies of Voter Register office documents indicating a West Virginia residence address for the bidder during those four years; certification from the Tax Commissioner that the bidder had filed Income Tax Returns for the previous four year period prior to the bid which indicated a West Virginia residence address for the bidder are examples of documents which can be submitted to the Commissioner in proof of a bidder's residence address during the four years in question. Copies of any ~~three~~ two documents mentioned above shall be submitted with the bid form and to the Commissioner's office by any individual bidder who desires to be granted a Preference For Resident Bidders.

10a.5.1. An individual may prove that he or she continuously resided in this State during the required period ending with the day the individual's bid is opened by submitting with his or her bid form an affidavit signed and acknowledged, under penalty of perjury, certifying the period of time the individual continuously resided in this State, as of the date the affidavit is signed and acknowledged, and stating that he or she intends to be a resident of this state on the

day his or her bid is opened. In addition to this affidavit, the individual will also be required to submit supporting documents in proof of his residency during the required period.

10a.6. A bidder who is other than an individual and is claiming a preference for residential bidders, shall submit documents in its bid package which prove its entitlement to this preferential treatment. Such documents will have to indicate that the requirements stated in subsection 10a.4. of this section have been satisfied.

10a.7. A bidder who feels believes he meets the requirements for residency set forth in W. Va. Code §60-3A-10a and Section §175-5- this rule, must affirmatively assert his claim on the official application form to receive this preferential treatment.

10a.8. A supplemental 2-page guideline for bidders seeking a residential preference was placed in each bid packet which was mailed to all prospective bidders and a copy of it is attached as Appendix H.

§175-5-10b. Bidding Procedure For Licenses Issued For Each Ten Year Period Beginning July 1, 2000, and Licenses Issued For Each Ten Year Period Thereafter.

10b.1. The issuance of Class A licenses and Class B licenses for the ~~ten~~ 10-year period beginning July 1, 2000 ~~the first day of July, two thousand,~~ and for each ~~ten~~ 10-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of W. Va. Code § 60-3A-10 and §175-5-10 of this rule, except as otherwise provided in this section.

10b.2. Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ~~ten~~ 10-year period beginning July 1, 2000, ~~the first day of July, two thousand,~~ the Board shall determine the minimum bid for each license based upon a review of the ABCC wholesale sales to each retail outlet permitted to operate under the license and such other factors as the Board may determine. ~~to be~~ The total amount of the minimum bid amounts specified by the Board shall be not less than nineteen million dollars (\$19,000,000). ~~to generate the revenues from liquor license renewal projected by the Governor's official estimates for fiscal year two thousand as presented to the regular session of the Legislature in the year one thousand nine hundred ninety-nine.~~

10b.2.1. A 2-page document indicating the Minimum Bid Requirements set by the Board for the sale on March 3, 2000 is attached as Appendix I.

10b.3. Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ~~ten~~ 10-year periods beginning July 1, 2000 ~~the first day of July, two thousand ten~~ and the first day of July every ~~ten~~ 10-years thereafter the Board shall determine the minimum amount for each bid ~~will make the same determinations as are specified in the preceding subsection 10b.2.~~

10b.4 All bids for a retail license for the ~~ten~~ 10-year period beginning July 1, 2000 ~~the first day of July, two thousand,~~ or for any ~~ten~~ 10-year period thereafter ~~may~~ should be rejected by the Board if the Board determines that the highest bid fails to meet the minimum bid requirement.

10b.5. The Board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone.

10b.6. If the Board determines that the highest bid meets or exceeds the minimum bid, the Board shall determine whether at the time of the bid, the same retail license was held for the period ending June 30, 2000 ~~the thirtieth day of June, two thousand,~~ or for any ~~ten~~ 10-year period thereafter, on the thirtieth day of June preceding the expiration of the license.

10b.7. If the current licensee holding the same retail license at the time for submission of the bid for the period ending June 30, 2000 ~~the thirtieth day of June, two thousand,~~ or for any ~~ten~~ 10-year period thereafter, on the thirtieth day of June preceding the expiration of the retail license, submitted a bid that was ~~no~~ not less than the minimum bid and is, after considering any preference applicable under the provisions of W. Va. Code §60-3A-10a, and §175-5-10a of this rule, an unsuccessful bidder for the license for the period beginning July 1, 2000 ~~the first day of July, two thousand,~~ or for any ~~ten~~ 10-year period thereafter, on the first day of July when the retail license expires, the Commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of W. Va. Code §60-3A-10b(e) and §175-5-10b.8 of this rule, and upon compliance with all other requirements imposed by the provisions of W. Va. Code §60-3A-1, *et seq.*, for the issuance of the license, the retail license for the ~~ten~~ 10-year period beginning July 1, 2000 ~~the first day of July, two thousand,~~ or for any ~~ten~~ 10-year period thereafter, shall be issued to the current licensee.

10b.7.1. Within five (5) days following the receipt of actual notice from the Commissioner to a current licensee that an opportunity exists for him, or her, or it to receive a license, the current licensee shall enter into a binding, written agreement with the Commissioner that he, or she, or it accepts the opportunity to receive a license and will pay the Commissioner an agreed upon amount of money for the opportunity. If the 5th day falls on a Saturday or Sunday, the agreement may be made on the following Monday. Payment by the current licensee to the Commissioner shall be made to the Commissioner by money order, certified check or cashier's check which shall be received in the Commissioner's office no later than 4:00 o'clock p.m. on May 25, 2000.

10b.7.2. If within the time determined by the Commissioner, the current licensee pays the amount to the Commissioner and complies with all other requirements imposed by the provisions of W. Va. Code §60-3A-1, *et seq.*, for the issuance of the license, the retail license for the ~~ten~~ 10-year period beginning July 1, 2000 ~~the first day of July, two thousand,~~ or for any ~~ten~~ 10-year period thereafter, shall be issued to the current licensee. If payment is not made to the Commissioner within the allotted time, the current licensee ~~will~~ shall forfeit his bid bond, and the Board may authorize the Commissioner to award the license to the original successful bidder upon receipt of payment of the bid amount and compliance by that bidder with all additional requirements imposed by W. Va. Code §60-3A-1, *et seq.*, and this rule.

10b.8. In determining the amount a current licensee, who is an unsuccessful bidder, shall pay as described in the preceding section of this rule, the Board shall afford the unsuccessful bidder a preference.

10b.8.1. If the unsuccessful bidder is a West Virginia resident as defined in W. Va. Code §60-3A-10a and §175-5-10a of this rule, the Board shall afford the unsuccessful bidder a five percent (5%) preference in addition to the five percent (5%) residential preference afforded under the code provisions and the regulation rule cited herein.

10b.8.2. If the unsuccessful bidder is not a West Virginia resident, the Board shall afford the unsuccessful bidder a five percent (5%) preference.

10b.8.3. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price. However, under no circumstances may the preference bring the price of the bid below the minimum bid established by the Board.

10b.9. This preference will shall be forfeited by a current licensee who fails to make a minimum bid on his, or hers, or its retail store during the initial round of bidding.

10b.10. A current licensee who is not operating any of the retail outlets for which he, or she, or it is authorized under the license is not eligible for the preference provided for in this section.

10b.11. In the event all bids submitted for a license fail to meet the minimum bid amount for the license as determined by the Board, the Board may offer the license for bid again after it determines a new minimum bid amount for the license.

§175-5-10c. Criminal Penalties For Unlawful Inducement.

10c.1. Any person who gives another person any thing of value to induce the other to refrain from bidding for a retail license is guilty of a misdemeanor, and upon conviction, shall be fined not more than ten thousand dollars (\$10,000), and in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars (\$1,000,000).

10c.2. Any person who gives a person any thing of value to induce the other to refrain from operating an outlet authorized under a retail license is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars (\$10,000), and, in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars (\$1,000,000).

§175-5-11. Bonding Requirements.

11.1. Each applicant submitting a bid or bids under W. Va. Code § 60-3A-10 and §175-5-10 of this rule, shall furnish to the Commissioner a bond at the time of bidding, which bond

shall guarantee the payment of twenty-five percent (25%) of the total price bid for each retail license. In the event that a winning bid is not paid, the bid bond will be forfeited to the State.

11.1.1. The bid bond shall be enclosed within the sealed bid of the applicant so as not to reveal the amount of the applicant's bid prior to bid opening day. However, if the bid bond is in the form of cash or negotiable securities:

11.1.1.a. It shall be transmitted directly either in person or by certified mail, return receipt requested to the State Treasurer's office, and

11.1.1.b. A certified statement made by the Treasurer to the effect that the bid bond, in the amount required, was in the form of cash or negotiable securities and was transmitted directly to the State Treasurer's office for safekeeping and a copy of this certified statement shall be enclosed with the sealed bid.

11.2. The bond required by W. Va. Code § 60-3A-11 and §175-5-11 of this rule shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the State, or an irrevocable letter of credit issued by a financial institution acceptable to the Commissioner. A cashier's check or surety bond is the preferred means of posting the bid bond. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the State Treasurer's office and credited to the Commissioner, but any income shall inure to the benefit of the applicant.

~~11.2.1. When cash or negotiable securities are deposited with the Treasurer to comply with the bid bond requirement, the Treasurer shall not reveal the amount of the deposit to the Commissioner or any other official or person until the bid opening day.~~

~~11.2.2. At the time when bids are opened, a representative of the Treasurer of West Virginia will shall be present to confirm the amount of deposit made in behalf of license bids.~~

11.3. The bond shall be returned to the applicant following the bidding if such applicant is not the successful bidder for the retail license. ~~and,~~ If an applicant is the successful bidder, the bond shall be released after issuance of the retail license and payment of the required amount.

11.4. A 4-page "Approved Format for Irrevocable Letter of Credit" is attached as Appendix J.

§175-5-12. Annual Retail License Fee; Expiration and Renewal of Retail Licenses.

12.1. The annual retail license period is from the first day of July to the thirtieth day of June of the following year.

12.1.1. The annual retail license for a Class A retail license is the sum obtained by multiplying the number of retail outlets operated by the retail licensee in the market zone to

which the Class A retail license applies by ~~one thousand five hundred dollars (\$1,500.00)~~ one thousand dollars (\$1,000).

~~12.1.2. The annual retail license fee for a Class B retail license shall be five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000).

~~12.1.3. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following thirtieth day of June.~~

~~12.1.4. The holder of a Class A retail license is not required to operate the maximum number of locations permitted for the license. A license fee is due only for a location which is selling liquor during any portion of the license year.~~

~~12.1.5. Once an annual license for a location is established, the license fee shall not again be pro-rated for any subsequent year.~~

~~12.2. All retail licenses shall expire on June thirtieth of each year and may be renewed only upon the submission to the Commissioner of the same information required to originally apply for the license and such additional information for the issuance of the license and any additional information requested by the Commissioner on the forms and by the date prescribed by the Commissioner, together with the payment to the Commissioner of the applicable annual retail license fee required under the provisions of W. Va. Code §60-3A-12(a) and §§175-5-12.1.1 and 175-5-12.1.2 of this rule.~~

~~12.3. No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.~~

~~12.4. All retail licenses issued or renewed under the provisions of W. Va. Code §60-3A-12 and this rule shall expire and be of no further force or effect as of the July first, in the year 2000, prior to which time new retail licenses shall be issued by following the bidding and other procedures set forth in W. Va. Code §60a and this rule for the initial issuance of retail licenses. for the period ending June 30, 2000 the thirtieth day of June, two thousand, or on the thirtieth day of June for any ten 10-year period thereafter shall expire and are be of no further force or effect as of July 1, 2000 the first day of July, in the year two thousand or as of the first day of July every ten 10-years thereafter.~~

~~12.5. Notwithstanding any provision of W. Va. Code §60-4-18 to the contrary, a municipality may invoke the authority granted by the provisions of W. Va. Code §8-13-4 to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in W. Va. Code § 60a-12(a) and §175-5-12.1 of this rule. The provisions of W. Va. Code §§60-4-18 and 8-13-4 are incorporated into this regulation rule by reference.~~

§175-5-13. Reserved For Future Use.

§175-5-14. Sale, Assignment or Transfer of Retail License.

14.1. No person may purchase or otherwise acquire a retail license unless the Commissioner has first approved of such person's qualifications to hold a retail license, which qualifications shall be the same as those required by W. Va. Code §60-3A-8 and §175-5-8 of this rule.

14.1.1. In no case may the holder of a Class A license sell one (1) or more authorized locations or in any way seek to divide a Class A license.

14.2. No person may sell, assign or otherwise transfer a retail license without the prior written approval of the Commissioner, which approval shall not be unreasonably withheld. ~~For purposes of W. Va. Code §60-3A-14 and this §175-5-14, the merger of a retail licensee or the sale of more than fifty percent (50%) of the outstanding stock of a licensee which is a corporation, or of the partnership or ownership interests of a partnership or other entity that is not a corporation, shall be deemed to be a sale, assignment or transfer of a retail license under said Section 60a-14 and this Section 175-5-14. W. Va. Code §60-3A-14 and this section of this rule.~~

§175-5-15. Surrender of Retail License.

15.1. ~~Any~~ When a retail licensee ~~may~~ surrenders a retail license to the Commissioner or when it is revoked or forfeited, ~~at any time~~, the Commissioner shall then proceed to reissue the retail license by following the bidding and other procedures set forth in W. Va. Code §60-3A-1, *et seq.*, and this rule for the initial issuance of a retail license. ~~There will be no pro-rate return of the initial bid or of any annual license fee which has been paid the Commissioner.~~

15.2. The effective date of a rebid license under this section shall be only for the portion of the 10-year license remaining after the bid is awarded.

175-5-16. Restriction on location of retail outlets.

~~16.1. No retail outlet may be located within the immediate vicinity of a school or church: Provided, That the provisions of W. Va. Code §60-3A-16 and this Section 175-5-16 shall not apply to the location of a retail licensee who, on the date of the passage of the State Retail Liquor License Act (W. Va. Code §60-3A), holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such location.~~

16.1. No retail outlet may be located within the immediate vicinity of a school or church.

16.2. Provided, that the provisions of ~~West Virginia~~ W. Va. Code §60-3A-16 and this Section 175-5-16 shall not apply to the location of a retail licensee who, on the date of the passage of the State Retail Liquor Act holds a license for the retail sale of wine, fortified wine or nonintoxicating beer at such a location. The State Retail Liquor Act was enacted on February 27, 1990 and was made effective from the date of its passage.

§175-5-17. Wholesale Prices Set By Commissioner; Retail Licensees to Purchase Liquor From the State; Transportation and Storage; Method of Payment.

~~17.1. The Commissioner shall fix wholesale prices for the sale of alcoholic liquor, other than wine, to retail licensees. The Commissioner shall sell alcoholic liquor, other than wine, to retail licensees according to a uniform pricing schedule. Provided, That the Commissioner may also establish discount prices for the sale to retail licensees of alcoholic liquor in inventory at State liquor stores and agency stores, but such discount prices shall only be available to retail licensees who pick up such alcoholic liquor at such stores. The Commissioner shall obtain if possible, upon request, any alcoholic liquor requested by a retail licensee.~~

~~17.1.1. Any alcoholic liquor picked up by a retail licensee from a State liquor store or agency prior to November 30, 1990 shall be discounted twenty percent (20%) from its wholesale catalog price as that price is defined in Administrative Rule 175-1-4.2.~~

17.1. The Commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The Commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule.

17.1.1. The Commissioner has established wholesale prices for the sale of liquor to retail licensees which is based upon the delivered cost of distilled spirits which ABCC purchases plus a mark-up of 25%. Added to the total is a shipping and handling charge of one dollar and five cents (\$1.05) per case delivered.

17.1.2. A uniform pricing schedule is maintained by the publication of an ABCC "Wholesale Spirits Catalog" which is sent to all retail licensees on a quarterly basis on February 1, May 1, August 1 and November 1 of each year. This catalog contains all alcoholic products normally available from the ABCC in addition to complete product information and pricing structure.

~~17.2. On or before July 1, 1990, the Commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the Commissioner for all alcoholic liquor in order to determine the prices at which all alcoholic liquor will be sold to retail licensees during the succeeding three (3) years~~

~~17.2.1. Until July 1, 1993, the wholesale liquor mark-up used to calculate the uniform cost for alcoholic liquor charged to every retail licensee by the Commissioner will be twenty-five percent (25%). During the three (3) year period ending July 1, 1993, price changes will only occur because of changes in the distillers' delivered price to the ABCC and the Federal Excise Tax. The sum of these two variables times 1.25 shall be the wholesale cost charged by the Commissioner to every retail liquor licensee. A shipping and handling charge of one dollar and five cents (\$1.05) per case delivered shall also be charged.~~

~~17.3. A retail licensee shall purchase all alcoholic liquor (other than wine) for resale in this State only from the Commissioner, and the provisions of W. Va. Code §§60-6-12 and 60-6-13 shall not apply to the transportation of such liquor. Provided, That a retail licensee shall purchase wine from a distributor thereof who is duly licensed under W. Va. Code §60-8. All alcoholic liquor (other than wine) purchased by retail licensees shall be stored in the State at the retail outlet or outlets operated by the retail licensee. Fortified wines and cordials must be purchased only from the Commissioner.~~

§175-5-18. Days and Hours Retail Licensees May Sell Liquor.

~~Retail licensees may not sell liquor on Sundays, Christmas or any primary or general Statewide election day, or between the hours of 10:00 p.m. and 8:00 a.m. on weekdays and Saturdays, wine and fortified wines may not be sold between 2:00 a.m. and 1:00 p.m. on Sundays or between 2:00 a.m. and 7:00 a.m. on weekdays or Saturdays.~~

18.1. Retail licensees may not sell liquor on Sundays, Christmas or election day, or between the hours of ten o'clock p.m. and eight o'clock a.m. on weekdays and Saturdays. Wine and fortified wines may be sold on such days and at such times as authorized in W. Va. Code §60-8-34, the provisions of which are incorporated into this regulation rule by reference.

18.2. For purpose of this section, "election day" shall mean only statewide primary election or general election days, and shall not mean any other State or local election day.

§175-5-19. Limitation on Amount to be Sold.

Not more than ten gallons of alcoholic liquor may be sold by a retail licensee to a person at one time without the approval of the Commissioner. However, but a sale in excess of ten gallons may be made to a religious organization purchasing wine for sacramental purposes. This section does not apply to purchases by private clubs as defined in W. Va. Code §60-7-2.

§175-5-20. Nonapplication of Rules to Retail Sales of Nonintoxicating Beer.

20.1 This rule does not apply to retail sales of nonintoxicating beer. ~~and a retail licensee may sell nonintoxicating beer for consumption off the premises of any retail outlet operated by such retail licensee if such retail licensee has obtained the appropriate license to sell the same under W. Va. Code §11-16-1, et seq. the provisions of which are incorporated into this regulation rule by reference. Beer which has an alcoholic content in excess of the limits set for nonintoxicating beer by W. Va. Code §11-16-3 may be sold by a retail liquor licensee when such beer has been purchased from the ABCC.~~

175-5-21. Tax on Purchases of Alcoholic Liquor.

21.1. For the purpose of providing financial assistance to and for the use and benefit of the various counties and municipalities of this State, there is levied by W.Va. Code §60-3A-21 a tax upon all purchases of alcoholic liquor from retail licensees. The tax so levied is five percent

(5%) of the purchase price and must be added to all purchases from retail licensees. ~~and~~ The tax must be collected with the purchase price by the retail licensee.

~~21.2. All such taxes shall be remitted to the Tax Commissioner who shall then deposit such taxes with the State Treasurer. All such taxes shall be distributed quarterly by the State Treasurer upon warrants of the Auditor payable to the counties and municipalities.~~

~~21.2.1. All such tax collected outside of a municipality but within one (1) mile of the corporate limits of any municipality shall be remitted to such municipality.~~

~~21.2.2. All other tax so collected shall be remitted to the county wherein collected:~~

~~21.2.2.a. Where the corporate limits of more than one (1) municipality are within one (1) mile of the place of collection of such tax, all such tax collected shall be divided equally among each of such municipalities.~~

~~21.2.2.b. Such mile is measured by the most direct hard surface road or access way usually and customarily used as ingress and egress to the place of tax collection.~~

§175-5-22. Requirement for Posting Information Sign.

22.1. Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by W. Va. Code §60-6-24, the provisions of which are incorporated in this regulation rule by reference.

22.2. All persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail either for consumption off-premises or on-premises, or both, shall display signs provided by the Commissioner alcohol beverage control administrator warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy.

22.3. Upon a determination by the Commissioner that a licensee has failed to comply with these provisions, the Commissioner may impose a civil administrative penalty for not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

§175-5-23. Records Required of Retail Licensees; Inspection of Records.

23.1. ~~Every~~ Each retail licensee must keep a record in book form showing the date that all distilled spirits, wine and beer were received on his, or her, or its premises, and from whom received.

23.2. ~~Every~~ Each retail licensee shall also maintain records including ABCC Form 190 showing the merchandise code, the total quantity of sales, and the quantity of each sale to a religious organization or to a private club as defined in ~~West Virginia Code article 60-7~~ W. Va. Code §60-7-2. A copy of ABCC Form 190 is attached as Appendix K.

23.2.1. In the case of sales to a private club, ABCC Form 190 shall be maintained by the retail licensee and the club must be identified by name, address and ABCC license number, and the full name of the person receiving the order must be clearly listed.

23.2.2 Each retail licensee must send a copy of ABCC Form 190 to the ABCC Nitro Warehouse each week, together with the Weekly Invoice which is a computer printout of the products ordered and delivered each week to a retail licensee. The driver of the delivery truck will take the ABCC Form 190's and the ABCC Weekly Invoice to the Nitro Warehouse each week. A copy of the ABCC Weekly Invoice is attached as Appendix L.

23.2.3. Failure by a retail licensee to comply with the provisions of subsection 23.2.2 will subject him, or her, or it to assessment of a Civil Penalty under the provisions of W. Va. Code §60-3A-26.

23.3. Records required to be maintained by this Section 23 shall not be destroyed, erased or altered for at least four (4) complete calendar years or until the year the retail licensee is audited and accepted by the department of tax and revenue.

§175-5-24. Unlawful Acts by Persons.

24.1. Any person under the age of twenty-one (21) years who, for the purpose of purchasing alcoholic liquor from a retail licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase alcoholic liquor from a retail licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars (\$50.00) or imprisoned in the ~~county~~ regional jail for a period not to exceed seventy-two (72) hours, or both fined and imprisoned, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one (1) year.

24.2. Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one (21) to whom he or she is not related by blood or marriage any alcoholic liquor from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars (\$100.00) or imprisoned in the ~~county~~ regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

24.3. No person while on the premises of a retail outlet may consume alcoholic liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of W Va Code §60-3A-24(c) and this § 175-5-24.3 is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars (\$100.00) or imprisoned in the ~~county~~ regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

24.4. Any person under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof,

shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the regional jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

24.5. Nothing in W.Va. Code §60-3A-24(a) this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

24.6. Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a State, federal or local law-enforcement agency or the Commissioner ~~West Virginia alcohol beverage control administration~~ while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules ~~and rules~~ of the Commissioner.

§175-5-25. Certain Acts of Retail Licensees Prohibited; Criminal Penalties.

25.1. It is unlawful for any retail licensee, or agent or employee thereof, on such retail licensee's premises to:

25.1.1. Sell or offer for sale any alcoholic liquor other than from the original package or container;

25.1.2. Sell, give away, or permit the sale of, gift of, or the procurement of, any alcoholic liquor, for or to any person under the age of twenty-one (21);

25.1.3. Sell, give away, or permit the sale of, gift of, or the procurement of, any alcoholic liquor, for or to any person who is visibly intoxicated;

25.1.4. Sell or offer for sale any alcoholic liquor on any Sunday or other than during the hours permitted for the sale of alcoholic liquor by retail licensees as provided under W. Va. Code §60-3A-1, *et seq.*, and this rule;

25.1.5. Permit the consumption by any person of any alcoholic liquor;

25.1.6. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

25.1.7. Permit any person under eighteen (18) years of age to sell, furnish or give alcoholic liquor to any other person;

25.1.8. Purchase or otherwise obtain alcoholic liquor in any manner or from any source other than the Commissioner; ~~that specifically authorized in W.Va. Code §60-3A-1, et seq., and this rule; or~~

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

~~25.2. Any person who violates any provision of W. Va. Code §60-3A-1, et seq., and this rule, except W. Va. Code §60a-24 and §175-5-24 of this rule, including, but not limited to, any provision of W.Va. Code §60a-25 and this § 175-5-25, or any other rule promulgated by the Board or the Commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in W. Va. Code §60-3A-1, et seq., and this rule to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred dollars (\$100.00) or nor more than five thousand dollars (\$5,000.00), or imprisoned in the county regional jail for not less than thirty (30) days nor more than one (1) year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under W. Va. Code §60-3A-1, et seq., and this rule.~~

25.2 Any person who violates any provision of W. Va. §60-3A-25 and this §175-5-25 who commits any of the acts declared therein to be unlawful, is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred dollars (\$100) or no more than five thousand dollars (\$5,000), or imprisoned in the county regional jail for not less than thirty (30) days nor more than one (1) year or both fined and imprisoned.

25.3. Nothing in W.Va. Code §60-3A-1, et seq., or this rule, or any other rule of the Board or Commissioner, prevents or prohibits any retail licensee from employing any person who is at least eighteen (18) years of age to serve in any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or from having such person sell liquor under the provisions of W. Va. Code §60-3A-1, et seq., and this rule.

25.3.1. With the prior written approval of the Commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than eighteen (18) years of age but at least sixteen (16) years of age, but such persons' duties shall not include the sale of liquor: Provided, that the authorization to employ such persons under the age of eighteen (18) years shall be clearly indicated on the retail license issued to any such retail licensee.

25.3.2. Permission to employ persons who are sixteen (16) or seventeen (17) years of age must be sought on the application for license or on any annual license renewal form only and such approval will not be unreasonably withheld.

25.3.3. The age restrictions in §175-5-25.3 of this rule apply to minor children of the licensee.

§175-5-26. Civil Penalties.

~~26.1. Any retail licensee who violates any provision of W. Va. Code §60-3A-1, et seq., or this rule or any other rule promulgated by the Board or Commissioner, may be assessed a civil penalty by the Commissioner, which penalty shall not be more than one thousand dollars (\$1,000.00) for each such violation.~~

~~26.2. Each violation shall constitute a separate offense.~~

~~26.3. In determining the amount of the penalty, the Commissioner shall consider the retail licensee's history of previous violations, the appropriateness of such penalty to the size of the business of the retail licensee charged, the gravity of the violation and the demonstrated good faith of the retail licensee charged in attempting to achieve rapid compliance after notification of a violation.~~

~~26.2. A civil penalty shall be assessed by the Commissioner only after the Commissioner shall have given at least ten (10) days' notice to the retail licensee. Notice shall be in writing, shall state the reason for the proposed civil penalty and the amount thereof, and shall designate a time and place for a hearing where the retail licensee may show cause why the civil penalty should not be imposed. Notice shall be sent by certified mail to the address for which the retail license was issued. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and be represented by counsel.~~

~~26.3. The provisions W. Va. Code §60-3A-28(b), (c), (d) and (e) and §175-5-28.2, 28.3, 28.4 and 28.5 of this rule are applicable to any such hearing and with respect to judicial review thereafter.~~

26.1. Any retail licensee who violates any provision of W. Va. Code §60-3A-1 *et seq.*, any rule promulgated by the Board or any rule promulgated by the Commissioner may be assessed a civil money penalty by the Commissioner. The amount of this money penalty may not exceed one thousand dollars (\$1,000) for each violation of the Act, the Board rule or a rule of the Commissioner.

26.2. Each day the violation continues shall constitute a separate violation.

§ 175-5-27. Suspension or Revocation of Retail License.

27.1 The Commissioner may, upon his or her motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of W. Va. Code §60-3A-1, et seq., this rule or of any other rule promulgated by the Board or Commissioner under authority of W. Va. Code §60-3A-6 has been violated by any retail licensee. The Commissioner may suspend or revoke a retail license if the retail licensee, or any employee thereof acting in the scope of his or her employment, has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty (20) days if he or she finds probable cause to believe

that the retail licensee, or any employee thereof acting in the scope of his or her employment, has wilfully violated any such provision.

27.2 The Commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application for retail license filed pursuant to W. Va. Code §60-3A-8.

§ 175-5-27a. Revocation of License For Failure to Operate Retail Outlet & Forfeiture of Retail Outlet for Failure to Operate Retail Outlet.

27a.1. Revocation. -- The Commissioner, after employing criteria prescribed by the Board in §202-1-19 of its pending, proposed legislative rule, may revoke a Class A retail license if the licensee fails to operate at least one of the retail outlets authorized under the license and may revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

27a.2. Disqualification of current licensee whose license is revoked. -- When a license is revoked under W. Va. Code § 60-3A-27a(a), the Commissioner may not accept the bid of the person who had the license revoked, or of a related person, when the license is offered for bid following the revocation. As used in this subsection, a bidder is a "related person" when the relationship between the bidder and the person whose license was revoked is such that the latter indirectly owns or controls the bidder under the provisions set forth in section 5.3 of this rule.

27a.3. Procedural due process. -- A revocation of a Class A or B license under W. Va. Code § 60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28.

27a.4. Forfeiture of authorization to operate retail outlet. -- When a person operates at least one of the retail outlets authorized under a Class A license but fails to operate the entire number of retail outlets authorized under the license, the Commissioner may, after employing criteria prescribed by the Board, reduce the number of retail outlets the person is authorized to operate under that license by the number not being operated. As used here, "failure to operate a retail outlet" includes, but is not limited to:

27a.4.1. Total failure to open and operate a retail outlet within ninety (90) days after July 1, 2000, or the day the person is awarded the license, whichever day occurs last;

27a.4.2. Failure to reopen the retail outlet within 90 days after it is closed, unless the closure was due to fire, flood or other act of God, "war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause," unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 60th day;

27a.4.3. Failure to reopen the retail outlet within 180 days after it was closed due to fire, flood or other act of God, "war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause," unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 180th day; or

27a.4.4. Failure to operate a retail outlet in a commercially reasonable manner as defined in subsection 3.3.2. of this rule.

Example 1. – The holder of a Class A license authorizing the operation of two retail stores opens the second retail outlet but operates it only six hours per week.

27a.5. Issuance of Class B license. -- The Board may authorize the Commissioner to issue, subject to the bid requirements of W. Va. Code §60-3A-10, a Class B license for each retail outlet for which authority to operate is forfeited under section 27a of this rule. The Board shall set a minimum bid for each Class B license.

27a.6. Procedural due process. -- A reduction in the number of retail outlets that may be operated by the holder of a Class A license under W. Va. Code §60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28..

§175-5-28. Notice of and Hearing on Revocation.

28.1. Before a retail license issued under the authority of W. Va. Code §60-3A-1, et seq., may be suspended for a period of more than twenty (20) days, or revoked, the Commissioner shall give at least ten (10) days notice to the retail licensee of his or her intention to suspend the retail license for more than twenty (20) days or to revoke said license.

28.1.1. Each notice shall be in writing and shall State the reason for the suspension or revocation. and shall. Each notice shall also designate a time and place for a hearing where the retail licensee may show cause why the retail license should not be suspended or revoked.

28.1.2. Notice shall be sent by certified mail to the address for which the retail license was issued.

28.1.3. The retail licensee may, at the time designated for the hearing, produce evidence in his or her behalf and may be represented by counsel.

28.2. Such hearing and the administrative procedures prior to, during and following the same, shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1, et seq., in like manner as if the provisions of said code sections were fully set forth in this section.

28.3. Any person adversely affected by an order entered following such hearing shall have the right of judicial review thereof in accordance with the provisions of W. Va. Code §29A-5-4 with like effect as if the provisions of said §29A-5-4 were fully set forth in this section.

28.4 The judgment of a circuit court reviewing such order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

28.5. Legal counsel and services for the Commissioner in all such proceedings in any circuit court and the supreme court of appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the Prosecuting Attorney of that county as well, all without additional compensation.

28.6. Upon final revocation, the Commissioner shall proceed to reissue the retail license by following the procedures set forth in W. Va. Code §60-3A-1, et seq., and this rule for the initial issuance of a retail license.

§175-5-28a. Notice of and Hearing on Boundary Disputes.

28a.1. Any retail licensee who disputes the placement of any part of the boundary which forms a part of the boundary of the market zone, or designated area within the market zone, within which the retail licensee's retail outlet is located may petition the Commissioner for a resolution of the dispute.

28a.1.1 The petition shall be in writing, and shall State the boundary in dispute, the grounds of the petition and all persons who may be affected by the Commissioner's decision.

28a.1.2. A copy of the petition shall be concurrently served upon all persons who may be affected by the Commissioner's decision and the petitioner shall verify under oath that such service has occurred.

28a.1.3. Within ten (10) days after receipt of the petition, the Commissioner shall schedule a hearing on the matter. At least twenty (20) days' notice of the hearing shall be provided to affected persons. such notice to be sent by certified mail, return receipt requested to the addresses provided by the petitioner.

28a.2. Such hearing and the administrative procedures prior to, during and following the same, shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1, et seq., in like manner as if those provisions were fully set forth in this section.

28a.3. Any person adversely affected by an order entered following such hearing shall have the right of judicial review thereof in accordance with the provisions of W. Va. Code §29A-5-4 with like effect as if those provisions of said § 29A-5-4 were fully set forth in this section.

28a.4. The judgment of a circuit court reviewing such order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

28a.5. Legal counsel and services for the Commissioner in all such proceedings in any circuit court and the supreme court of appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

28a.5.1. Each party shall be responsible for his own legal representation.

§ 175-5-29. ~~Disposition of Inventory Upon Revocation or Surrender of Retail License.~~

~~29.1 In the event of the revocation, or surrender of any retail license in accordance with the provisions of W. Va. Code §60-3A and this rule the Commissioner shall purchase, and the retail licensee holding such retail license shall sell to the Commissioner, all of the alcoholic liquor inventory of such retail licensee based on the then current delivered cost to the retailer of such inventory less any expenses incurred by the Commissioner in connection with the repossession thereof. The Commissioner, before paying such net amount to such retail licensee, shall honor all liens and warrants issued by the Tax Commissioner pursuant to W. Va. Code §11-10 and shall then pay any remaining proceeds to the licensee in accordance with provisions of W. Va. Code § 60-3A-1, et seq., may in his discretion, to purchase, or authorizes another person to purchase, the inventory or any portion of the, inventory.~~

§ 175-5-30. ~~Employees of ABCC.~~

§ 175-5-31. ~~Rules of Construction; Severability.~~

~~31.1. Nothing contained in W. Va. Code § 60-3A-1, et seq., and this rule shall be construed to modify the provisions of W. Va. Code §60-5-1, et seq., relating to local option elections, except that the reference to sales of alcoholic liquor by the Commissioner shall be deemed to refer to sales of alcoholic liquor by retail licensees.~~

~~31.2. If any section, subsection, subdivision, provision, clause or phrase of W. Va. Code §60-3A-1, et seq., and this rule or the application thereof, to any person or circumstance is held unconstitutional or invalid, such subdivisions, provisions, clauses or phrases or applications of this rule, and to this end each and every section, subsection, subdivision, provision, clause and phrase of §60-3A-1, et seq., and this rule are declared to be severable.~~

~~31.3. The provisions of W. Va. Code §60-3A-31(b) and §175-5-31.2 of this rule shall be fully applicable to all future amendments or additions to this W. Va. Code §60-3A-1, et seq., and this rule, with like effect as if the provisions of said sections were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.~~

~~31.4 In the event of any conflict between any provision of W. Va. Code §60-3A-1, et seq., and any other provision of the Code, any such other provision shall be construed and applied~~

~~so as to enable the Board and Commissioner to implement and make effective the provisions of said W. Va. Code §60-3A-1, et seq.~~

Emergency
West Virginia Legislative Regulation
Title 175 - Series 5
APPENDIX and REFERENCES

APPENDIX A	A two-page “Application for Retail Liquor Store License”
APPENDIX B	“License to Engage in the Business of Operating a Retail Liquor Store”
APPENDIX C	“Notice to All Bidders for Retail Licenses -- Federal Liquor Dealer Permits and Tax Stamps Required”
APPENDIX D	A two-page “West Virginia Alcohol Beverage Control Commission Licensing Division Initial Inspection Report Form”
APPENDIX E	A “Bid Form”
APPENDIX F	A two-page “Instructions To Complete Bid Form”
APPENDIX G	A two-page “Authorization To Release Information” by the West Virginia State Tax Commissioner
APPENDIX H	A two-page guideline for “Residential Bid Preferences”
APPENDIX I	A two-page “Minimum Bid Information” document
APPENDIX J	A four-page “Approved Format for Irrevocable Letter of Credit” Form
APPENDIX K	ABCC Form 190
APPENDIX L	A three-page “ABCC Weekly Invoice”

Provisions of W. Va. Code which are incorporated into this rule by reference:

§2-2-1, into §175-5-9.3.3.
§2-2-2, into §175-5-9.3.3.
§29A-1-1, et seq. into §175-5-6.3.2.
§29A-3-15, into §175-5-1.2.
§29A-5-1, into §175-5-6.2.9.
§29A-5-4, into §175-5-28.3.
§29A-6-1, into §175-5-28.4.
§60-6-24, into §175-5-22.1.
§60-7-2, into §175-5-23.2.
§60-8-34, into §175-5-18.1.

APPLICATION FOR RETAIL LIQUOR STORE LICENSE

REMITTANCE:

CERTIFIED CK: _____
 CASHIER'S CK: _____
 MONEY ORDER: _____

Payable To 'WV ABCA'

WEST VIRGINIA DEPARTMENT OF TAX & REVENUE
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 - 70TH STREET, SE
 (304) 558-2481

FOR OFFICE
 USE ONLY

APPROVED _____
 DISAPPROVED _____
 DATE _____

2000 - 2001

APPENDIX A

LICENSE CLASS A - \$1,000.00 B - \$1,000.00 (CHECK BOX) LICENSE NUMBER _____

1. NAME OF APPLICANT: _____ PHONE: RES() - _____
2. NAME OR TITLE OF BUSINESS _____ PHONE: BUS() - _____
3. STREET ADDRESS OF BUSINESS: _____
4. MAILING ADDRESS (IF DIFFERENT): NAME _____
 STREET OR P.O. BOX: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
5. FEDERAL IDENTIFICATION NUMBER (FEIN OR SOC.SEC.#): _____
6. DO YOU CURRENTLY HOLD ANY OTHER RETAIL LIQUOR LICENSES, WINE PERMITS, OR BEER PERMITS?
 NO _____ YES _____
 IF 'YES', LIST STATE AND LICENSE/PERMIT NUMBER: _____
7. OWNERSHIP DO YOU INTEND TO OPERATE YOUR BUSINESS AND HOLD LIQUOR LICENSE AS A(N):
 INDIVIDUAL _____ PARTNERSHIP OR JOINT VENTURE _____
 CORPORATION _____
8. COMPLETE THE FOLLOWING BASED ON RESPONSE TO NO. 7 ABOVE:

- INDIVIDUAL THE PERSON IN WHOSE NAME LICENSE WILL BE ISSUED.
- CORPORATION ALL OFFICERS AND ANY INDIVIDUAL OR ENTITY OWNING 10% OR MORE IN VALUE OR SHAR OF THE CORPORATION
- PARTNERSHIP MANAGING PARTNER AND ANY PERSON OR ENTITY OWNING 10% OR MORE OF THE PARTNERSHIP OR JOINT VENTURE

NAME	TITLE	HOME ADDRESS	DATE OF BIRTH MO/DAY/YR	U.S. CITIZEN? YES/NO	% OF OWNERSHI

9. IF APPLICANT AND PROPOSED LIQUOR LICENSE HOLDER IS A:

•CORPORATION:

REGISTERED NAME: _____

PLACE AND DATE OF INCORPORATION: _____ - ____/____/____
(DATE)

•PARTNERSHIP:

REGISTERED NAME: _____

PLACE AND DATE OF ORGANIZATION: _____ - ____/____/____
(DATE)

10. CONVICTIONS - MUST BE ANSWERED. HAVE ANY OF THE PERSONS OR ENTITIES LISTED IN ITEM NUMBER EIGHT (8) BEEN CONVICTED OF ANY OFFENSE AGAINST THE LIQUOR LAWS OF THE UNITED STATES, OR ANY STATE THEREOF, OR ANY FELONY CONVICTION IN THE STATE OF WEST VIRGINIA? YES ___ NO ___ IF ANSWER IS 'YES', THE FOLLOWING INFORMATION MUST BE FURNISHED ALONG WITH THIS FORM:

- 10A. NAME OF PERSON OR ENTITY
- 10B. NATURE OF OFFENSE OR CONVICTION
- 10C. PLACE AND DATE OF JURISDICTION AND COURT.
- 10D. THE SENTENCE AND/OR FINE.

11. A COPY OF: FEDERAL BASIC PERMIT OR WHOLESALE PERMIT, FOR PERIOD ENDING 30 JUNE 2001, MUST BE ATTACHED

12. NUMBER OF EMPLOYEES WORKING IN THIS LOCATION BETWEEN THE AGES OF 16-18 YEARS _____

STATEMENT - THE FOLLOWING STATEMENT MUST BE SIGNED BY ALL INDIVIDUALS OR ENTITIES LISTED IN ITEM NUMBER EIGHT (8):

THE UNDERSIGNED HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENT SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED. WE AGREE TO NECESSARY BUSINESS, FINANCIAL, AND CONVICTION BACKGROUND INVESTIGATIONS NECESSARY TO ISSUE THE REQUESTED LICENSE. IF ONE OR MORE LICENSES ARE GRANTED, THE PERSON(S) MAKING THIS APPLICATION HEREBY AGREE(S) TO COMPLY AT ALL TIMES WITH, AND OBSERVE ALL PROVISIONS OF CHAPTER 60 OF THE WEST VIRGINIA CODE AND ALL LAWS OF THIS STATE AND THE RULES AND REGULATIONS PROMULGATED BY THE ALCOHOLIC BEVERAGES DIVISION RELATING TO ALCOHOLIC LIQUORS, WINE, AND BEER

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____
DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____
DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____
DATE _____

(SIGNATURE): _____ SOCIAL SECURITY No.: _____ - _____ - _____
DATE _____

NOTARY:

STATE OF _____, COUNTY
OF _____

ON THIS _____ DAY OF _____, _____, THE ABOVE
(DAY) (MONTH) (YEAR) (NAMES OF PERSONS SIGNING ABOVE)

BEFORE ME, HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENTS SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED.

SWORN TO AND SUBSCRIBED BEFORE ME

(SIGNATURE OF NOTARY PUBLIC)

(S E A L)

MY COMMISSION EXPIRES:

PLEASE SEE REVERSE SIDE FOR AN IMPORTANT MESSAGE!

APPENDIX B

EFFECTIVE DATES:

JUL 1st, 1999 - JUN 30th, 2000

1999-2000



State of West Virginia

Office of West Virginia Alcohol Beverage Control Commissioner, ss:

LICENSE NUMBER

17-B-100-002980

OFF PREMISE

This is to certify that the undersigned, in pursuance of the authority vested in the Commissioner by

CHAPTER 60, ARTICLE 3A-1

has this day granted in the name and for the place of business set out below this

LICENSE TO ENGAGE IN THE BUSINESS OF
RETAILER

LICENSE TO OPERATE A LIQUOR STORE. LIQUOR SALES ONLY PERMITTED

MAILING ADDRESS:

CREIGHTON CORPORATION
CREIGHTON'S SHINNSTON FOODLAND
540 SOUTH PIKE STREET
SHINNSTON, WV 26431

PHYSICAL ADDRESS:

CREIGHTON CORPORATION
CREIGHTON'S SHINNSTON FOODLAND
540 SOUTH PIKE STREET
SHINNSTON, WARRISON, WV 26431

Given under my hand this,

the 15th day of JUNE, 1999

Notice: This license is issued only to the Licensee named above for use as specified, and cannot be abandoned, loaned, rented, or leased, and is not assignable or transferable.

992842 FILE-COPY

Commissioner

Post in a CONSPICUOUS place at the location for which issued. "PERMANENT LICENSE" - post under glass on licensed premises

APPENDIX C

NOTICE TO ALL BIDDERS FOR RETAIL LICENSES FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS REQUIRED

1. Successful bidders must acquire a Federal Wholesaler's Basic Permit unless they have already obtained one as a current licensee in West Virginia, and they must also acquire a "Wholesale Dealers In Liquor Tax Stamp" and a "Retail Dealers In Liquor Tax Stamp" before they can legally engage in the retail and wholesale liquor business in West Virginia. **IT IS NOW MANDATORY THAT ALL HOLDERS OF RETAIL LIQUOR LICENSES IN WEST VIRGINIA HAVE THE FEDERAL WHOLESALER'S BASIC PERMIT AND THE TWO TAX STAMPS MENTIONED HEREIN EVEN IF THE STORE DOES NOT SELL TO PRIVATE CLUBS.**

2. A person who purchases alcoholic liquors for resale to consumers, is required to register for and obtain a retail dealer in liquors tax stamp from the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms. This stamp must be obtained before making any retail sales of alcoholic liquors. The cost of this tax stamp is currently two hundred and fifty dollars (\$250) per year.

3. Current licensees who are successful bidders must renew this stamp when notified by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

4. Successful bidders who are not the current licensee shall submit Bureau of Alcohol, Tobacco and Firearms Form ATFF 5630.5, Special Tax Registration And Return, to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962 and enclose a check or money order for Two Hundred Fifty Dollars (\$250.00) to pay the Retail Special Occupation Tax to obtain a Retail Dealer In Liquors Tax Stamp. This stamp must be purchased for and displayed in each retail store before a retail licensee can engage in the retail sale of liquor at that location.

5. The Commissioner shall not issue a retail license to an applicant which does not hold a basic permit issued by the U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms to sell liquor at wholesale

6. Current licensees who are successful bidders and who hold a Federal Wholesaler's Permit and Wholesale Dealer In Liquors Tax Stamp will have an opportunity to renew them when notified by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

7. Successful bidders who are not current licensees shall be required to obtain a Wholesaler's Basic Permit by submitting Bureau of Alcohol, Tobacco and Firearms Form ATFF 5100.24 Application For Basic Permit Under The Federal Alcohol Administration Act and mailing it to ATF, 550 Main Street, Cincinnati, OH 45202-3263. If this Permit is issued, the successful bidder shall submit an ATF Form 5630.5, Special Tax Registration and Return, to qualify for a Wholesale Dealer In Liquors Tax Stamp and mail it along with a check or money order for Five Hundred Dollars (\$500.00) made payable to "Bureau Of Alcohol, Tobacco and Firearms" to Bureau of ATF, P.O. Box 371962, Pittsburgh, PA 15250-7962. Questions about this matter can be answered by telephoning ATF, 1/800/398-2282 at its Cincinnati, OH office.

**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSION
LICENSING DIVISION
INITIAL INSPECTION REPORT**

CLASS B

COUNTY: _____ TELEPHONE #: _____

APPLICANT: _____

DBA: _____

PHYS. ADDRESS: _____
STREET/ROUTE CITY ZIP

MAILING ADDRESS: _____
STREET/ROUTE CITY ZIP

TYPE OF LICENSE APPLYING FOR: _____

** IF CORPORATION, ASSOCIATION OR LIMITED LIABILITY COMPANY, LIST THE NAME, ADDRESS, TITLE, & TELEPHONE NUMBER OF THE PERSON REPORT IS COMPLETED ON: _____

1. STATE TAX #: _____

2. PREVIOUSLY LICENSED BY: _____ DBA: _____
LICENSE NUMBER: _____

3. HAS APPLICANT BEEN PREVIOUSLY LICENSED: _____ APPLICANT NAME: _____
DATE: _____ LICENSE NUMBER: _____

4. HAS THE APPLICANT BEEN CONVICTED OF A FELONY? _____
IF YES, WHEN? _____ WHERE? _____
MISDEMEANOR CONVICTION WITHIN THE LAST 5 YEARS OF VIOLATION OF ANY ABC LAWS? _____

5. YEARS OF WV RESIDENCY: _____ AGE: _____ SEX: _____ DOB: _____
PLACE OF BIRTH: _____ SOCIAL SECURITY #: _____
U.S. CITIZEN? _____ BY BIRTH OR NATURALIZATION? _____
IF NATURALIZATION, WHEN: _____ WHERE: _____

6. WV OPERATOR'S LICENSE #: _____ DATE ISSUED: _____
VEHICLE LICENSE IN WV: _____

7. IS APPLICANT OWNER OF BUILDING? _____ LEASING? _____ VERIFIED? _____
IF LEASED, GIVE NAME & ADDRESS OF OWNER: _____

8. ARE THE FOLLOWING ACCEPTABLE? GENERAL APPEARANCE INSIDE AND OUTSIDE? _____
NUMBER OF FLOORS: _____ FLOOR LOCATION: _____

9. ESTIMATED WHOLESALE VALUE OF INVENTORY OF FOOD (FOR THE TABLE)? _____
THIS ESTIMATE IS BASED ON: _____

10. ESTIMATE RETAIL SALES PER MONTH OF FOOD (FOR THE TABLE): \$ _____
THIS ESTIMATE IS BASED ON: _____

11. IF A WINE SPECIALTY SHOP, WILL APPLICANT SELL ONLY WINE ACCESSORIES AND FOOD OR FOOD

STUFFS NORMALLY ASSOCIATED WITH WINE: _____ EXPLAIN: _____

12. IS THERE IN THE STORE \$3,000 OR MORE IN FOOD ITEMS, EXCLUDING SNACK FOOD AND SOFT DRINKS?
EXPLAIN: _____

13. IF THIS IS A NEW BUSINESS, WILL SALES AND INVENTORY EXCEED \$3,000? _____

14. PLEASE NOTE ANYTHING THAT SHOULD BE CONSIDERED BEFORE LICENSE IS ISSUED: _____

APPLICANT'S SIGNATURE: _____

TITLE: _____ DATE: _____

INSPECTOR'S SIGNATURE: _____ DATE: _____

RECOMMENDATION: _____

BID FORM

WEST VIRGINIA DEPARTMENT OF TAX & REVENUE
 Alcohol Beverage Control Administration
 (See Instructions included with this package)

1. Name, Address, Phone Number of Applicant:

- a. Full Name: _____ Phone: (____) _____
- b. Business Name: _____
- c. Street Address: _____
- d. City, State: _____ Zip Code: _____
- e. Name of Person(s) to contact: _____
- f. Contact phone number concerning bid acceptance and right of first refusal (____) _____

2. Preferences:

- a. Claiming West Virginia Residency Status? Yes No
- b. Claiming Current Retailer Licensee Preference Yes No

3. Market Zone Bid Information:

Please enter your bid for this market zone in the columns below:

Market Zone # (County)	Class A License	Class B License	Designated Area Class B	License Preference	Bond Amount

Type of Bond(s): Surety Bond Letter of Credit Cash

Signature of Applicant: _____ Date: _____

Title: _____

INSTRUCTIONS TO COMPLETE BID FORM

The completed Bid Form must be received in the WV Department of Administration, Purchasing Division no later than 1:30 P. M. E.S.T., March 3, 2000. The pre-addressed (blue) envelope which is included with this package must be used for your bid. Additional envelopes are available at the ABCA Central Office. If additional bid envelopes are needed, please call (304) 558-2481.

The bid form (including attachments) must be completed in its entirety by all bidders and signed by an authorized representative of the entity. Failure to complete the bid form or provide all information requested may result in the disqualification of the bid.

Include bids for all licenses within a market zone on one bid form. Separate bid forms must be submitted for each market zone in which a license is being bid.

Applicants should read the enclosed Proposed Emergency Rules and Regulations, House Bill 3023, and these instructions in their entirety before completing the bid form. Failure to comply with the requirements contained in each could result in the disqualification of the bid.

Section 1

Provide all information requested. Incomplete information may result in delays in awarding licenses. Information in this section will be used to contact unsuccessful bidders with the right of first refusal.

Section 2

Preferences for residency and current licensees are claimed here. Conditions for claiming the residency preference are found in §175-5-10a in the enclosed Proposed Emergency Rules and Regulations. Proof of meeting such requirements should be attached to the completed bid form. Current retail licensees should attach a copy of their license to the completed bid form to claim the current retail licensee preference.

Section 3

For each license on which you are submitting a bid, enter the market zone, license class, license number, bid amount, priority, and bond amount in the corresponding columns in this section. Attach additional sheets if necessary.

Multiple Bids

Applicants may submit bids on more than one license in each market zone. However, you will be awarded only one license in each market zone. Applicants submitting bids for more than one license in each market zone should indicate the priority of the bids made. This priority will determine the license that will be awarded where the applicant is the highest bidder on more than one license in a market zone.

Bond Amounts

Each applicant is required to submit a bond equal to 25% of the amount bid for any license. Where two or more licenses are bid within a single market zone, the bond amount must be equal to the highest amount bid for any license within that zone. For example, an applicant bidding \$2 million for an A license and \$1 million for a B license in the same market zone must post a bond in the amount of \$500,000 - 25% of the \$2 million highest bid.

Bidders must total the required bond amount for each market zone bid and furnish with your bid an appropriate

bond equal to the sum of the required bond amounts for each market zone bid. The bond may be submitted in the form of a surety bond, irrevocable letter of credit, cash or negotiable securities. **The ABCA and the WV Purchasing Division strongly advises against enclosing cash or negotiable securities. The State of West Virginia and its Divisions will not be responsible for lost or stolen cash and/or negotiable securities submitted with bids.** Please note that bonds provided in the form of an irrevocable letter of credit should conform to the suggested wording that has been furnished to you with these materials.

Bidders are strongly advised to carefully review their bid forms to insure that the bid amount has been entered in the correct box corresponding to the type of license and market zone for which a bid is intended.

If you have any questions concerning the completion of the bid form, please call John Rutherford at (304) 558- 2481.

DISCLAIMER

The W V Department of Tax & Revenue and the ABCA cannot guarantee that the liquor licensing process will result in profitable ventures for all licensees as the licensee must determine many of the factors influencing the success of the investment in the license such as retail prices, store hours, product mix, administrative expenses and many other factors. As a result, bidders should consider the inherent risks associated with this investment.

Authorization to Release Information

APPENDIX G
Date _____

Name of taxpayer _____

Address _____

City, Town, Post Office _____ State _____ Zip Code _____

West Virginia Identification No. or Social Security No. _____

The above named taxpayer does hereby waive the confidentiality provisions of West Virginia Code § 11-10-5d and/or § 11-1A-23 to the following extent:

1. Persons to whom information may be released:

Name Donald L. Stemple Capacity Commissioner, ABCA

Address 322 70th Street, SE, Charleston, WV 25304

2. Effective period of this waiver:

X authorization terminates June 30 2000
month day year

_____ until my liability for West Virginia taxes is liquidated.

_____ (other: explain) _____

3. Taxes and/or credits to which this waiver applies:

	W. Va. Code Art.		W. Va. Code Art.
_____ Beer Barrel Tax	11-16	_____ Severance Tax	11-13A
<u>X</u> Business and Occupation Tax	11-13	_____ Soft Drink Tax	11-19
<u>X</u> Business Franchise Tax	11-23	_____ Telecommunications Tax	11-13B
_____ Business Investment and Jobs Expansion Credit (Super Credit)	11-13C	_____ Use Tax	11-15A
<u>X</u> Business Registration Tax	11-12	_____ Wine Liter Tax	60-8
_____ Cigarette Tax	11-17	_____ Charitable Raffle Boards & Games	47-23
<u>X</u> Consumers Sales & Service Tax	11-15	_____ Solid Waste Fee	20-5F
<u>X</u> Corporate Net Income Tax	11-24	<u>X</u> Corporate License Tax	11-12C
_____ Employers Withholding Tax	11-10	_____ Minimum Severance Tax on Coal	11-12B
_____ Estate Tax	11-11	_____ Health Care Provider Taxes	11-27
_____ Gasoline & Special Fuel Excise Tax	11-14	<u>X</u> All of the above applicable to the taxpayer.	
_____ Inheritance Tax	11-11	<u>X</u> Property Taxes	
_____ Motor Camer Road Tax	11-14A	_____ OTHER	
<u>X</u> Personal Income Tax	11-21		

4. Information to be released: (describe specifically)

That from January 1, 1996 to date, taxpayer filed all tax returns and reports and purchased all licenses/permits required under W. Va. tax laws.

5. Reason(s) why information is to be released:

APPENDIX G - P2

To determine if the taxpayer is qualified to receive a 5% residential preference
on the competitive bid he/she is making on the right to operate a retail liquor store
for 10 years beginning July 1, 2000.

This waiver will be effective only to the extent explained above and any other release of information is not permitted without additional authorization. Additionally, information will be released only to the extent necessary to comply with this request for information, and will not be disclosed if the Tax Commissioner determines that such disclosure would seriously impair administration of this State's tax laws.

This waiver must be signed by the taxpayer. If this waiver is by a corporation, it must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a partnership, as defined for federal income tax purposes, this waiver shall be signed by a partner or any employee of the partnership duly authorized so to act. The fact that an individual's name is signed on the waiver shall be prima facie evidence that such individual is authorized to sign the waiver on behalf of the corporation or partnership.

Signature

Capacity

Date

State of West Virginia,
County of _____, to-wit,

This day appeared before me, the undersigned notary public, _____ who acknowledge under oath the signature above

Notary Public

Date

My commission expires _____

RESIDENTIAL BID PREFERENCES**Preference for resident bidders.**

1. In determining the highest bidder for retail liquor store licenses, a five percent (5%) preference for West Virginia resident bidders, shall be computed by adding five percent of the bid price to the bid price submitted by the resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license
2. This preference shall not be added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.
3. A bidder shall be considered a West Virginia resident if the bidder:
 - a. Being an individual, has resided in West Virginia for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened; or:
 - b. Being a person other than an individual, has had its headquarters or principal place of business in this State for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened.
4. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.
5. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened, did as follows:
 - a. Had registered in accordance with W.Va. Code §11-12-1, *et seq.*, ["Business Registration Tax"] to transact business within the State of West Virginia;
 - b. Maintained its headquarters or principal place of business in this State; this can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, the period of time the person's headquarters or principal place of business was continuously located in this state, as of the date the affidavit is signed, and stating that that address will remain the same as of the date on which the bids are to be opened;
 - c. Had actually paid, and not just applied to pay, county personal property taxes on the equipment used in the regular course of its business activity;
 - d. Had actually paid, and not just applied to pay, required business taxes imposed by W.Va. Code §11-1-1, *et seq.*; a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCA Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not

contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential. An "Authorization to Release Information" form is attached which has been prepared by the West Virginia State Tax Commissioner for this purpose. Bidders shall complete this form and mail it to the West Virginia State Tax Commissioner, Building 1, Room W-300, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0842; and

e. A bidder who is other than an individual and is claiming a preference for residential bidders, shall submit documents in its bid package which prove its entitlement to this preferential treatment. Such documents will have to indicate that the requirements stated in this subsection have been satisfied.

6. A bidder who is an individual may prove that he or she continuously resided in this state during the 48 month period immediately preceding the opening of his bid by submitting with his or her bid form an affidavit signed, under penalty of perjury, certifying the period of time the individual continuously resided in this state, as of the date the affidavit is signed, stating that he or she intends to be a resident of this state on the day his or her bid is opened and true copies of any two (2) of the following documents:

a. Copies of receipts from the Sheriff of a County indicating payment of personal property taxes and/or real estate taxes for each of the four years which indicate a West Virginia address for the bidder;

b. Copies of Department of Motor Vehicle documents such as a Driver's License, Registration Card, or Certificate of Title of a motor vehicle indicating a West Virginia address for the bidder during those four years;

c. Certification from the Tax Commissioner that the bidder had filed West Virginia Resident Income Tax Returns for the previous four year period prior to the bid which indicated a West Virginia residence address for the bidder;

d. Copies of insurance policies on the person's primary residence, whether owned or rented, showing its location for each of the four years immediately preceding the day the person's bid is opened.

e. A letter signed by the clerk of the individual's county of residence certifying the date on which the individual registered to vote in that county and that the individual is still eligible to vote in that county and that that individual has remained eligible to vote in any election held in the 48 month period immediately preceding the opening of the bids; and if during such four year period the individual resided in two or more West Virginia counties, the separate certificates from the clerk of each county in which the individual resided will be accepted; and

f. Copies of any documents mentioned above shall be submitted with the bid form by any individual bidder who desires to be granted a Preference For Resident Bidders;

7. A bidder who believes he meets the requirements for residency must affirmatively assert his claim on the official application form to receive this preferential treatment.

MINIMUM BID INFORMATION

ZONE	COUNTY	LICENSES	A	B	DB	MIN BID	MIN BID	A	B	DB
		PROPOSED				FOR ZONE	PER LICENSE			
53	Mercer	3	2	1		420,000	140,000	280,000	140,000	-
54	Mineral	1		1		18,000	18,000	-	18,000	-
55	Mineral	1		1		78,000	78,000	-	78,000	-
56	Mingo	1		1		75,000	75,000	-	75,000	-
57	Mingo	1		1		35,000	35,000	-	35,000	-
58	Mingo	1		1		105,000	105,000	-	105,000	-
59	Mingo	1		1		63,000	63,000	-	63,000	-
60	Monongalia	2	2			508,000	254,000	508,000	-	-
61	Monongalia	3		3		591,000	197,000	-	591,000	-
62	Monongalia	2		2		468,000	234,000	-	468,000	-
63	Monroe	2		2		118,000	59,000	-	118,000	-
64	Morgan	1		1		26,000	26,000	-	26,000	-
65	Nicholas	1		1		61,000	61,000	-	61,000	-
66	Nicholas	2		2		218,000	109,000	-	218,000	-
67	Ohio	5	3	2		830,000	166,000	498,000	332,000	-
68	Pendleton	1		1		43,000	43,000	-	43,000	-
69	Pleasants	1		1		57,000	57,000	-	57,000	-
70	Pocahontas	1		1		83,000	83,000	-	83,000	-
71	Pocahontas	1		1		47,000	47,000	-	47,000	-
72	Preston	1		1		97,000	97,000	-	97,000	-
73	Preston	2		2		32,000	16,000	-	32,000	-
74	Putnam	2	2			134,000	67,000	134,000	-	-
75	Putnam	2		2		220,000	110,000	-	220,000	-
76	Raleigh	5	3	2		745,000	149,000	447,000	298,000	-
77	Raleigh	3	2		1	147,000	49,000	98,000	-	49,000
78	Raleigh	2		2		212,000	106,000	-	212,000	-
79	Kandolph	2		2		320,000	160,000	-	320,000	-
80	Kandolph	1		1		38,000	38,000	-	38,000	-
81	Ritchie	1		1		38,000	38,000	-	38,000	-
82	Roane	1		1		73,000	73,000	-	73,000	-
83	Summers	1		1		80,000	80,000	-	80,000	-
84	Taylor	1		1		77,000	77,000	-	77,000	-
85	Tucker	1		1		57,000	57,000	-	57,000	-
86	Tucker	1		1		47,000	47,000	-	47,000	-
87	Tyler	1		1		25,000	25,000	-	25,000	-
88	Lincoln	1		1		163,000	163,000	-	163,000	-
89	Wayne	2	2			140,000	70,000	140,000	-	-
90	Webster	1		1		50,000	50,000	-	50,000	-
91	Webster	1		1		166,000	166,000	-	166,000	-
92	Webster	1		1		7,000	7,000	-	7,000	-
93	Wirt	1		1		59,000	59,000	-	59,000	-
94	Wood	6	3	3		1,212,000	202,000	606,000	606,000	-
95	Wood	1		1		76,000	76,000	-	76,000	-
96	Wyoming	1		1		53,000	53,000	-	53,000	-
97	Wyoming	1		1		59,000	59,000	-	59,000	-
98	Wyoming	1		1		47,000	47,000	-	47,000	-
Total all zones		180	59	117	4	20,978,000				

MINIMUM BID INFORMATION

ZONE	COUNTY	LICENSES			MIN BID FOR ZONE	MIN BID PER LICENSE	A	B	DB
		PROPOSED	A	B					
53	Mercer	3	2	1	420,000	140,000	280,000	140,000	-
54	Mineral	1		1	18,000	18,000	-	18,000	-
55	Mineral	1		1	78,000	78,000	-	78,000	-
56	Mingo	1		1	75,000	75,000	-	75,000	-
57	Mingo	1		1	35,000	35,000	-	35,000	-
58	Mingo	1		1	105,000	105,000	-	105,000	-
59	Mingo	1		1	63,000	63,000	-	63,000	-
60	Monongalia	2	2		508,000	254,000	508,000	-	-
61	Monongalia	3		3	591,000	197,000	-	591,000	-
62	Monongalia	2		2	468,000	234,000	-	468,000	-
63	Monroe	2		2	118,000	59,000	-	118,000	-
64	Morgan	1		1	26,000	26,000	-	26,000	-
65	Nicholas	1		1	61,000	61,000	-	61,000	-
66	Nicholas	2		2	218,000	109,000	-	218,000	-
67	Ohio	5	3	2	830,000	166,000	498,000	332,000	-
68	Pendleton	1		1	43,000	43,000	-	43,000	-
69	Pleasants	1		1	57,000	57,000	-	57,000	-
70	Pocahontas	1		1	83,000	83,000	-	83,000	-
71	Pocahontas	1		1	47,000	47,000	-	47,000	-
72	Preston	1		1	97,000	97,000	-	97,000	-
73	Preston	2		2	32,000	16,000	-	32,000	-
74	Putnam	2	2		134,000	67,000	134,000	-	-
75	Putnam	2		2	220,000	110,000	-	220,000	-
76	Raleigh	5	3	2	745,000	149,000	447,000	298,000	-
77	Raleigh	3	2		147,000	49,000	98,000	-	49,000
78	Raleigh	2		2	212,000	106,000	-	212,000	-
79	Randolph	2		2	320,000	160,000	-	320,000	-
80	Randolph	1		1	38,000	38,000	-	38,000	-
81	Roanoke	1		1	38,000	38,000	-	38,000	-
82	Roanoke	1		1	73,000	73,000	-	73,000	-
83	Summers	1		1	80,000	80,000	-	80,000	-
84	Taylor	1		1	77,000	77,000	-	77,000	-
85	Tucker	1		1	57,000	57,000	-	57,000	-
86	Tucker	1		1	47,000	47,000	-	47,000	-
87	Wayne	1		1	25,000	25,000	-	25,000	-
88	Wayne	1		1	163,000	163,000	-	163,000	-
89	Wayne	2	2		140,000	70,000	140,000	-	-
90	Wayne	1		1	50,000	50,000	-	50,000	-
91	Wayne	1		1	166,000	166,000	-	166,000	-
92	Wayne	1		1	7,000	7,000	-	7,000	-
93	Wayne	1		1	59,000	59,000	-	59,000	-
94	Wayne	6	3	3	1,212,000	202,000	606,000	606,000	-
95	Wayne	1		1	76,000	76,000	-	76,000	-
96	Wayne	1		1	53,000	53,000	-	53,000	-
97	Wayne	1		1	59,000	59,000	-	59,000	-
98	Wayne	1		1	47,000	47,000	-	47,000	-
Total all zones		180	59	117	4	20,978,000			

**APPROVED FORMAT FOR IRREVOCABLE
LETTER OF CREDIT**

In consideration of your issuing the standby letter of credit applied for (herein called the "credit") we hereby agree as follows:

1. We agree to pay to you on demand, at your above address and in United States currency, the amount of each draft payable in United States currency and drawn under the credit, or purporting to be so drawn.
2. We agree to pay to you on demand, at your above address and in United States currency, the equivalent (at your then selling rate for cable transfers to the place where and in the currency in which such draft or instrument is payable) of the amount of each draft payable in other than United States currency and drawn under the credit, or purporting to be so drawn.
3. We agree to pay to you on demand a commission for the credit at such rate as you have quoted to us, together with the amount of any and all charges and expenses paid or incurred by you or by any of your agents or correspondents in connection with the credit. In addition to such commission and any such charges and expenses, we agree that if at any time any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority:
 - A. shall subject you to any tax, duty or other charge with respect to this agreement, or shall materially change the basis of taxation of payments to you of the principal of or interest on any amounts payable by us under this agreement (except for the imposition of or changes in respect of the rate of tax on your overall net income); or
 - B. shall impose or deem applicable or increase any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by you because of this agreement or the credit; or
 - C. shall require you to include the credit in your calculations relating to your capitalization, and if the result is to increase the cost to you of maintaining the credit, or to reduce the amount of any sum received or receivable by you under this agreement, then within 30 days after demand we agree to pay you such additional amount or amounts as will compensate you for such increased cost or reduction. Your certificate in reasonable detail setting forth the basis for the determination of such additional amount or amounts shall be conclusive evidence of such amount or amounts.
4. All amounts payable by us under paragraphs 1 and 2 of this agreement shall, if unpaid, bear interest from the date of demand; all other amounts payable by us under any provision of this agreement, except this paragraph 4, shall, if unpaid, bear interest from the date you are first entitled to demand payment thereof, regardless of whether you actually do make demand. In all cases, such indebtedness shall bear interest at an annual rate equal to the highest rate or rates of interest payable by us (for periods of time such indebtedness is outstanding) pursuant to the provisions of any promissory note issued or endorsed by us and held by you, or, for periods of time during which no such promissory note is outstanding at (check one): (13) the annual rate of (14) _____ %, (15) an annual rate that shall be (16) _____ percent in excess of the base rate in effect from time to time, and that shall change when and as the base rate changes. "Base rate" means the rate of interest established by (17) _____ from time to time as its "base" or "prime" rate. We agree to pay such interest to you, on a monthly basis and also on demand, based on a 360 day year.
5. Except to the extent we may hereafter give you contrary instructions in writing:
 - A. Your duty and that of your correspondents to examine certificates and other documents received by you or them under, or purporting to be under, the credit, shall be fully discharged if you or they exercise reasonable care to ascertain that they appear on their face to be in accordance with the terms of the credit.
 - B. Your liabilities and responsibilities and those of your correspondents shall be strictly limited in accordance with the most current revision of the Uniform Customs and Practice for Documentary Credits (1983 Revision), ICC Publication Number 400, effective October 1, 1984.
 - C. You and your correspondents may receive and accept or pay as complying with the terms of the credit any drafts, documents or statements, otherwise in order, which may be signed by the administrator, executor, trustee in bankruptcy of or receiver of any of the property of (or any similar representative or trustee for), the person in whose name the credit provides that any such drafts, documents or statements must be drawn or issued.

- A. For the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or statements;
- B. For the consequences arising out of any delay and/or loss in transit of any messages, letters or documents, or the delay, mutilation or other errors arising from the transmission of cables, telegrams or telex; or
- C. For consequences arising out of the interruption of your business by acts of God, riots, civil commotions, insurrections, wars or other causes beyond your control or by any strikes or walkouts

None of the foregoing acts or things shall in any way affect or impair any of our obligations or any of your rights and powers specified in or arising under this agreement. In furtherance and extension and not in limitation of the specific provisions set forth above, we agree that any action taken or omitted by you or by your correspondents under or in connection with the credit, if taken or omitted with honesty in fact, shall be binding on us and shall not put you or your correspondents under any resulting liability to us. We further agree that we will indemnify you and your correspondents, and also you and their officers, employees and agents, and hold you and all of them harmless from and against each and every claim, demand, action, or suit which may arise against you or them by reason of any action taken or omitted (from and against each and every claim, demand, action or suit which may arise against you or them by reason of any action taken or omitted) pursuant to this agreement.

- 7. We agree to pay to you on demand any and all expenses, including reasonable attorneys' fees and legal expenses, incurred or paid by you in protecting or collecting our indebtedness to you under this agreement or in protecting, exercising or enforcing any or all of your rights and remedies against us.
- 8. Should any of the following events of default occur, and if at the time of any such event there remains any portion of the Credit undischarged, we shall, upon your demand, pay to you for application to drawings under the Credit the entire amount which has not been drawn: (i) we default in respect of any payment due you under this agreement; (ii) we default in the payment of any indebtedness which we may have for the repayment of borrowed monies; (iii) we become insolvent, fail to pay our debts generally as they become due, make any assignment for the benefit of creditors, file or suffer the filing of any petition or action for relief under the provisions of the United States Bankruptcy Code or other similar laws for the relief of or relating to, debtors; (iv) there is a voluntary or involuntary appointment of a receiver, trustee, custodian or similar official to take possession of any of our property; (v) there is an attachment of any material involuntary lien of any kind to our property or assets; or (vi) any representation made in any financial statement or in any other statement or document presented to you by or on our behalf is, in any material respect, false or misleading when made. Any amount so paid which has not been drawn on the expiry date of the Credit shall be repaid to us.
- 9. We further agree that:
 - A. This agreement and your rights hereunder shall continue unimpaired and shall be binding upon us notwithstanding any delay, extension of time, increase in amount, renewal, compromise or other indulgence or modification granted or agreed to by you, with or without notice to or approval by us (or any of us) in respect of the credit or any of our indebtedness to you under this agreement.
 - B. You shall not be deemed to have waived or released any of your rights or remedies (whether specified in or arising under this agreement or otherwise available to you by law or agreement) unless you have signed a written waiver or release. Delay or failure to act on your part shall not constitute a waiver of or otherwise preclude enforcement of any of your rights and remedies. All of your rights and remedies shall be cumulative and may be exercised singularly or concurrently. You need not resort to any particular right or remedy before exercising or enforcing any other, and your resort to any right or remedy shall not preclude the exercise of enforcement of each other's right and remedy.
 - C. This agreement shall be governed by the laws of the state where your main banking office is located.
 - D. If any provision or clause of this agreement or the application thereof to any person or circumstance is invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, clauses or applications of this agreement which can be given effect, and this agreement shall be construed as if the invalid or illegal or unenforceable provision, clause or application has never been contained herein.

- E. If the application is signed by or on behalf of several of us, this agreement shall be construed and interpreted so as to establish in all instances the joint and several obligations of each of us and this agreement shall be fully binding upon and enforceable against either, any or all of us. Each of us shall be deemed to be the agent of any others, and except as expressly provided otherwise herein, you may act at the direction or request of any one or more of us and you may give a notice or notices (whether or not required to be given), to any one or more of us, all as you may from time to time elect, without notice to or approval by the others. You may terminate this agreement with respect to, or release or discharge, any one or more of us without affecting or impairing the obligations of the rest of us. The death, incompetence or dissolution of any of us or any change in the composition of any partnership or any other firm which may be a party hereto shall not affect in any way the credit or any rights with respect to indebtedness incurred under this agreement or with respect to transactions theretofore initiated. In this agreement, the terms "we," "us" and "our" refer to any one or more applicants and correspondent banks that have executed the application, and the terms "you" and "your" refer to the bank to which such application is directed.
- F. This agreement is without limitation as to duration or amount and shall be binding upon our respective heirs, legal representatives, successors and assigns and shall inure to the benefit of and be enforceable by you, your successors and assigns. You may assign or transfer this agreement and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all of your rights and remedies specified in or arising under this agreement with respect to any and all instruments and rights not so assigned or transferred.
- G. Unless you agree otherwise, the credit shall be subject to Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication number 500 effective January 1, 1994, but all of your rights arising under said Customs and Practice shall be in addition to, and not in limitation of, your rights under this agreement.

We waive notice of your acceptance of this agreement.

Dated this (18) _____ day of (19) _____, 19 _____

APPLICANT	CORRESPONDENT BANK
Company or individual name	Bank name
(20) _____	(23) _____
Authorized signature	Authorized signature
(21) _____	(24) _____
Title	Title
(22) _____	(25) _____

STATE OF WEST VIRGINIA
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 70TH STREET CHARLESTON, WV 25305

APPENDIX L

TO: RITE AID OF WV 1914
 401 BUCKHANNON PIKE
 NUTTER FORT, WV

INVOICE NO. 0146-01/18/2000-0
 DATE- 01/18/2000
 PAGE- 1

DESCRIPTION	BOTTLE CODE	SIZE	FULL CASES	CHK RCV	SPLIT BOTTLES	UNIT PRICE	EXTENDED PRICE
ACQUIN APRICOT	229	.750M	1	--		74.40 CASE	74.40
EAGRAM'S VO	238	1.750L	1	--		117.06 CASE	117.06
ARTON VODKA	262	1.000L	1	--		54.00 CASE	54.00
ONTEZUMA TQ WHT	263	1.000L	4	--		72.12 CASE	288.48
MIRNOFF 80	354	.750M	1	--		78.60 CASE	78.60
MARETTO DI AMOR	421	.750M	1	--		93.35 CASE	93.35
AHLUA COFFEE	432	1.000L	1	--		205.92 CASE	205.92
EAGRAM'S VO	464	1.000L	1	--		143.40 CASE	143.40
ESSLER'S	476	.750M	1	--		68.28 CASE	68.28
BOSTON PEACH BRA	496	.750M	1	--		71.76 CASE	71.76
POPOV 80	644	1.000L	1	--		73.80 CASE	73.80
EAGRAM'S 7 CROW	696	1.000L	1	--		102.00 CASE	102.00
APTAIN MORGAN R	744	.750M	1	--		95.40 CASE	95.40
ILD TURKEY 101	844	1.000L	1	--	117.00	186.84 CASE	186.84
ARTON PEACH SCH	955	1.750L	1	--		49.56 CASE	49.56
EAGRAM'S VO	1242	.375M	1	--		120.00 CASE	120.00
LAUMIR VODKA	1247	.375M	1	--		49.44 CASE	49.44
ORD CALVERT CAN	1266	.375M	1	--		84.24 CASE	84.24
IM BEAM - GLASS	1319	.375M	1	--		101.04 CASE	101.04
ACARDI LIGHT	1607	1.000L	1	--		114.96 CASE	114.96
RISTOCRAT VODKA	1660	1.000L	1	--		54.96 CASE	54.96

STATE OF WEST VIRGINIA
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 70TH STREET CHARLESTON, WV 25305

APPENDIX L - P2

TO: RITE AID OF WV 1914
 401 BUCKHANNON PIKE
 NUTTER FORT, WV

INVOICE NO. 0146-01/18/2000-0
 DATE- 01/18/2000
 PAGE- 2

DESCRIPTION	BOTTLE CODE	SIZE	FULL CASES	CHK RCV	SPLIT BOTTLES	UNIT PRICE	EXTENDED PRICE
BROWN ROYAL	1750	.750M	1	--		177.00 CASE	177.00
FTER SHOCK	2386	.750M	1	--		161.88 CASE	161.88
YAN'S CREAM	2406	.750M	1	--		88.20 CASE	88.20
ADIAN VSP	2429	1.000L	1	--	returned 1/24/000	58.80 CASE	58.80
ARTON VODKA	3314	1.750L	1	--		46.50 CASE	46.50
IM BEAM	3327	1.000L	1	--		111.24 CASE	111.24
ARTON VODKA	4008	.750M	1	--		45.60 CASE	45.60
EN HIGH BOURBON	4011	1.000L	1	--		71.40 CASE	71.40
RISTOCRAT VODKA	4048	1.750L	1	--		47.46 CASE	47.46
POPOV 80	4287	.200M	1	--		78.72 CASE	78.72
ORD CALVERT CAN	4306	.200M	1	--		95.52 CASE	95.52
NCIENT AGE	4401	1.750L	1	--		78.24 CASE	78.24
ILBEY'S VODKA	4564	1.750L	1	--		58.98 CASE	58.98
APALI LICOR DE	4699	.750M	1	--		81.00 CASE	81.00
OSE CUERVO ESPE	4717	1.000L	1	--		157.36 CASE	157.36
YER'S JAMAICAN	5012	1.000L	1	--		155.40 CASE	155.40
ULDSCHLAGER	5211	.750M	1	--		155.16 CASE	155.16
IKEMAN GIN	7063	1.750L	2	--		51.24 CASE	102.48
ORDONS DRY GIN	7673	1.750L	1	--		81.06 CASE	81.06
EN HIGH BOURBON	7831	1.750L	1	--		63.96 CASE	63.96

---SHIPPED---

FULL CASES	SPLIT BOTTLES	ORDER AMOUNT	SPLIT CASE CHARGE	CREDIT DUE	INVOICE TOTAL
45	0	4,143.45	.00	.00	4,143.45

STATE OF WEST VIRGINIA
 ALCOHOL BEVERAGE CONTROL ADMINISTRATION
 322 70TH STREET CHARLESTON, WV 25305

TO: RITE AID OF WV 1914
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INVOICE NO. 0146-01/18/2000-0
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*** INVOICE NUMBER	*** INVOICE EXCEPTIONS BOTTLE CODE	*** BOTTLE CASES	*** RET	*** APP	*** BOTTLE CODE	*** CLAIMS BOTTLES RETURNED	*** SECTION BOTTLE CODE	*** BOTTLES RETURNED
-----	2429	1 CASE	---	---	---	---	---	---
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INVOICE COMMENTS DID NOT WANT ** CLAIMS COMMENTS

1914/1/20/2000
1/20/2000

TOTALS--TRUCK -----

TOTALS--COMM -----

S. Ferson 1-20-00 X

TRUCK DRIVER/DATE RETAILER / DATE TRUCK DRIVER/DATE RETAILER / DATE