



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Alcohol Beverage Control CommissionBeer TITLE-SERIES: 176-01  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: NONINTOXICATING BEER LICENSING AND  
OPERATIONS PROCEDURES

CITE STATUTORY AUTHORITY: W. Va. Code §11-16-1 et seq.

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 50

Section W. Va. Code §64-7-2 and 60-2-16 Passed On 3/8/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 8, 2024

This rule shall terminate and have no further force or effect from the following date:

August 01, 2032

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 176  
LEGISLATIVE RULE  
ALCOHOL BEVERAGE CONTROL ADMINISTRATION COMMISSIONER - BEER

SERIES 1  
NONINTOXICATING BEER LICENSING AND OPERATIONS PROCEDURES

**§176-1-1. General.**

1.1. Scope. -- These legislative rules repeal and replace 176 CSR 1 and establish rules for the West Virginia Alcohol Beverage Control Administration Commissioner relating to nonintoxicating beer and affecting manufacturers, brewers, distributors, retailers, and consumers.

1.2. Authority. -- W. Va. Code §11-16-1 *et seq.*

1.3. Filing Date. -- April 8, 2024.

1.4. Effective Date. -- April 8, 2024.

1.5. Sunset Date. This rule shall terminate and have no further force effect upon August 1, 2032.

**§176-1-2. Definitions.**

As used in these rules and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed in this section.

2.1 The "ABCA" refers to the West Virginia Alcohol Beverage Control Administration or Commission.

2.2. "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 14% or less by volume, nonintoxicating beer or nonintoxicating beverages.

2.3. "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute and containing more alcohol than that of nonintoxicating beer, including nonintoxicating craft beer, and shall be included in the definition of "liquor" and "alcoholic liquor", as used in W.Va. Code §11-16-1 *et seq.*: *Provided*, that in the Liquor Control Act, "beer" shall not be construed to include or embrace nonintoxicating beer or nonintoxicating craft beer.

2.4. "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled, or otherwise produced, imported, or transhipped by a brewer or manufacturer, the labels of which have been registered and approved by the Commissioner that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

2.5. "Brewer" or "Manufacturer" means any person, firm, association, partnership, or corporation, including agents and employees, who is manufacturing, brewing, mixing, concocting, blending, bottling, or otherwise producing or bottling, or importing, or transshipping from a foreign country nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably. A brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities, may obtain only one brewer's license for its nonintoxicating beer or nonintoxicating craft beer. Upon review of a brewer's licensure, the Commissioner, may, but is

not limited to, consider the percentage of ownership of subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. Any importer who obtains a brewer's license must submit to the Commissioner an appointment letter or other letter of authorization from a brand owner granting the importer the rights to the brand in West Virginia, and the importer will have to meet all requirements of a brewer.

2.6. "Brewer's License" means a license issued by the Commissioner to a brewer or manufacturer of nonintoxicating beer which authorizes that person to engage in activities of a brewer in this state.

2.7. "Brewer's Products" means all malt-based beverages produced or imported by a brewer and offered for sale in the state of West Virginia.

2.8. "Brewpub" means a portion of a resident brewer's place of manufacture of nonintoxicating beer or nonintoxicating craft beer, subject to federal and state regulations and guidelines, where a portion of the resident brewer's licensed premises is designated for retail sales of nonintoxicating beer or nonintoxicating craft beer manufactured or brewed by the resident brewer who owns the brewpub.

2.9. "Class A License" means the license issued by the Commissioner which authorizes a retailer to sell at retail nonintoxicating beer for consumption either on the premises where sold or off the premises: Provided, that for railroads operating in this state, nonintoxicating beer may be sold at retail only for consumption in the licensed dining, club, or buffet car where sold.

2.10. "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter 60 of the Code.

2.11. "Class B License" means the license issued by the Commissioner which authorizes the retailer to sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for consumption off the licensed premises: Provided, that a Class B license may only be issued to the proprietor or owner of a grocery store.

2.12. "Class B retail license" means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to chapter 60 of the Code.

2.13. "Class S License" means the special license issued by the Commissioner for the retail sale of nonintoxicating beer at a fair or festival sponsored or endorsed by the municipality or county wherein the fair or festival is conducted, and at other special events approved by the Commissioner.

2.14. "Code" means the official Code of West Virginia, 1931, as amended.

2.15. "Commissioner or Alcohol Beverage Control Commissioner" means the Commissioner of the West Virginia Alcohol Beverage Control Administration (ABCA or Commission) or his or her delegate.

2.16. "Contract Brewing" means an arrangement documented by a written agreement between a brewer located in West Virginia and at least one other party who may or may not be located in West Virginia. Further, the party who is operating in West Virginia as the importer or owner of the brand shall obtain a brewer's license. The brewer who is actually brewing the nonintoxicating beer or nonintoxicating craft beer is responsible for meeting all federal requirements. If the other party or parties are operating in West Virginia, then only one of the parties may operate as the only licensed brewer or importer of the brand. This party or licensed brewer shall make the payment of all beer barrel taxes. If the parties are not operating in West Virginia, then the brewer located in West Virginia shall make all payments of beer barrel taxes. A resident brewer who must brew at certain volumes from its place of manufacture is not permitted to contract brew its products or brew on contract for another brewer or resident brewer. In no event shall contract brewing be used as an arrangement to circumvent any franchise agreement or

franchise distributor network.

2.17. "Delivery Day" means any day that a distributor is open for business.

2.18. "Distributor" means any person, including that person's agents or employees, jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to licensed retailers at wholesale and whose warehouse and chief place of business is located within this state. A distributor may make arrangement to receive nonintoxicating beer or nonintoxicating craft beer from a brewer, located in the state, or a resident brewer to transport the nonintoxicating beer or nonintoxicating craft beer to the distributor's warehouse from the place of manufacture, prior to distributing the nonintoxicating beer or nonintoxicating craft beer at wholesale to licensed retailers. For the purposes of a "distributor" only, the term "person" means and includes an individual firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of W.Va. Code §11-16-1 *et seq.*, notwithstanding the liability of trustees in W.Va. Code §44D-10-1001 *et seq.*

2.19. "Distributor License" means a license issued by the Commissioner to a distributor which authorizes the distributor to engage in the commercial activities described in section 2.18 above, except that sub-distributing is an impermissible practice.

2.20. "Food" and "Food Products" means and includes edible foodstuffs intended for human consumption and items commonly thought of as food, including by way of illustration and not by limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, flour and flour products, sugar and sugar products, stevia and stevia products, milk and milk products, coca and coca products, coffee and coffee substitutes, tea, herbs, spices, salt and salt substitutes, condiments, soft drinks, soft drink mixes and syrups, tenderizers, food coloring, bottled drinking water, sugar substitutes, oleo, margarine, shortening, gelatins, baking and cooking ingredients, mushrooms, spreads, relishes, desserts, flavorings, edible seeds, nuts, and berries: Provided, that the terms "food" and "food for meals" does not include medicines, vitamins and dietary supplements whether in liquid, powdered, granular, tablet, capsule, lozenge, or pill form; spirituous, malt or vinous liquors or beer; ice; tobacco or tobacco products; candy and confections; chewing gum; cake letters; breath mints; or food sold through a vending machine.

2.21. "Franchise Agreement" means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the Commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions and new brands all in the brewer's assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the Commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer in accordance with the Code and rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

2.22. "Franchise Distributor Network" means the distributors who have entered into a binding

written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network. Provided, That a brewer that has acquired the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in W. Va. Code §11-16-21(a)(2) shall continue to maintain and be bound by the selling brewer's separate franchise distributor's network for any of its existing brands, line extensions, and new brands.

2.23. "Grocery Store" means any retail establishment commonly known as a grocery store or delicatessen, where at least \$500.00 worth of food or food products are sold as average monthly sales for consumption off premises and \$500.00 food or food products are held as monthly inventory, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and food supplies for the table for consumption off the premises.

2.24. "Growler" means a container or jug that is made of glass (also a 32 ounce glass container which is commonly referred to as a howler), ceramic, metal (also a canned type of metal growler referred to as a crowler) or other material approved by the Commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premises, and not for resale. A securely sealed growler is not an open container under state and local law. A growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-evident seal, shrink wrap, or other material, as approved by the Commissioner, placed on or over the growler's opening. The seal, shrink wrap, or other material must be clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler. Additional requirements are set forth in W. Va. Code §60-8-1 *et seq.*, for wine growlers, and in W. Va. Code §60-7-1 *et seq.*, and 175 CSR 2, for craft cocktail growlers.

2.25. "Licensed Retailer" means any person, including the person's agents and employees selling, servicing, or otherwise dispensing nonintoxicating beer and all products regulated by W. Va. Code §11-16-1 *et seq.*, including, but not limited to, any malt beverages or malt coolers, at the retailer's established and licensed place of business or premises.

2.26. "Licensee" means any person licensed in accordance with W. Va. Code §11-16-1 *et seq.* to brew, manufacture, distribute, or sell, at wholesale or retail, any nonintoxicating beer.

2.27. "Line Extension" means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the Commissioner may consider, but is not limited to, the following factors: name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; and advertising promotion or pricing.

2.28. "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of W. Va. §11-16-1 *et seq.* and this rule who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video, and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members,

shareholders, officers, or directors.

2.29. "Non-alcoholic beer" means natural cereal malt beverages or products of the brewing industry commonly referred to as a malt beverage, cereal beverage, or near beer and all other mixtures and preparations produced by the brewing industry, including malt coolers, frozen beer based products, and nonintoxicating craft beers, all with no caffeine infusion or any additives masking or altering the alcohol effect, containing less than 0.5% alcohol by volume. Non-alcoholic beer products brewed by a brewer or resident brewer or distributed by a distributor must prior to any sale in West Virginia first submit, on a form provided by the Commissioner, the brand or brands for verification of the non-alcoholic claims and status, and the approval of the Commissioner for sale in West Virginia. Non-alcoholic beer must meet federal labeling requirements for 0.00% beer or for beer less than 0.5%. All labeling shall clearly convey the non-alcoholic nature of the beer.

2.30. "Nonintoxicating Beer or Nonintoxicating Craft Beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, IRC beer and all other mixtures and preparations produced by the brewing industry, including malt coolers, frozen beer based products, and nonintoxicating craft beers, all with no caffeine infusion or any additives masking or altering the alcohol effect containing at least 0.5% alcohol by volume, but not more than 11.9% of alcohol by weight, or 15% by volume, whichever is greater. The word "liquor" as used in W. Va. Code §60-1-1 *et seq.*, does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition. For the purposes of this definition "infusion" means and includes to artificially add, input, or otherwise deliver caffeine or any other additive, not a true flavoring or coloring, that would mask or alter the alcohol effect in nonintoxicating beer. Furthermore, low or no alcohol beers which are less than 0.5% alcohol by volume manufactured or brewed by a brewer or resident brewer must provide the ABCA with a certified lab analysis that the low or no alcohol beer is below 0.5% alcohol by volume prior to the low or no alcohol beer being sold in West Virginia, such beer must list the exact alcohol percentage on the product's label.

2.31. "Nonintoxicating beer sampling day" means any days and hours of the week where Class A retail licensees (See section 2.10 above) only may sell nonintoxicating beer pursuant to W. Va. Code §11-16-11a and W. Va. Code §11-16-18 (a)(1), and is approved, in writing, by the Commissioner to conduct a nonintoxicating beer sampling event.

2.32. "Original Container" means the container used by the resident brewer or brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale, such original container may only include bottles, cans, pouches, sealed growlers sealed by the resident brewer or brewer, other containers sealed and manufactured by the brewer or resident brewer and as approved by the Commissioner, and kegs.

2.33. "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation. A trust is not included in the definition of "person", however an appointed trustee or authorized trust representative that meets licensure requirements may be listed on a retail license application provided that the Commissioner is satisfied that the true ownership is reflected on the retail license application. A distributor license has separate trust requirements.

2.34. "Private Club" means any corporation or unincorporated association licensed in accordance with W. Va. Code §60-7-1 *et seq.* which:

2.34.a. belongs to or is affiliated with a nationally recognized fraternal or veteran's organization, which:

2.34.a.1. is operated exclusively for the benefit of its members;

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2.34.a.2. pays no part of its income to its shareholders or individual members;

2.34.a.3. owns or leases a building or other premises;

2.34.a.4. admits only duly elected or approved dues paying members in good standing of the corporation or association and their guests while in the company of a member, and does not admit the general public; and,

2.34.a.5. maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests.

2.34.b. is a nonprofit social club, which:

2.34.b.1. is operated exclusively for the benefit of its members;

2.34.b.2. pays no part of its income to its shareholders or individual members;

2.34.b.3. owns or leases a building or other premises;

2.34.b.4. admits only duly elected or approved dues paying members in good standing of the corporation or association and their guests while in the company of member, and does not admit the general public; and,

2.34.b.5. maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests.

2.34.c. is organized and operated for legitimate purposes, which has at least 100 duly elected or approved dues paying members in good standing, which:

2.34.c.1. owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state; and,

2.34.c.2. maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests.

2.34.d. is organized for legitimate purposes and which:

2.34.d.1. owns or leases a building or other limited premises in any state, county, or municipal park, or at any airport, in which a club has been established;

2.34.d.2. admits only duly elected and approved dues paying members in good standing and their guests while in the company of a member, and does not admit the general public; and,

2.34.d.3. maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

2.34.e. any other private club set forth in W. Va. Code §60-7-1 *et seq.*, such as a private club bar, private club restaurant, private caterer, private wedding venue or barn, private nine-hole golf course, private farmers market, private professional sports stadium, private multi-sport complex, private manufacturer club, private tennis club, private hotel, private golf club (18 hole), private resort hotel,

private fair and festival, private multi-vendor fair or festival, and one-day charitable rare, antique, or vintage liquor auction.

2.35. "Private wine bed and breakfast" means any business, such as a hotel motel or other establishment properly zoned in accordance with local ordinances, with the sole purpose of providing, in a residential or country setting lodging and meals which:

2.35.a. is a partnership, limited partnership, corporation, unincorporated association, or other business entity which provides meals on its premises to its members and their guests;

2.35.b. is licensed under the provisions of W. Va. Code §60-8-1 *et seq.* to serve up to two glasses of wine on its premises to its members and their guests when the sale accompanies the serving of food or meals; and,

2.35.c. admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

2.36. "Private Wine Restaurant" means a restaurant licensed in accordance with W. Va. Code §60-8-1 *et seq.* which:

2.36.a. is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has its principal purpose the business of serving meals on its premises to its members and their guests;

2.36.b. is licensed under the provisions of W. Va. Code §60-8-1 *et seq.* as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and,

2.36.c. admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

2.37. "Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, including a licensed massage parlor or salon with licensed beauticians or stylists, and which:

2.37.a. is a partnership, limited partnership, corporation, unincorporated association, or other business entity which provides meals on its premises to its members and their guests;

2.37.b. is licensed under the provisions of W. Va. Code §60-8-1 *et seq.* to serve up to two glasses of wine on its premises to its members and their guests when the sale accompanies the serving of food or meals; and,

2.37.c. admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

2.38. "Resident Brewer" means and includes any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of non-intoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually. For purposes of this rule, a barrel is 31 gallons of nonintoxicating beer or nonintoxicating craft beer.

2.39. "Retailer" means a licensed Class A or Class B retail dealer as set forth in W. Va. Code §11-16-

1 *et seq.*

### §176-1-3. Licenses.

3.1. General License Requirement: Each person seeking to manufacture, tender, sell, possess for sale, transport, distribute, or deliver nonintoxicating beer in the state of West Virginia must first be licensed in accordance with W. Va. Code §11-16-5. Such licenses shall be valid for one (1) year for the period of July 1 through June 30 of the following year.

3.1.a. Following receipt of a completed application, on a form provided by the Commissioner and as determined by the Commissioner, for a license containing 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 license.

3.1.b. The Commissioner will conduct background investigations for the purpose of determining whether an applicant and the applicant's manager has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a retail liquor license. For purposes of this paragraph, "background investigation" means a criminal investigation of an applicant and the applicant's manager who has applied for the issuance or renewal of a license. The applicant and the applicant's manager will submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form as provided by the Commissioner. The applicant and the applicant's manager will submit a full set of fingerprints to facilitate a criminal background check and the Commissioner will request the state police to submit the fingerprints and identifying information to the Federal Bureau of Investigation for a national criminal history record check. The results of the fingerprint checks will be returned to the ABCA.

3.1.c. The applicant will reimburse the ABCA for all fees or charges that are incurred by the ABCA for a background investigation undertaken pursuant to subdivision 3.1.b. of this rule.

3.1.d. A person may be licensed in only one capacity as a brewer, distributor, or licensed retailer and there shall be no connection or interest, direct or indirect, between such persons, except as noted in section 3.7. A resident brewer may operate in a limited capacity as a distributor when self-distributing the product it manufactures and from its licensed place of manufacture.

3.1.e. Manager requirement. - No licenses shall be given to any applicant or renewed for any licensee who has not listed a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, not have been convicted of a felony in the previous five years before application, not have been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, not have been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application, being capable of operating a bona fide private club of good reputation in the community, where applicable, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on a license or renewal application shall be made immediately to the Commissioner, to verify that the new manager meets licensure requirements.

3.1.f. Operational fee. - All brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors shall pay, with their annual fee, an annual \$100.00 non-prorated and nonrefundable operational fee.

3.1.g. Reactivation fee. - A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional non-prorated and nonrefundable \$150.00 reactivation fee.

3.2. Brewer and Resident Brewer License: The annual license fee for a brewer, or a brewer or resident brewer with a principal place of business located in this state is \$1,500.00 for each place of manufacture, except as noted in subdivision 3.2.d.

3.2.a. If the period of the original license for the principle place of business or for a warehouse commences on or after January 1 of any year, the license fee for the facility is \$750.00.

3.2.b. No brewer or manufacturer shall offer for sale, sell, consign, ship, or deliver nonintoxicating beer into this state except to a duly licensed distributor for delivery at the distributor's place of business.

3.2.c. A resident brewer may act as a distributor in a limited capacity for up to 10,000 barrels of his or her own products produced at its brewery and place of manufacture. A resident brewer shall, on a form provided by the Commissioner, provide information on the amount of its barrel and gallon production as required by the Commissioner. Nothing in this subdivision shall prevent a resident brewer or brewer from using the services of licensed distributors as specified in W. Va. Code §11-16-1 *et seq.* and this rule. A resident brewer acting in the limited capacity of a distributor for up to 10,000 barrels of his or her own nonintoxicating beer products produced at its brewery and place of manufacture annually, shall meet the distributor requirements in subsection 6.3 of this rule.

3.2.d. The annual license fee for a brewer or resident brewer with its principal place of business and manufacture located in the state of West Virginia and who produces:

3.2.d.1. 12,500 barrels or less of nonintoxicating beer or nonintoxicating craft beer, the annual license fee is \$500.00 for each place of manufacture;

3.2.d.2. 12,501 barrels and up 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the annual license fee is \$1,000.00 for each place of manufacture; or

3.2.d.3. 25,001 barrels or more of nonintoxicating beer or nonintoxicating craft beer, the annual license fee is \$1,500.00 for each place of manufacture.

3.2.e. In order to determine the correct license fee for a brewer or resident brewer with its principal place of business and manufacture located in the state of West Virginia, as set forth in subsection 3.2.d. above, said brewer or resident brewer shall:

3.2.e.1. Provide the Commissioner, on a form provided by the Commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer's or resident brewer's manufacturing facilities, and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer with the submission of a new license application prior to licensure or for licensees upon the submission of a license renewal application;

3.2.e.2. File a final report on or before July 15 of each year, on a form provided by the Commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year;

3.2.e.3. Include a remittance for the balance of the license fee pursuant to this subsection that would be required for any final higher level of production, if the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the license application or license renewal application for that period;

3.2.e.4. Only a brewer whose place of manufacture is located in West Virginia is permitted to contract brew or brew on contract nonintoxicating beer, nonintoxicating craft beer, or non-alcoholic beer for a second party or possibly other parties who may or may not be located in West Virginia, of whom one party who is either the importer or brand owner must obtain a brewer license in West Virginia to provide the party or parties' nonintoxicating beer, nonintoxicating craft beer, or non-alcoholic beer for sale in West Virginia;

3.2.e.4.A. The written agreement between the actual brewer whose place of manufacture is located in West Virginia must be provided to the Commissioner for review and the actual brewer, owner of the brand, the importer of the brand, and all parties must be identified in the written agreement or other documentation submitted to the Commissioner.

3.2.e.4.B. No resident brewer may contract brew or brew under contract.

3.2.e.4.C. The party that obtains a brewer's license as an importer of a brand or brand owner shall submit the label(s) and brand(s) for registration and shall be licensed as a brewer for the payment of all beer barrel taxes, unless not operating in West Virginia, then the actual brewer shall make payment of all beer barrel taxes. Only one brewer's license is permitted per brand.

3.2.e.4.D. Contract brewing shall not be used as an arrangement to circumvent any franchise agreement or franchise distributor network.

3.2.e.5. A brewer or resident brewer that brews or a distributor that distributes non-alcoholic beer containing less than 0.5% alcohol by volume must, prior to any sale in West Virginia, submit the brand or brands for verification of the non-alcoholic claims and status to the Commissioner, on a form provided by the Commissioner; and

3.2.e.5.A. Non-alcoholic beer must meet federal labeling requirements for 0.00% beer or for beer less than 0.5% alcohol by volume.

3.2.e.5.B. All labeling shall clearly convey the non-alcoholic nature of the non-alcoholic beer.

3.2.e.6. Collaboration nonintoxicating beer or nonintoxicating craft beer.

3.2.e.6.A. Any brewer or resident brewer collaborating with another brewer, resident brewer, or a third party (not a licensee) must provide the WVABCA a written agreement that sets forth which brewer, resident brewer, or third party shall be the owner and have all rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand. There cannot be a mutual ownership. The brewer, resident brewer, or third party that owns the brand shall have primary placement of logo and markings on any bottle or cans, and the actual brewer must be listed on the brands label as the actual brewer of the nonintoxicating beer or nonintoxicating craft beer with no logo or trademark permitted on the label. In no way shall this section be construed to permit private label nonintoxicating beer or nonintoxicating craft beer brands.

3.2.f. License Application: An applicant shall submit a verified application (provided by the

Commissioner) to the Commissioner, which shall state:

- 3.2.f.1. the name of the applicant, where incorporated and the date incorporated;
- 3.2.f.2. the applicant's federal identification number or social security number;
- 3.2.f.3. the address of the applicant's main office;
- 3.2.f.4. the names and respective addresses of the applicant's partners, members, owners, shareholders, manager or for a corporation, its officers and directors;
- 3.2.f.5. the date the applicant qualified to transact business in this state and a copy from the West Virginia Secretary of State authorizing the applicant to transact business in the state;
- 3.2.f.6. the applicant is in good standing with the Tax commissioner by providing a written letter or document from the Tax Commissioner;
- 3.2.f.7. the applicant is in compliance with unemployment compensation and workers' compensation, and if necessary will provide any proof or support required by the Commissioner; and,
- 3.2.f.8. any other information required by the Commissioner.

3.2.g. Bonds: There shall be no bond for a brewer, resident brewer, distributor, any Class S license, or a brewpub.

3.2.h. A resident brewer and brewer shall meet the requirements in subsection 3.6 of this rule where applicable.

3.2.i. Any brewer or resident brewer located in the state of West Virginia who fails to file the reports required in subdivisions 3.2.d and 3.2.e., shall be required to pay the \$1,500.00 annual license fee.

3.2.j. A licensed brewer or resident brewer with its principal place of business and manufacture located in the state of West Virginia may offer tours during normal hours of operation per subdivisions 6.1.a., of this rule.

3.2.k. A licensed brewer or resident brewer with its principal place of business and manufacture located in the state of West Virginia may offer limited complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture in accordance with the W. Va. Code §11-16-6a and this rule.

3.2.l. A brewer or resident brewer, licensed under the Code and this rule, may separately apply, pay, and, if qualified, receive other manufacturing licenses specified in W. Va. Code §60-4-2, such as a distillery or winery license.

3.3. Foreign Corporation Brewer's License Application: A foreign corporation seeking a West Virginia brewer's license shall submit a verified application to the Commissioner, which shall state:

- 3.3.a. the name of the corporation and the state where incorporated;
- 3.3.b. the date incorporated;
- 3.3.c. the address of the corporation's main office;

3.3.d. the names and respective addresses of the corporation's officers and directors, and also its manager;

3.3.e. the date the corporation qualified to transact business in this state;

3.3.f. the applicant is in good standing with the Tax Commissioner based on a written letter or document provided by the Tax Commissioner;

3.3.g. the applicant is in compliance with unemployment compensation and workers' compensation and, if necessary, will provide any proof or support required by the Commissioner; and,

3.3.h. any other information required by the Commissioner.

3.4. A foreign corporation seeking a West Virginia brewer's license shall meet the requirements in subsection 3.6 of this rule and also provide the following to the Commissioner:

3.4.a. A certified copy of the certificate of authority issued by the Secretary of State authorizing the corporation to transact business in this state; and,

3.4.b. A certified copy of the corporation's most recent charter.

3.5. The annual license fee for a brewer's license for a foreign corporation selling nonintoxicating beer in this state, regardless of where its principal place of business is located, is \$1,500.00.

3.5.a. If the period the original license commences is on or after January 1 of any year, the license fee is \$750.00.

3.6. Distributor, Class A, and Class B Licenses: The following information must be provided on the application form provided by the Commissioner for a distributor, Class A, or Class B license:

3.6.a. The name, residence, and certification of the applicant and the applicant's manager;

3.6.a.1. If the applicant is an individual, that the applicant and the applicant's manager must be at least 21 years of age and list the state of residence of the applicant and the applicant's manager. If claiming West Virginia residency each shall have the requisite proof to show that the applicant or the applicant's manager are a resident of West Virginia;

3.6.a.2. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers: Provided, that if a corporation applies for a Class A or Class B license, the officers, agents, or employees who shall manage and be in charge of the licensed premises must possess all of the requirements of an individual applicant for a licensed retailer's license: Provided further, that if a limited liability company applies for a Class A or Class B license, the agents, employees, or members who shall manage and be in charge of the licensed premises must possess all of the requirements of an individual applicant for a licensed retailer's license;

3.6.a.3. If the application is for a distributor license, the application shall state that the person, or for a firm, partnership, limited partnership, limited liability company, association, corporation, or trust or has a trust as an owner, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, corporation, or trust;

3.6.a.4. If the applicant for a distributor's license is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a

certification of trust as described W. Va. Code §44D-10-1013. This certification of trust shall include the excerpts described in W. Va. Code §44D-10-1013(e) and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent or legal guardian who is 21 years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor license until the beneficiary is at least 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date.

3.6.b. The place of birth of the applicant and the applicant's manager. That the applicant and the applicant's manager are citizens of the United States, of good moral character, and if naturalized when and where naturalized;

3.6.b.1. If the applicant is a corporation, the application must state when and where incorporated, the name and address of each officer and manager, and that each officer and manager is a United States citizen and has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, and deceit in the previous five years before application, and has not been convicted of a felony crime for violating alcohol-related distribution laws in the previous five years before application;

3.6.b.2. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership, or limited partnership and the trustees, beneficiaries, manager, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust is a United States citizen and if naturalized, when and where, and each member must qualify and sign the application;

3.6.c. The particular place for which the license is desired and a detailed description of the place, the description shall include the size and nature of the facilities operated by the applicant and the specific proportions of any structure used in conjunction with other purposes that will constitute the licensed premises;

3.6.d. The name of the owner of the building and if the owner is not the applicant, that a statement that the applicant is the actual and bona fide lessee of the premises;

3.6.e. Verification that the place or building in which the proposed business will be located:

3.6.e.1. conforms to all applicable health, fire, safety, and zoning regulations;

3.6.e.2. is a safe and proper place or building; and,

3.6.e.3. is not within 300 feet of a church or school, measured from front door to front door, along the street or streets; Provided:

3.6.e.3.A. that this requirement does not apply to Class B license, or any place occupied by a licensed retailer so long as that place is continuously so occupied; and,

3.6.e.3.B. that this requirement does not apply to a college or university that has notified the Commissioner, in writing, that it has no objection to the location of the proposed business; and

3.6.e.3.C. that this requirement does not apply to a school or church that has notified the Commissioner, in writing, that it has no objection to the location of a proposed business.

3.6.f. That the applicant and the applicant's manager are not incarcerated and have not been convicted of a felony or other crime involving moral turpitude. An applicant or an applicant's manager who has been convicted of a felony or other crime involving moral turpitude shall not be eligible for licensure until five (5) years after successfully completing all conditions of probation, discharge from parole supervision, or expiration of sentence;

3.6.g. That the applicant is and shall remain for the license period the only person with a pecuniary interest in the business to be licensed, and no other person is pecuniarily interested during the license period;

3.6.h. That the applicant and the applicant's manager have not during the five (5) years preceding the application date had a nonintoxicating beer license revoked;

3.6.i. In the case of an applicant for a distributor license that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the Commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the Commissioner pursuant to this rule is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act, W. Va. Code §29B-1-1 *et seq.*;

3.6.j. That the applicant and the applicant's manager have not been convicted of a felony in the previous five years before application, have not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and have not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed;

3.6.k. That the applicant and the applicant's manager have made no false statements or material misrepresentations in the application and licensure process, or after licensure, and further that all information provided in the application and submitted to the Commissioner shall be true and correct;

3.6.l. That the applicant and the applicant's manager are not involved in hidden ownership with an applicant or licensee;

3.6.m. That the applicant and the applicant's manager have not failed to disclose any person or persons with a pecuniary interest in the applicant or licensee;

3.6.n. That the applicant and the applicant's manager have not omitted any pertinent or relevant information in the application or licensure process; and

3.6.o. That the applicant and the applicant's manager have not failed to fully complete the application or license renewal form, as determined by the Commissioner.

3.7. A Brewpub is a Class A license available to only resident brewers for on-premises sales. All applicants must meet the requirements of a Class A license applicant under section 3 of this rule. Further, a resident brewer who is also licensed as a brewpub may apply separately and, if qualified under the Code and rules, be licensed as a tavern or Class A retail dealer per the requirements of this rule and W. Va. Code §11-16-1 *et seq.*, private manufacturer club per the requirements of W. Va. Code §60-7-1 *et seq.*, a private wine restaurant per the requirements of W. Va. Code §60-8-1 *et seq.*, or may apply separately and, if qualified and in good standing with the Commissioner, pay all applicable fees and receive a Class S or S1 license per W. Va. Code §11-16-11 or §11-16-11b and meet all other Class S or S1 license

requirements. The brewpub license fee is \$500.00. A brewpub may not be licensed as a private club bar or private club restaurant.

3.8. Refusal of License: The Commissioner shall refuse to issue a brewer, resident brewer, brewpub, foreign corporation brewer, distributor, Class A or Class B license if the applicant or the applicant's manager:

3.8.a. fails to satisfy any of the requirements of section 3;

3.8.b. has engaged in conduct declared to be unlawful by W. Va. Code §11-16-1 *et seq.*;

3.8.c. has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application to be licensed; or

3.8.d. is or has a manager, owner, employee, or person, in a contractual relationship to provide goods or services to the applicant or licensee, who is an employee of the Commissioner.

3.9. Additional Requirements and Investigation: The Commissioner may require any additional information from an applicant or an applicant's manager for a brewer, resident brewer, brewpub, foreign corporation brewer, distributor, Class A license, or Class B license and may conduct any investigation of the applicant, the applicant's manager, or the proposed place of business as the Commissioner may determine is necessary:

3.9.a. The applicant will provide a letter of good standing from the Tax commissioner;

3.9.b. The applicant will provide proof of compliance with unemployment compensation and workers' compensation;

3.9.c. The applicant or the applicant's manager will provide any other information required by the Commissioner;

3.9.d. Bond. All Class A license applicants and licensees, except for a brewpub, shall furnish a \$1,000 bond from a solvent surety company that upon penalty and failure to pay or serve a penalty, suspension, and failure to serve a suspension, or revocation that the sum shall be due and payable by the surety to the State of West Virginia for the applicant or licensee's failure to faithfully observe the provisions of the W.Va. Code §11-16-1 *et seq.*, this rule, the Commissioner's regulations, and orders, and any other laws of the State of West Virginia generally relating to the distribution, sale, or delivery of nonintoxicating beer. The bond term shall be for the applicable license period from July 1 to June 30 of the applicable year; and

3.9.e. The Commissioner, as necessary and advisable, may, withhold the granting or refusal of license when conducting additional investigation of an applicant, manager, or of the place to be occupied for a 30 day period or until the applicant has completed the conditions of licensure set forth by the Commissioner, and such delay for an additional investigation shall be communicated to the applicant.

3.10. Annual License Fees: Annual license fees are as follows:

3.10.a. Class A licensee: \$150.00 for each place of business;

3.10.b. Class A licensee: for each social, fraternal or nonprofit club in continuous operation for two (2) or more years immediately preceding the application date -- \$150.00;

3.10.c. Class A licensee: for each railroad dining, club or buffet car in which nonintoxicating beer will be dispensed -- \$10.00 for each car;

3.10.d. Class B licensee: \$150.00 for each place of business;

3.10.e. Distributor: \$1,000.00 for each place of business;

3.10.f. Brewer: \$1,500.00 for each location, unless requirements are met at section 3.2., of this rule;

3.10.g. Foreign Corporation Brewer: \$1,500.00 for each location;

3.10.h. Resident Brewer: \$1,500.00 for each location, unless requirements are met at section 3.2., of this rule; and

3.10.i. Brewpub: \$500.00 for each location.

3.11. Class S License, Class S1 License, the Nonintoxicating Beer Floorplan Extension, and additional licenses.

3.11.a. Class S License. An applicant shall submit the application, as provided by the Commissioner, for a Class S license to the Commissioner at least 30 days before the first day upon which nonintoxicating beer is to be sold at a fair or festival or other special event approved by the Commissioner. Any time a Class S license is obtained, the licensee is required to notify in writing all distributors in the area where the fair, festival or special event will occur in order that all distributors are provided the opportunity to participate.

3.11.a.1. The Commissioner may issue a Class S license for a term of no longer than 10 consecutive days.

3.11.a.2. The license fee for a Class S license is \$250.00.

3.11.b. Class S1 License. An applicant shall submit the application, as provided by the Commissioner, at least 15 days prior to the event to the Commissioner for a Class S1 license for the retail sale of nonintoxicating beer and nonintoxicating craft beer by a duly-organized nonprofit corporation, limited liability entity, or an association having received federal tax exempt status allowing the sale and serving of nonintoxicating beer or nonintoxicating craft beer when raising money for artistic, athletic, charitable, educational, or religious purposes.

3.11.b.1 The special license S1 shall be issued for a term no longer than one day.

3.11.b.2. No more than six licenses may be issued to any single licensee during any calendar year.

3.11.b.3. The Commissioner may not charge a fee to the applicant that meets requirements for licensure.

3.11.b.4. The license application shall contain a copy of the documents showing approved federal tax-exempt status and other information required by the Commissioner.

3.11.b.5. Nonintoxicating beer served and sold during the event shall be purchased from a licensed distributor or resident brewer acting in the limited capacity of a distributor for its own products,

that services the location where the festival, fair, or other event is occurring. All distributors and resident brewers in the area must be notified in writing by mail, facsimile or electronic mail of the event in advance and be presented with the opportunity to participate in the event.

3.11.b.6. Licensed representatives of distributors, brewers, or resident brewers may attend the one-day event and discuss their products, but may not engage in the serving or selling of the nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section may use bona fide employees or volunteers of the charitable entity to sell and serve nonintoxicating beer and nonintoxicating craft beer.

3.11.c. A license issued under the provisions of section 3.11.a. or section 3.11.b. and the licensee holding the license are subject to all other provisions of W. Va. Code §11-16-1 *et seq.*, and the rules and orders of the Commissioner relating to the special license: Provided, That the Commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each event requires, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of W. Va. Code §11-16-24: Provided, however, That under no circumstances may the provisions W. Va. Code §11-16-18(a)(1), §11-16-18(a)(2), or §11-16-18(a)(3), be waived or an exception granted.

3.11.d. Nonintoxicating Beer Floorplan Extension. A Class A retail dealer may apply to the Commissioner (on a form provided by the Commissioner) to conduct a nonintoxicating beer event using a temporary one day nonintoxicating beer floor plan extension permit which would authorize the sale and consumption of nonintoxicating beer within a bounded area that is contiguous to the licensee's licensed premises and existing floorplan.

3.11.d.1. The permit shall be issued for a term no longer than one day.

3.11.d.2. The license fee per event for a nonintoxicating beer floor plan extension is \$50, and the fee may not be prorated or refunded, and must be accompanied with a license application, certification that the event meets certain requirements in the code and rules, and such other information as the Commissioner may reasonably require.

3.11.e. Class B Retail Dealer Grocery Store – Curbside Delivery with mobile application or web based sales. An applicant shall submit the application, as provided by the Commissioner, to permit a grocery store containing over \$100,000 of fresh produce and saleable food and food products fit for human consumption, in a combination of displayed and stored inventory, for a Class B license privilege granting the licensee the ability to complete the sale of such nonintoxicating beer or nonintoxicating craft beer in the original sealed container for off-premises consumption to a person purchasing the nonintoxicating beer or nonintoxicating craft beer from a vehicle. The applicant will be required to meet all requirements in the rule and the Code.

3.11.e.1. The Class B retail dealer for a grocery store curbside delivery license privilege permit, nonrefundable and non-prorated, annual fee is \$250.

3.11.e.2. For a Class B retail dealer that is not a grocery store as set forth in 3.11.e., of this rule, curbside in-person or in-vehicle delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed bottle, can, pouch, or beer growler is not permitted.

3.11.f. Class A Delivery License and Third Party Delivery License from a Class A Licensee.

3.11.f.1. A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a

sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The applicant will be required to meet all requirements in the rule and the Code.

3.11.f.1.A. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license.

3.11.f.1.B. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license.

3.11.f.2. A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license.

3.11.f.2.A. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program.

3.11.f.2.B. The annual nonintoxicating beer or nonintoxicating craft beer delivery license non-prorated and nonrefundable fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

3.11.f.3. The nonintoxicating beer or nonintoxicating craft beer delivery license application for a Class A or a third party shall comply with licensure requirements in W. Va. Code §11-16-8, and this rule, and further shall require any information as reasonably required by the Commissioner.

3.11.f.4. Sale Requirements - Nonintoxicating beer or nonintoxicating craft beer purchases must accompany the purchase of prepared food or meal, must not be in excess of 384 fluid ounces, and must be purchased by someone at least 21 years of age and not noticeably or visibly intoxicated. All sales must be in accordance with requirements in W. Va. Code §11-16-6d(d).

3.11.f.5. Delivery Requirements – Delivery of nonintoxicating beer or nonintoxicating craft beer must accompany the delivery of prepared food or meal and must be delivered to the person placing the order for delivery. Delivery drivers must verify the age of the person accepting the delivery and may not complete the delivery if the person accepting the delivery is noticeably or visibly intoxicated. If delivery cannot be completed, the delivery driver may leave the prepared food or meal at the door but must return any nonintoxicating beer or nonintoxicating craft beer to the licensee. All delivery of nonintoxicating beer or nonintoxicating craft beer must be in accordance with requirements in W. Va. Code §11-16-6d(e).

3.11.f.6. Telephone, mobile ordering application, or web-based software requirements: The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person's legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person's identification must be created and retained for at least 3 years.

3.11.f.6.A. All records are subject to inspection by the Commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably

withhold the records from the Commissioner's inspection; and

3.11.f.6.B. Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per W. Va. Code §11-16-6d(g) and section 3.21.

3.11.f.7. A Retail Transportation Permit shall meet the requirements in this section and section 3.21.

3.11.g. Class B Delivery License and Third Party Delivery License from a Class B Licensee.

3.11.g.1. A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The applicant shall meet all applicable requirements in the Code and this rule.

3.11.g.1.A. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license.

3.11.g.1.B. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license.

3.11.g.2. A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license.

3.11.g.2.A. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program.

3.11.g.2.B. The nonintoxicating beer or nonintoxicating craft beer delivery annual non-prorated and nonrefundable license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles.

3.11.g.3. The nonintoxicating beer or nonintoxicating craft beer delivery license application for a Class B and a third party shall comply with licensure requirements in W. Va. Code §11-16-8 and shall require any information as reasonably required by the Commissioner.

3.11.g.4. Sale Requirements – Nonintoxicating beer or nonintoxicating craft beer purchases must accompany the purchase of prepared food or meal, must not be in excess of 384 fluid ounces, and must be purchased by someone at least 21 years of age and not noticeably or visibly intoxicated. All sales must be in accordance with requirements in W. Va. Code §11-16-6f(d).

3.11.g.5. Delivery Requirements – Delivery of nonintoxicating beer or nonintoxicating craft beer must accompany the delivery of prepared food or meal and must be delivered to the person placing the order for delivery. Delivery drivers must verify the age of the person accepting the delivery and may not complete the delivery if the person accepting the delivery is noticeably or visibly intoxicated. If delivery cannot be completed, the delivery driver may leave the prepared food or meal at the door but

must return any nonintoxicating beer or nonintoxicating craft beer to the licensee. All delivery of nonintoxicating beer or nonintoxicating craft beer must be in accordance with requirements in W. Va. Code §11-16-6f(e).

3.11.g.6. Telephone, mobile ordering application, or web-based software requirements: The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the delivery of food and nonintoxicating beer or nonintoxicating craft beer and the delivery driver must verify the person's legal identification to ensure the person accepting the delivery is at least 21 years of age. A record of the delivery and of verifying the person's identification must be created and retained for at least 3 years.

3.11.g.6.A. All records are subject to inspection by the Commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the Commissioner's inspection; and

3.11.g.6.B. Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with W. Va. Code §11-16-6f(g).

3.11.g.7. A Retail Transportation Permit shall meet the requirements in this section and section 3.21., and the Code.

#### 3.11.h. Nonintoxicating Beer or Nonintoxicating Craft Beer Outdoor Dining Area.

3.11.h.1. A Class A retail dealer, in good standing with the Commissioner, may apply, on a form provided by the Commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area, as authorized by any municipal government or county commission in the which the licensee operates.

3.11.h.2 The Class A retail dealer shall submit to the municipal government or county commission, for approval, a revised floorplan and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the Commissioner's requirements, in an approved outdoor dining area in accordance with W. Va. Code §11-16-9. The Commissioner may supply a form for municipality or county commission approval of outdoor dining.

3.11.h.3. Any licensee not using the approved outdoor area for dining purposes, as determined by the Commissioner shall be subject to penalties under this rule and W. Va. Code §11-16-1 *et seq.* Outdoor dining is intended for dining only and not a fair, festival, or other outdoor event. The Commissioner may approve entertainment, however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.

#### 3.11.i. Nonintoxicating Beer or Nonintoxicating Craft Beer Outdoor Street Dining Area.

3.11.i.1. A Class A retail dealer, in good standing with the Commissioner, may apply, on a form provided by the Commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor street dining area, as authorized by any municipal government or county commission in the which the licensee operates.

3.11.i.2. The Class A retail dealer shall submit to the municipal government or county commission, for approval, a revised floorplan and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the Commissioner's requirements, in an approved outdoor area in accordance with W. Va. Code §11-16-9. The Commissioner may supply a form for municipality or county commission approval of outdoor dining.

3.11.i.3. Any licensee not using the approved outdoor area for street dining purposes, as determined by the Commissioner shall be subject to penalties under this rule and W. Va. Code §11-16-1 *et seq.* Outdoor street dining is intended for dining only and not a fair, festival, or other outdoor event. The Commissioner may approve entertainment, however, if the Commissioner denies entertainment the Commissioner must provide an explanation for denying such entertainment.

3.11.j. Sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer.

3.11.j.1. Authorization. - Any person that is currently licensed and in good standing in its domicile state as a brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license from the Commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. Once licensed, a nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this rule and W. Va. Code §11-16-1 *et seq.*, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws. All sales and shipments must follow the requirements of W. Va. Code §11-16-6e.

3.11.j.2. Pay to the Commissioner the \$250 non-prorated and nonrefundable annual license fee;

3.11.j.3. Shipping Requirements. All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall, in addition to their requirements in W. Va. Code §11-16-6e:

3.11.j.3.A. Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

3.11.j.3.B. Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in W. Va. Code §60-6-12 and section 3.21.;

3.11.j.4. Payment of Fees and Taxes - Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in W. Va. Code §47-11A-6, remit all taxes and fees, and otherwise comply with W. Va. Code §11-16-6e;

3.11.j.5. Jurisdiction. By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper license, the licensee shall be considered to have agreed and consented to the jurisdiction of the Commissioner, who is located in Charleston, West Virginia and the Kanawha County circuit court would be the court of jurisdiction for the enforcement of this rule, W. Va. Code §11-16-1 *et seq.*, and any other related laws or rules; and

3.11.j.6. Records and reports.

3.11.j.6.A. Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia and must retain those records for at least 3 years.

3.11.j.6.B. Provide proof or records to the Commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

3.11.j.7. The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the Commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper annual license fee and providing the Commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

3.11.k. Unlicensed brewer or unlicensed home brewer temporary license.

3.11.k.1. An unlicensed brewer or home brewer may obtain a temporary special license, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and an unlicensed brewer with a federal brewer's permit may obtain a temporary special license for sales to a fair and festival licensed for on-premises consumption at the licensed fair or festival under W. Va. Code §11-16-11 and §11-16-11b, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license. All requirements for a temporary special license must be in accordance with W. Va. Code §11-16-11c.

3.11.k.2. A brewer or home brewer unlicensed in West Virginia, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a \$150 nonrefundable and non-prorated fee and submit an application provided by the Commissioner for a temporary special license.

3.11.k.3. The unlicensed brewer or home brewer temporary license application shall include, but is not limited to:

3.11.k.3.A. the person or entity's name, address, taxpayer identification number, and location;

3.11.k.3.B. If the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state or home brewer's license, if applicable; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under W. Va. Code §11-16-11 and §11-16-11b; and

3.11.k.4.C. Any other information required by the Commissioner, except that if an unlicensed brewer is licensed in its domicile state and is in good standing, no criminal background checks may be required for the temporary one-day license.

3.11.k.4. The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the Commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under W. Va. Code §11-16-11 and §11-16-11b, for no additional fee.

3.11.k.5. An applicant that receives this temporary special license for any event licensed must pay all taxes and fees in accordance with W. Va. Code §11-16-11c.

3.11.k.6. The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under W. Va. Code §11-16-11 and §11-16-11b, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale, when permitted. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident brewery in this state.

3.11.k.7. The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by W. Va. Code §11-16-10(f).

3.11.k.8. The Commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. Fingerprints for a criminal background investigation will not be required when an unlicensed home brewer or unlicensed brewer can present a written document to the Commissioner from its domicile regulatory authority indicating that it is in good standing with that authority.

3.11.k.9. The Commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of W. Va. Code §11-16-23 and §11-16-24.

3.12. Brewery and Distributor Representatives, Permits, Fee, Term, Suitability: No person shall act as agent, representative, solicitor or salesman in the state of West Virginia for any brewer, resident brewer distributor, or manufacturer of nonintoxicating beer until that person has obtained a permit to act as an agent, representative, solicitor or salesman, from the Commissioner.

3.12.a. Application: An application for a permit, shall be accompanied by a photograph (2 inches by 3 inches) of the applicant, and shall be made on a form prescribed and furnished by the Commissioner.

3.12.b. Fee: There is no fee for a permit to act as a brewer, resident brewer or distributors' agent, representative, solicitor, or salesman but such person must complete a form provided by the Commissioner and be approved for a license prior to acting in any such capacity.

3.12.c. Term: All such permits expire on September 30 succeeding the date of issuance of October 1, unless suspended, cancelled, or revoked.

3.12.d. Suitability: The Commissioner shall issue a permit to any person upon showing that he or she:

3.12.d.1. Is a citizen of the United States of America;

3.12.d.2. Is at least 18 years of age;

3.12.d.3. Has not been convicted of a felony within the five (5) years immediately preceding the application for a permit and has completed all conditions of probation, been discharged from parole supervision or the sentence has expired;

3.12.d.4. Has not been convicted of a violation of federal or state liquor or beer law within the five (5) years immediately preceding the application for a permit;

3.12.d.5. Has not had a similar license or permit revoked or suspended in this or any other

state within the five (5) years immediately preceding the application for a permit;

3.12.d.6. has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty, or deceit in the previous five years before application, and has not been convicted of a felony crime violating alcohol-related distribution laws in the previous five years before application; and,

3.12.d.7. Is employed by a nonintoxicating beer manufacturer, resident brewer, or brewer qualified to sell or transport nonintoxicating beer into the state of West Virginia.

3.12.e. Suspension or Revocation: Permits may be suspended or revoked by the Commissioner for noncompliance with the West Virginia Nonintoxicating Beer Act and this rule, or for false or fraudulent representations made in securing the permits. However, the Commissioner shall not revoke or suspend any permit unless and until a hearing shall be held after 10 days' notice, in writing, to the licensee. Such notice shall contain a statement of the charge or charges against the permittee and the time and place of hearing. Furthermore, such notice shall be served upon the permittee by registered mail, addressed to the office of the permittee's principal, as set out in the application.

3.13. Transfer: Nonintoxicating beer licenses are not transferable from one person to another; however, with the consent of the Commissioner, endorsed on the face of the license, a license may be transferred from one location to another.

3.13.a. A licensee shall not transfer a license from one (1) location to another before the transfer is approved by the Commissioner.

3.13.b. A licensee shall apply for a transfer of a license on the regular license application form.

3.13.c. A letter from licensee's surety company accepting liability on the new location must accompany the transfer application, if applicable.

3.13.d. The Commissioner will not approve the transfer of a license before the letter from the surety company accepting liability on the new location is received, if applicable.

3.14. Abandonment, Leasing or Loaning: No licensee shall abandon, loan, rent, or lease his or her license.

3.14.a. Upon the sale of an outlet, the licensee shall remove his or her license from the premises and file it with the Commissioner.

3.14.b. Licensees, together with their surety, permitting others to use their licenses, either by express permission or by abandonment, will be held strictly liable for any bond forfeiture, if applicable, ordered against them for violations of the W. Va. Code §11-16-1 *et seq.*

3.15. Establishment: The following businesses and locations are generally not suitable for the retail sale of beer and, depending upon the circumstances, the Commissioner may refuse to issue a license to an applicant who intends to operate in:

3.15.a. Establishments in reasonable close proximity to churches, schools, state institutions, privately operated charitable or eleemosynary institutions: Provided, however, that a Class A license shall not be issued to a new establishment located within 300 feet of a school or church, measured from front door to front door along the street or highway;

3.15.b. Establishments in predominantly residential districts of any city, town, or village;

3.15.c. Filling stations or grocery stores, unless a bona fide restaurant is operated in connection with the station or store, and the sale, serving, and consumption of beer is restricted to the restaurant section of the filling station or grocery store;

3.15.d. Establishments not completely under the control of the licensee, including all balconies and adjacent connecting rooms; and,

3.15.e. Premises on which there is an existing nonintoxicating beer license unless the applicant for a new license for the premises and the owner of the building submit notarized statements to the Commissioner to verify that substantial efforts were made to recover and surrender the existing license.

3.16. Any person whose nonintoxicating beer license has been revoked shall not be eligible for a nonintoxicating beer license until after the revocation has been in effect for a period of five (5) years.

3.17. Posting License: The license granted in accordance with these Rules must be kept posted in a conspicuous place on the licensed premises.

3.18. Posting of Blood-Alcohol Chart: A blood alcohol chart, as prescribed by W. Va. Code §60-6-24, shall be posted in every establishment in West Virginia which sells or offers for sale nonintoxicating beer.

3.18.a. Every private club licensed in accordance with W. Va. Code §60-7-1 *et seq.* with a nonintoxicating beer license shall prominently post the blood-alcohol chart. The chart shall be posted so as to be readily accessible and easily readable by the members and guest of the licensed private club.

3.18.b. Every licensed retailer licensed to sell nonintoxicating beer pursuant to the provisions of W. Va. Code §11-16-1 *et seq.* shall prominently display during the hours for which the retail sale of nonintoxicating beer is permitted, the blood-alcohol chart at or near that portion of the retail establishment devoted to the sale and/or display of any nonintoxicating beer sold by the licensed retailer. In the event the licensed retailer has nonintoxicating beer displayed for sale at more than one location within the licensed premises, or has multiple points of sale, or multiple points of ingress and egress from the licensed premises, then the licensed retailer may be required to display additional blood-alcohol charts at or near the displays, points of sale or store exits.

3.18.c. The licensed retailer is responsible for the prudent care of the blood-alcohol chart, the license in 3.17., the chart in 3.19., and the notice in 3.20., and for assuring that the license, charts, and notice are displayed in accordance with the provisions of this rule.

3.19. Posting of the Fetal Alcohol Syndrome Chart: All persons licensed to sell nonintoxicating beer at retail either for consumption off-premises or on-premises, or both, shall display signs provided by the Commissioner warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy as prescribed by W. Va. Code §60-6-25.

3.20. Posting of the Human Trafficking Notice: All persons licensed to sell nonintoxicating beer at retail either for off-premises consumption or on-premises consumption, or both, shall display the human trafficking notice required by W. Va. Code §15A-2-5.

3.21. Nonintoxicating Beer Transportation Permits for brewers, resident brewers, distributors, and Nonintoxicating Beer or Nonintoxicating Craft Beer Retail Transportation Permits for Class A Retail Dealers, Class B Retail Dealers, and Third Party Delivery Licensees.

3.21.a. Any brewer, resident brewer, distributor, Class A retail dealer, Class B retail dealer, third

party delivery licensee, or any person transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on behalf of such licensees, or by contract or other means, may only transport nonintoxicating beer or nonintoxicating craft beer that is registered and available for resale, and not personal use, in or through West Virginia.

3.21.b. All vehicles transporting nonintoxicating beer or nonintoxicating craft beer for a brewer, resident brewer, distributor, or other person shall be issued a nonintoxicating beer transportation permit.

3.21.c. All vehicles delivering nonintoxicating beer or nonintoxicating craft beer for a Class A retail dealer, Class B retail dealer, third party delivery licensee, or other person after a retail sale shall be issued a nonintoxicating beer or nonintoxicating craft beer retail transportation permit.

3.21.c.1. Nonintoxicating beer or Nonintoxicating Craft Beer Retail Transportation Permit.

3.21.c.1.A. A Class A retail dealer, Class B retail dealer, and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

3.21.c.1.B. A Class A retail dealer, Class B retail dealer, and a third party shall apply for a permit and provide vehicle and driver information, required by the Commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall provide a written update of the vehicle and driver information to the Commissioner within 10 days of the change.

3.21.d. Transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state requires a nonintoxicating beer or nonintoxicating craft beer retail transportation permit.

3.21.e. The Commissioner shall prescribe forms to complete such permitting.

3.22. Special privilege of Class A private club licensee to operate a separate but connected Class B license.

3.22.a. A Class A private club licensee with 1,000 or more members may, in the Commissioner's discretion, operate a Class B licenses for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private club premises.

3.22.b. The Class A licensed private club with 1,000 or more members and the Class B business must be licensed separately and operate separate cash registers and maintain separation barriers between the different licensed operations.

#### **§176-1-4. Labels, Brewer's Reports, Taxation, Distributor's Reports, Records Management By Brewers And Distributors.**

4.1. Approval of Commissioner: The Commissioner must approve the label to be affixed upon any nonintoxicating beer container manufactured, imported, sold, or to be sold in this state. Labels must be submitted by all breweries, resident brewers, or importers in duplicate to the Commissioner who must approve the labels before they can be used on any container sold or to be sold in this state.

4.1.a. No label may be affixed to any nonintoxicating beer container, manufactured, imported, sold, or for sale in this state, which bears any design, picture, or wording indicating that the contents of the container are brewed or manufactured for one particular distributor, retailer, or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer. Additionally, no nonintoxicating beer container may be manufactured, brewed, or approved for sales when intended for use solely by one

retailer or a particular group of associated retailers. In other words, private label nonintoxicating beer is unlawful.

4.1.b. No nonintoxicating beer product or brand may be sold, offered for sale or transported to West Virginia by any person, brewer, resident brewer, distributor, or retailer unless it has first been registered and approved by the Commissioner.

4.1.b.1. Label Registration.

4.1.b.1.A. Any brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft beer for sale in West Virginia shall register, prior to offering such beer for sale in the state, with the Commissioner each nonintoxicating beer or nonintoxicating craft beer container label.

4.1.b.1.A.i. Prior to registration of any nonintoxicating beer or nonintoxicating craft beer container labels, the Commissioner must review the label or brand.

4.1.b.1.A.ii. The label and brand review shall include, but not be limited to, a review of the alcohol content, corporate or product information, and marketing and advertising information to ensure the nonintoxicating beer or nonintoxicating craft beer container label is not intended to be marketed to persons less than 21 years of age.

4.1.b.1.B. No nonintoxicating beer or nonintoxicating craft beer brand may be sold unless the nonintoxicating beer or nonintoxicating craft beer brand's container labels for the product intended for sale in the state have been registered and reviewed by the Commissioner.

4.1.b.1.C. The Commissioner shall remove all nonrenewed nonintoxicating beer or nonintoxicating craft beer container labels from the list of registered and approved labels, and any licensee who sells nonintoxicating beer or nonintoxicating craft beer with nonrenewed container labels shall be subject to the penalties under this rule and W. Va. Code §11-16-23.

4.1.b.1.D. Failure to register, obtain a review, and a certification for a nonintoxicating beer or nonintoxicating craft beer container label and failure to register such labels will subject the brewer or resident brewer to penalties under this rule and the Code.

4.1.b.1.E. The Commissioner shall prescribe forms to complete such registration.

4.2. Serving Bottled Beer, Cans, or Sealed Growlers From Which Labels Have Been Removed: No licensed retailer of beer shall serve to any customer any bottle, can, or sealed growler of nonintoxicating beer from which the label has been removed.

4.3. Brewer's or Resident Brewer's Reports, Taxation: A tax is imposed and levied by W. Va. Code §11-16-13 in the amount of \$5.50 on each barrel of 31 gallons, and in like ratio on each part barrel, of nonintoxicating beer which is either manufactured in this state for sale in this state, or manufactured outside of this state and brought into this state for sale in this state.

4.3.a. A brewer or resident brewer manufacturing or producing nonintoxicating beer in this state for sale in this state shall, on or before the 10<sup>th</sup> day of each month, file the report prescribed by the Commissioner stating total estimated sales of nonintoxicating beer to distributors in this state during that month and pay the tax on the estimated sales.

4.3.b. The distributor of nonintoxicating beer manufactured or produced out of this state, or who brings the nonintoxicating beer into this state shall, on or before the 10<sup>th</sup> day of each month, file the report prescribed by the Commissioner stating the total estimated purchases of nonintoxicating beer during that

month.

4.3.c. Any brewer which manufactures or produces nonintoxicating beer outside this state shall, upon obtaining licensure approval from the Commissioner, file the required report and pay the required tax on behalf of the brewer's distributors in this state.

4.3.d. Brewers, Resident Brewers, and Distributors must file adjusted monthly reports by the 25<sup>th</sup> day of each reporting month.

4.3.e. Any monthly report reflecting an underestimate of the previous month's tax in an amount of 25% or more, which has not been timely adjusted, will result in a penalty assessment of 1% of the total taxes due in the prior month.

4.4. Records Management by Brewers, Resident Brewers, and Distributors: Brewers, resident brewers, and distributors shall keep all records, which relate to purchase and sales transactions in and for the state of West Virginia, on file in their respective licensed places of business for a period for three (3) years unless approval for earlier disposal is granted in writing by the Commissioner. The records shall include copies of all invoices covering all purchases, sales invoices, transfers, reports, and such other records to completely describe the nonintoxicating beer transactions of the brewers and distributors and such other records as may be determined by the Commissioner to be essential for audit and control purposes.

#### **§176-1-5. Growlers.**

5.1. The retail sale of nonintoxicating beer and nonintoxicating craft beer in growlers for off-premises personal consumption and not for resale from a brewer or resident brewer located in the state of West Virginia, a licensed brewpub, a Class A retail dealer, a Class B retail dealer, a Class A Retail licensee, or a Class B Retail licensee subject to certain requirements in the Code and the rules.

5.2. For purposes of this rule an "authorized licensee" means a licensed brewer or resident brewer located in the state of West Virginia, a licensed brewpub, a Class A retail dealer, a Class B retail dealer, a Class A Retail licensee, or a Class B Retail licensee who has applied for the growler privilege, paid the \$100.00 nonrefundable fee (or is a brewer, resident brewer, or brewpub exempt from such fee) and obtained all the necessary approvals for licensure with the growler privilege.

5.3. The Commissioner shall provide growler informational and licensure forms on its website at [www.abca.wv.gov](http://www.abca.wv.gov).

#### 5.4. Growler requirements:

5.4.a. An authorized licensee may offer nonintoxicating beer or nonintoxicating craft beer only for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale.

5.4.a.1. Prior to the sale, the authorized licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated.

5.4.a.2. An authorized licensee may not sell, give, or furnish alcoholic liquors, including wine, for consumption off of its licensed premises subject to the penalties in the Code and this rule, unless it is:

5.4.a.2.A. Any type of private club licensed to sell sealed wine for consumption off of the

licensed premises and meets the requirements set out in subsections (j) and (l), of W. Va. Code §60-8-3, for the sale of wine, or is separately authorized for the sale of wine growlers, or is private club restaurant or a private manufacturer club separately authorized for the sale of craft cocktail growlers;

5.4.a.2.B. A retail outlet with a Class A retail license (freestanding liquor retail outlet) or Class B retail license (mixed retail liquor outlet) licensed to sell sealed original container liquor and nonintoxicating beer or wine, or all three, for off-premises consumption; or

5.4.a.2.C. A Class B licensee licensed to sell sealed original container nonintoxicating beer or wine, or both for off-premises consumption.

5.4.b. Growler requirements - An authorized licensee must sanitize, fill, or refill, securely seal, and label any growler prior to its sales in accordance with the Code and this rule. All growler sales and samples must comply with W. Va. Code §11-16-6b.

5.5. An authorized licensee shall remit a \$100.00 nonrefundable fee for the growler privilege to the Commissioner, except for a licensed brewer or resident brewer located in the state of West Virginia, or a licensed brewpub.

5.6. A brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture in accordance with W. Va. Code §11-16-6a;

5.7. An authorized licensee may provide complimentary samples of nonintoxicating beer or nonintoxicating craft beer in accordance with W. Va. Code §11-16-6b;

5.8. A brewer, resident brewer, or authorized licensee's failure to comply with any requirements or conditions of this section of the rule may result in penalties under the Code and this rule.

#### **§176-1-6. Unlawful Acts.**

6.1. It shall be unlawful:

6.1.a. except as provided in W. Va. Code §7-1-3ss, for any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or to allow any individual to drink or consume, in or on any licensed premises or in any rooms directly connected with the licensed premises, nonintoxicating beer between the hours of 2:00 a.m. and 6:00 a.m., except in private clubs licensed under the provisions of W. Va. Code §60-7-1 *et seq.*, where the hours shall conform with the hours of sale of alcoholic liquors;

6.1.b. for any licensee, his, her, its, or their servants, agents, or employees, to sell, furnish, or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or known to be mentally incompetent;

6.1.c. for any licensee, his, her, its, or their servants, agents, or employees, to sell, furnish, permit the consumption of, or give any nonintoxicating beer to any person who is less than 21 years of age;

6.1.d. for any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

6.1.e. for any licensee except the holder of a license to operate a private club issued under the provisions of W. Va. Code §60-7-1 *et seq.*, or a holder of a license for a private wine restaurant issued

under the provisions of W. Va. Code §60-8-1 *et seq.*, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

6.1.f. for any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: Provided, that provisions of this section shall not apply to the premises of a Class B licensee, and the premises of any type of private club or the premises of a private wine restaurant;

6.1.g. for any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by the license or on premises directly or indirectly used in connection therewith: Provided, that the prohibition contained in this section with respect to the selling or possessing, or to the acquiescence in the sale, possession or consumption, of alcoholic liquors is not applicable with respect to the holder of a license to operate any type of private club nor is the prohibition applicable to a private wine restaurant insofar as the private wine restaurant is authorized to serve wine;

6.1.h. for any retail licensee to sell or dispense nonintoxicating beer purchased or acquired from any source other than a distributor or a resident brewer acting in a limited capacity as a distributor of his or her own product as specified in the code, except that a Class A retail dealer may, on a Saturday or Sunday, if no longer having any nonintoxicating beer inventory and the distributor or applicable resident brewer is unable to distribute to the retail account on a Saturday or Sunday (as documented by the Class A retail dealer), purchase nonintoxicating beer from only one Class B retail dealer at retail, with all taxes paid, as a retail sale up to 10 cases of nonintoxicating beer. The Class A retail dealer must retain documentation of such purchase for one year for inspection by the Commissioner;

6.1.h.1. Except as otherwise permitted by law, distributors will make no platform deliveries except to persons known to be licensed retail dealers, or upon a signed notarized order from the known retail dealers.

6.1.i. for any licensee to permit loud, boisterous, or disorderly conduct of any kind upon the licensed premises or to permit the use of loud musical instruments if they may disturb the peace and quietude of the community where the business is located, except a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

6.1.j. for any person whose license has been revoked, to obtain employment with any licensed retailer within the period of one (1) year from the date of the revocation, or for any licensed retailer to knowingly employ that person within that time;

6.1.k. for any licensee or any agent, servant, or employee of any such licensee to knowingly violate any rule lawfully promulgated by the Commissioner;

6.1.l. for any licensee to knowingly permit any act to be done upon the licensed premises the commission of which constitutes a crime under the laws of this state;

6.1.m. for any Class B licensee to permit the consumption of nonintoxicating beer upon his or her licensed premises;

6.1.n. for any Class A licensee to permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this section shall not apply where the person under the age of 18 years is in or upon the premises in the immediate company of his or her parent

or parents, or is in or upon the premises for the purpose of actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink, or soft drink therein lawfully prepared and served or sold for consumption on such premises;

6.1.o. for any Class A licensee to allow faucets or taps from which beer is drawn from kegs to be identified with a knob showing the brand or name of the brewer of the nonintoxicating beer dispensed to be other than the brand or name of the nonintoxicating beer actually dispensed, in other words the brand of the nonintoxicating beer may not be misrepresented by the name of the brand listed on a knob, faucet, tap handle, or display or sign depicting the brand being sold, served, and dispensed through a knob, faucet, or tap handle (See also Section 6.3.c.);

6.1.p. for any person to manufacture, sell, transport, deliver, furnish, purchase, consume, or possess any nonintoxicating beer except as provided by the laws of this state or rules lawfully promulgated by the Commissioner;

6.1.q. for any retail licensee to permit nonintoxicating beer in an open container to be carried into or out of any licensed premises; provided that a brewer, resident brewer, brewpub, Class A retail dealer, Class B retail dealer, when licensed for nonintoxicating beer growler sales, may lawfully sell sealed growlers for personal consumption off of the licensed premises and not for resale; and

6.1.r. for retail licensee to fail to clean and sanitize at least every two weeks, and also maintains records of all cleaning and sanitization conducted by the licensee or third party authorized by a state, county, or local health department, all nonintoxicating beer coils, draught lines, pipes, and tubes.

6.2. Nothing in this rule shall prevent or be considered to prohibit any licensee from employing any person who is at least 16 years of age to serve in the licensee's lawful employ, including the sale of nonintoxicating beer. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age but at least 16 years of age who will be directly supervised by an employee 21 years of age or older: Provided, that the person's duties shall not include the delivery of nonintoxicating beer or alcoholic liquors: Provided, however, that the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

6.3. The following acts, when performed by distributors, manufacturers, resident brewers or a resident brewer, acting in a limited capacity as a distributor, or brewers are unlawful:

6.3.a. A distributor or a resident brewer acting in a limited capacity as a distributor may not sell or offer to sell, or a licensed retailer may not purchase or receive, any nonintoxicating beer, except for electronic transfer of funds, cash or a check drawn against the bank account of the licensed retailer who is making the purchase. The distributor may accept electronic transfer of funds if it is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The retailer will pay the cost of the EFT and the distributor must initiate the transfer by noon within one day of delivery as prescribed by W. Va. Code §11-16-18(a)(4). No distributor shall pay or bear any cost to be included in a retailer's electronic payment, ordering, or deliver scheduling system. No right of action shall exist to collect any claims for credit extended contrary to the provisions of this section. Nothing in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the licensee;

6.3.a.1. All distributors must immediately, and in the regular course of business, deposit in

the bank all checks given them by licensed retailers for the purchase of nonintoxicating beer. No distributor shall through himself, or his agents or employees, enter into any agreement or understanding with any licensed retailer to hold any checks given in payment for nonintoxicating beer;

6.3.a.2. The repeated giving of worthless checks by the licensed retailer to the distributor or the repeated acceptance of worthless checks from the licensed retailer by the distributor, is prima facie evidence of obtaining an extension of credit and shall, in the discretion of the Commissioner, be grounds for revocation or suspension of the retailer's or distributor's license; and

6.3.a.3. Payment for a retail nonintoxicating beer license, or renewal of a license, shall be submitted only in the form of a certified check, cashier's check, or money order made payable to the West Virginia Alcohol Beverage Control Administration Commissioner in the exact amount as required by W. Va. Code §11-16-9.

6.3.b. A brewer, resident brewer, distributor, or a resident brewer acting in a limited capacity as a distributor, or his or her agents, may not transport or deliver nonintoxicating beer to any licensed retailer without first obtaining a nonintoxicating beer transportation permit.

6.3.c. For any brewer, resident brewer, distributor, or resident brewer acting in a limited capacity as a distributor, to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, for example any prize, premium, gift, or gift card where a purchase is necessary. No brewer, resident brewer, or distributor shall contribute to or support, either directly or indirectly, any baseball, football, bowling, or other athletic team event or contest, (except a recognized professional athletic team event or contest,) unless the brewer, resident brewer, or distributor has first obtained written permission from the Commissioner. However, it is lawful:

6.3.c.1. for a brewer, resident brewer, distributor, or a resident brewer acting in a limited capacity as a distributor, to provide advertising matter, including, but not limited to: indoor electronic or mechanical signs; branded glassware, so long as a nonintoxicating beer brand is not misrepresented by the beer being poured into misbranded glassware; plastic static window clings; tchotchkes; the temporary use of draft trucks with tap handles, portable beverage tubs, Texas icers, cold plates, draft jockey boxes, and other types of similar type of cooling and dispensing equipment; tap handles; and other items of nominal value up to \$25.00 per stock keeping unit, to either trade (Class A or Class B retail dealers, Class S, S1, S2, or S3 licensees) or consumer buyers (consumers). However, branded or logoed draft trucks with tap handles, portable beverage tubs, Texas icers, cold plates, draft jockey boxes, and other types of similar cooling and dispensing equipment; tap handles; and other items of nominal value greater than \$25.00 per stock keeping unit, may be provided for temporary use to trade buyers (Class A or Class B retail dealers, Class S, S1, S2, or S3 licensees) when such items are either rented or charged, invoiced, and paid at no less than actual cost to the trade buyer. A licensed representative must submit a promotion or advertising material request form to the Commissioner in order to be approved to provide lawful advertising material of a nominal value to a licensed retailer or to provide by rent or charge, invoice, and payment for advertising material that is greater than nominal value;

6.3.c.2. for a distributor or resident brewer acting in a limited capacity as a distributor, to offer, for sale or rent, tanks of carbonic gas;

6.3.c.3. in the interest of public health and safety, for a distributor or resident brewer acting in a limited capacity as a distributor, independently or through a subsidiary or affiliate, to furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than actual cost. Draught line services or equipment must be separately charged and invoiced items, and such services and equipment

shall not be included in the price of nonintoxicating beer sold to a licensed retailer as this would result in price discrimination;

6.3.c.4. for a distributor or resident brewer acting in a limited capacity as a distributor, to furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations in 6.3.c and as set forth in W. Va. Code §11-16-1 *et seq.*;

6.3.c.5. for brewer, resident brewer, resident brewer acting in a limited capacity as a distributor, or distributor to offer a prize, premium, or gift that is not an inducement when such prize, premium, or gift does not require a purchase of the brewer, resident brewer, or distributor's nonintoxicating beer product and the prize, premium, or gift is not nonintoxicating beer; and

6.3.c.6. for a brewer or resident brewer to sponsor any professional or amateur athletic event or from providing prizes or awards for participants and winners in such events, such prize and awards may not be nonintoxicating beer products: Provided, however, that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the Commissioner.

6.3.d. Any brewer, resident brewer, or distributor, or any salesman, agent or licensed representative of any brewer, resident brewer, or distributor, who gives, either directly or indirectly, free goods or discounts to any licensed retailer is subject to immediate license revocation, as provided in W. Va. Code §11-16-18;

6.3.d.1. Free goods, or the giving of a certain number of free cases of nonintoxicating beer, for each number or amount of cases of nonintoxicating beer purchased is prohibited.

6.3.d.2. No brewer, resident brewer, distributor, salesman or licensed representative shall give to any retailer or any person working for or connected with the retailer, either directly or indirectly, anything of more than nominal value, which is \$25, as specified in this rule. Licensed representatives of brewers, resident brewers, and distributors may conduct trade spending up to \$150 in any licensed Class A retail dealer's establishment when the licensed representative has submitted a promotion request form, on a form provided by the Commissioner, and obtained the Commissioner's approval for a promotion. Such promotions must be offered widely to retailers and not focus on a few retailers.

6.3.d.3. A distributor or a resident brewer acting in a limited capacity as a distributor may rotate, stock, merchandise, price, and presell nonintoxicating beer in a licensed nonintoxicating beer retail establishment only on a nonintoxicating beer or nonintoxicating craft beer delivery day.

6.3.d.4. No distributor or resident brewer acting in a limited capacity as a distributor, may rotate, touch, move, alter, or disturb the products of another distributor.

6.3.d.5. No distributor or a resident brewer acting in a limited capacity as a distributor, may participate in a licensed retailer's shelf reset, diagramming, or planning, unless such reset, diagramming or planning is approved by the Commissioner, and in no event shall the number of shelf resets or planning events exceed four per year per retailer. A distributor is not required to participate in any shelf reset, diagramming, or planning. However, if a distributor participates in one licensed retailer's shelf reset, diagramming, or planning, then it must participate in any licensed retailer's requested shelf reset, diagramming, or planning up to the prescribed limit.

6.3.e. A distributor or a resident brewer acting in a limited capacity as a distributor, may not sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

6.3.f. A distributor or a resident brewer acting in a limited capacity as a distributor may not sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to the distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute, or deliver any nonintoxicating beer to any licensed retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of nonintoxicating beer: Provided, that nothing in this section prohibits sales of convenience between distributors licensed in this state where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale. All such sales of convenience shall be reported in writing to brewer or resident brewer;

6.3.g. A brewer, resident brewer, or manufacturer, or any other person, firm, or corporation engaging in the business of selling nonintoxicating beer to a distributor or wholesaler, may not discriminate in price, allowance, rebate, refund, commission, discount, or service between distributors or wholesalers licensed in the state of West Virginia. "Discriminate", as used in this section, means the granting of more favorable prices, allowances, rebates, refunds, commissions, discounts, or services to one West Virginia distributor or wholesaler when compared to another;

6.3.g.1. Breweries or resident brewers licensed to do business in the state of West Virginia may not engage in price discrimination or make any secret deals with distributors in the state of West Virginia.

6.3.g.2. No brewer or a resident brewer shall discriminate in price, allowance, rebate, refund, commission, discount, or service between wholesaler's purchasing beer, ale, malt beverages, or malt coolers, and no brewer can threaten a distributor in order to change or maintain resale prices.

6.3.g.3. A brewer or a resident brewer shall file with the Commissioner on or before December 15<sup>th</sup> of any year a complete price listing along with UPC Codes of each nonintoxicating beer product by package size and brand sold to licensed distributors. This filing is in addition to any other filing required pursuant to these rules. Failure to timely file the price list may result in fines and penalties.

6.3.h. A brewer, resident brewer, manufacturer, or any other person, firm, or corporation engaged in the business of selling nonintoxicating beer to a distributor or wholesaler, may not sell or deliver nonintoxicating beer to any licensed distributor or wholesaler unless and until the brewer, resident brewer, manufacturer, person, firm, or corporation, as the case may be, has filed the brewery or dock price of the beer, by brands and container sizes, with the Commissioner. No price schedule shall be put into effect until 90 days after receipt of the same by the Commissioner and shall be submitted on or before the following quarterly dates of January 1, April 1, July 1 and October 1 of the calendar year to be effective for the next successive quarterly period on a form provided by the Commissioner. Prices will be in effect for 90 days and are effective on the 1<sup>st</sup> day of the applicable quarterly period. If there is no change in pricing for a nonintoxicating beer product, by brand or container size, filing a quarterly price is not required. Prices will revert back to the base price filed per subsection 6.3.g.3., as noted on the form provided by the Commissioner. For example, a brewer or manufacturer would submit prices, by brands and container sizes, on or before January 1, for the prices to be effective for the quarterly period from April 1 through June 30 (90 day pricing period) and so forth. Upon submission and approval of a new nonintoxicating beer product or new packaging or container sizes for existing nonintoxicating beer product which does not coincide with a quarterly pricing filing date or which occurs during a quarterly price period, the new pricing will be valid until the next quarterly price filing date for which the new price must thereafter be filed as noted this subsection;

6.3.h.1. West Virginia licensed beer distributors or a resident brewer acting in a limited capacity as a distributor shall not sell or deliver nonintoxicating beer to any licensed retailer unless the distributor or a resident brewer acting in a limited capacity as a distributor:

6.3.h.1.A. Shall have filed with the Commissioner the wholesale price of the nonintoxicating beer, by brands and container sizes, 60 days on or before the following quarterly dates of January 1, April 1, July 1 and October 1 of the calendar year to be effective for the next successive quarterly period on a form provided by the Commissioner. Wholesale prices will be in effect for 90 days or for the balance of the 90 day period of quarter from the effective date. Wholesale prices are effective on the first Sunday of the quarter. If there is no change in pricing for a nonintoxicating beer product, by brand or container size, filing a quarterly price is not required. Wholesale prices will revert back to the base price filed per subparagraph 6.3.h.1.C., as noted on the form provided by the Commissioner. The prices shall be the same for all retail licensees in a geographical area, the geographical area to be no smaller than a county. Upon submission and approval of a new nonintoxicating beer product or new packaging or container sizes for existing nonintoxicating beer product which does not coincide with a distributor's quarterly pricing filing date or which occurs during a distributor's quarterly price period, the new pricing will be valid until the distributor's next quarterly price filing date for which the new price must thereafter be filed as in this subsection. Furthermore, distributor's are permitted to make price adjustments during a distributor's quarterly pricing period in accordance with W. Va. Code §47-11A-1 *et seq.*, and specifically W. Va. Code §47-11A-8, but must provide the Commissioner with 30 days' notice of the price adjustment, all on a form provided by the Commissioner. Any distributor price adjustment per W. Va. Code §47-11A-8 will be reviewed, and if approved shall expire in 30 days or the end of the distributor's quarterly pricing period, whichever is sooner, and revert back to the distributor's quarterly price for its 90 day period or expire;

6.3.h.1.B. Shall have furnished licensed retailers with a price list delivered to the licensed retailers via mail, fax, scan, e-mail, or other form of electronic delivery on or before the effective date, showing the wholesale price of the nonintoxicating beer by brands and container sizes; and,

6.3.h.1.C. Shall file with the Commissioner during the month of December a complete price listing along with UPC Codes of each nonintoxicating beer product by package size and brand carried by the distributor. This filing is in addition to any other filing required pursuant to these rules.

6.3.h.2. In no case shall a distributor or a resident brewer acting in a limited capacity as a distributor, file with the Commissioner prices which would reflect any quantity discounts, tie-in sales, gifts or gift cards, kickbacks, draught line cleaning services or equipment, or other activity that would impact pricing.

6.3.i. No brewer, resident brewer, foreign corporation brewer or other manufacturer may, in any manner either directly or indirectly, own or operate a licensed distributor, except that a resident brewer may act as a distributor in a limited capacity for his or her own product up to 10,000 barrels from such resident brewery or place of manufacture.

6.4. The following acts, when performed by any person, are unlawful:

6.4.a. Any person under the age of 21 years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age, or 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 nonintoxicating beer, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed \$50.00 or shall be imprisoned in the county jail for a period not to exceed 72 hours, or both fined and imprisoned, or, in lieu of a fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one (1) year.

6.4.b. Any person who knowingly buys for, gives to or furnishes nonintoxicating beer to anyone under the age of 21 to whom they are not related by blood or marriage is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed \$100.00 or shall be imprisoned in the county jail for a period not to exceed 10 days, or both fined and imprisoned.

6.4.c. Any person who at any one time transports into the state for their personal use and not for resale, more than 6.75 gallons of nonintoxicating beer, upon which the West Virginia barrel tax has not been imposed, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed \$100.00, and shall have all the untaxed nonintoxicating beer in his or her possession at the time of the arrest confiscated, and such person shall be imprisoned for 10 days in the county jail, or both fined and imprisoned.

**§176-1-7. Advertising.**

7.1. Any West Virginia licensed retailer may advertise nonintoxicating beer products including, but not limited to the following manner:

7.1.a. By a display or displays, of nominal value less than \$25 per stock keeping unit, of such products and their containers within the licensed establishment. The licensed retailer and a licensed representative providing a display shall retain records of the value of all displays.

7.1.b. Within licensed establishments by signs, posters, placards, graphic displays, decorations or other similar advertising matter including crepe paper, plastic static window clings displayed to the public, or other background or decorative material, signs, placards, posters or other similar advertising matter.

7.1.c. By advertisements in any advertising medium that nonintoxicating beer or nonintoxicating craft beer is offered for sale on the licensed premises and listing the price and brand of the beer, subject to the approval by a brewer or resident brewer of a brewer or resident brewer's logos, copyright, trademarks, and trade dress being used for the advertisement.

7.2. Advertising matter as in subdivision 7.1.b. of these rules may be furnished to a licensed retailer by a licensed representative of a brewer, resident brewer, or distributor only if it has no value to the licensed retailer, except as a nominal value advertisement.

7.2.a. No brewer, resident brewer, or distributor shall directly or indirectly pay or credit a licensed retailer for displaying any advertisement or for any expense incidental to the advertisement. A brewer, resident brewer, or distributor shall not make offers of payments or payments to a licensed retailer, or one another, where a payment is offered to gain access, preference, advantage, or any other pay-to play arrangement.

7.3. Any advertisement of nonintoxicating beer may not contain the following:

7.3.a. Any statement that is disparaging of a competitor's product;

7.3.b. Any statement, device or representation that is obscene or indecent, including depictions or descriptions of nonintoxicating beer being consumed irresponsibly or intemperately;

7.3.c. Any statement that is false, misleading, or deceptive in any manner;

7.3.d. Any statement that may intimate or state that drinking of the advertised product produces good health, affects weight or similar statements; and

7.3.e. Any statement or display that may encourage intemperance or advertising presentations designed to appeal to persons below the legal drinking age.

7.4. Advertising matter or gifts not exceeding \$25.00 in value per stock keeping unit, may be given

by a licensed resident brewer, brewer, or distributor representative if prior written approval of the Commissioner has been obtained by such representative, on a promotion request form provided by the Commissioner.

#### **§176-1-8. Sanitation.**

8.1. Health Permits: The Commissioner shall not issue a Class A license, authorizing the sale of nonintoxicating beer for consumption on the licensed premises, to any person, partnership, firm, association or corporation, unless the applicant has a permit from the Health Department in the county where the establishment is located. Such health permit must authorize the applicant to operate a Class A license on the premises set out and described in the applicant's application. The Commissioner will not transfer a license to a new location unless the licensee has a permit from the appropriate Health Department to operate a Class A license on the new location, as described in licensee's application for transfer.

8.2. Health, Sanitation, Toilets: Class A licensees must be kept in a sanitary condition, as required by the appropriate Health Department. Class A licensees shall maintain separate functioning toilets for each sex, properly labeled and conveniently located. Provided that, the Code permits a private wine restaurant and a private club restaurant to operate having one functioning toilet or restroom when meeting certain requirements set forth in the Code.

8.3. Sanitation Schools, Classes and Demonstrations: Brewers, resident brewers, and distributors, either jointly or severally, with the cooperation of the Commissioner, may hold classes for the instruction of Class A licensees, Class B Licensees, and their employees in the proper method of cleansing and sterilizing glasses and other equipment used in the serving or dispensing of nonintoxicating beer to the public: Provided, that no quid pro quo, such as refreshments being served or offered at the instructional class, except nonintoxicating beer used for demonstration showing the impairment of its quality and taste by the use of improper cleansing and sterilizing of glasses and equipment.

#### 8.4. Cleansing Beer Bottles or Cans, Draught or Pipe Lines, Registration:

8.4.a. Cleansing of beer bottles and bottling: A resident brewer or brewer who bottles or cans, or who cleans beer bottles or cans shall use beer bottle or can soakers and cleansers which shall be approved by the state, county, or local health department and shall meet the requirements set forth in 64 CSR 17 and the FDA food code, as amended;

8.4.b. Cleaning of beer draught or pipe lines: A resident brewer, brewer, brewpub, or Class A retail dealer or Class B retail dealer who is appropriately licensed to serve nonintoxicating beer through draught or pipe lines and equipment are required to clean at least every two weeks the draught or pipe lines in accordance with the requirements set by state, county, or local health department, and further as set forth in 64 CSR 17 and the FDA food code, as amended. All compounds used for cleansing beer draught or pipe lines must be approved by a state, county or local health department or as set forth in 64 CSR 17 and the FDA food code, as amended;

8.4.c. Draught or Pipe lines and equipment: The use of any draught lines or pipes through which nonintoxicating beer flows or is forced, other than draught lines or pipes made of vinyl, polyethylene, or similar materials is prohibited; and the use of a rubber hose, other tubing, or any kindred products in connection with draft nonintoxicating beer is prohibited;

8.4.d. Gassing of nonintoxicating beer: Nonintoxicating beer may be gassed by the use of carbonic gas (carbon dioxide), or by the use of electrical, hydraulic, or mechanical pumps. In the event pumps are used, the intake for the pumps shall be from the outside of the building where fresh and clean air is available, and the intake must be protected by a suitable filter or filters;

8.4.e. Cleaning and sanitizing of receptacles in which nonintoxicating beer is served: Any licensee using glasses and similar containers used in serving nonintoxicating beer shall, after each use and before being used again, be thoroughly cleaned and sanitized (for growlers see growler sanitization requirements) as required by the health department in 64 CSR 17 and the FDA food code, as amended; and

8.4.f. Registration: Every person, firm, or corporation conducting a business in the state of West Virginia which involves the cleaning of beer coils, beer lines, beer pipes, and barrel tubes shall register with the health department in the county in which the establishment is located. Licensed retailers who do their own cleaning shall register as in the case of a person, firm, or corporation.

8.4.f.1. All persons, firms, or corporations (which includes distributors, either through the distributor of an affiliated entity, who must separately invoice and charge for any draught line cleaning services) engaged in the business of cleansing beer coils, beer lines, beer pipes, and barrel tubes shall maintain a written record along with the licensee engaging the entity for draught line cleaning that is subject to inspection by the Commissioner's office and a state, county or local health department. The records shall show the date of each cleansing, the method used and be signed by the person who performed the cleansing. The record shall be retained for a period of two years. The records shall be kept upon the licensed premises and shall be available at all times for inspection by a state, county or local health department and agents and employees of the Commissioner's office.

**§176-1-9. Reserved For Future Use.**

**§176-1-10. Reserved for future Use.**

**§176-1-11. Reserved for Future Use.**

**§176-1-12. Flat or Out-of-Date Beer.**

12.1. No allowance shall be made by any brewer or distributor to any licensed retailer, nor shall any brewer make any allowance to any distributor as a result of any claim for flat or out-of-date beer ,that is no longer fit for human consumption or has deteriorated in quality, in excess of a ratio of one (1) bottle to 50 bottles, cans, or other original containers in any one (1) calendar month, except with the written approval of the Commissioner.

12.1.a. Any allowances made in excess of the rate of one (1) bottle to 500 bottles, cans, or other original containers as a result of claims for flat beer will subject the offending parties to a revocation of their licenses.

**§176-1-13. Brewers, Qualification, Shipment Into State, Bond, Contract.**

13.1. West Virginia distributors shall not purchase, receive or distribute any nonintoxicating beer from any brewer or resident brewer, whether situate in or out of the state of West Virginia, unless the brewer is qualified to manufacture or transport nonintoxicating beer into the state by licensure from the Commissioner. The license as described in W. Va. Code §11-16-1 *et seq.* which shall provide:

13.1.a. For the filing of such written reports as may be required by the Commissioner.

13.1.b. For the payment on behalf of its distributors, of the beer excise (barrel) tax in monthly advance payments, or as may be otherwise directed by rule or statute; and

13.1.c. For the delivery, upon request, to the office of the Commissioner, the brewer's or resident brewer's records, papers, and accounts, for the purpose of inspecting and auditing the same, or the payment of the expense of an auditor(s) of the Commissioner while inspecting and auditing records in the office of the brewer or resident brewer.

13.2. Brewer or Resident Brewer-Distributor Franchise Agreement, Brand, Line Extensions, Sales, Transfers, Withdrawals, and Termination.

13.2.a. A brewer may not transfer or deliver to a distributor any nonintoxicating beer without first having entered into an equitable franchise agreement with the distributor: Provided, that the franchise agreement must conform to the laws of this state and be approved in writing by the Commissioner. However, any brands sold or transferred pursuant to paragraph 13.2.a.2., shall remain in the selling brewer's franchise distributor network. All of a brewer's nonintoxicating beer products, brands or family of brands, including line extensions that are imported or offered for sale in West Virginia must be listed in the franchise agreement or an amendment to the franchise agreement subject to the Commissioner's approval. A franchise agreement may be amended by mutual written agreement of the parties, as approved by the Commissioner with identical terms and conditions for a brewer and all of its distributors. The Commissioner shall approve: all brewers' franchise agreements, any amendments to franchise agreements and all brewers' franchise distributor networks, which shall be in writing and identical as to terms and conditions with all other franchise agreements between the brewer and its other distributors in this state, a brewer's existing brands, line extensions, and new brands are assigned by the brewer to the correct approved distributors in established and approved territories for the brewer's brands or line extensions; and the registration of the brewer's labels per section 4, and it shall contain a provision in substance or effect as follows:

13.2.a.1. The brewer recognizes that the distributor is free to manage his or her business in the manner the distributor considers best, and that this prerogative vests in the distributor, subject to the provisions of W. Va. Code §11-16-1 *et seq.*, the exclusive right: (i) to establish the distributor's selling prices; (ii) to have the distribution rights to the brands and line extensions of nonintoxicating beer products that are bound by franchise agreements specifying a distributor's assigned territory and that are assigned to a franchise distributor network, and, further, that the distributor may determine which brands and line extensions of nonintoxicating beer products he or she wishes to handle; and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer's nonintoxicating beer products handled by the distributor;

13.2.a.1.A. As a brewer's nonintoxicating beer products, brands, and line extensions shall only be handled by the distributor with a franchise agreement for a certain territory in West Virginia as a part of the brewer's overall franchise distributor network in West Virginia and will not be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in the distributor's assigned territory; and,

13.2.a.1.B. The distributor must therefore competitively price the brewer's nonintoxicating beer products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

13.2.a.1.C. Upon licensure, brewers must select distributors to be included in brewers' franchise distributor network via an approved franchise agreement. A brewer shall only have one franchise distributor network and only one brewer's license. However, a brewer may have nonintoxicating beer products, brands or family of brands, including line extensions, which were acquired from another brewer and continue to utilize the selling brewer's franchise distributor network for those acquired nonintoxicating beer products, brands or family of brands, including line extensions, as specified in paragraph 13.2.a.2. Any changes to the brewer's entity shall bind all the successor entities to the brewer's approved franchise distributor network. The brewer's franchise agreement with a distributor

binds the parties and all successor brewers, unless the parties mutually agree in writing to any change resulting from a sale or transfer of the distributor's business, or unless the brewer terminates the distributor as provided in the West Virginia Code and this rule.

13.2.a.1.D. Resident brewers may select distributors to be included in its franchise distributor network via an approved franchise agreement. A resident brewer shall only have one franchise distributor network and only one resident brewer's license. However, a resident brewer may have nonintoxicating beer products, brands or family of brands, including line extensions, which were acquired from another resident brewer and continue to utilize the selling resident brewer's franchise distributor network for those acquired nonintoxicating beer products, brands or family of brands including line extensions, as specified in paragraph 13.2.a.2. Any changes to the resident brewer's entity shall bind all the successor entities to the resident brewer's approved franchise distributor network. The resident brewer's franchise agreement with a distributor shall bind the parties and all successor resident brewers or brewers, unless the parties mutually agree in writing to any change resulting from a sale or transfer of the distributor's business, or unless the resident brewer terminates the distributor, all as further provided in subsection 13.5, the West Virginia Code and this rule. Unless otherwise specified, a resident brewer must meet the requirements of a brewer specified in section 13 of this rule.

13.2.a.2. A brewer may sell or transfer to another brewer or a resident brewer may sell or transfer to another resident brewer the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale. In subdivision 13.2.a., where the term brewer is used the same requirements or authority apply to resident brewer when reading section 13 as a whole, where applicable and where not contradicted by specific statements in this rule. When a sale occurs, the franchised distributor of the selling brewer is entitled to continue distributing the selling brewer's nonintoxicating beer products, brands or family of brands, including line extensions, as authorized in the distributor's existing franchise agreement. The acquiring brewer, any successor brewers or successor entities are all bound by the selling brewer's existing franchise agreement and franchise distributor network and shall continue to market all the selling brewer's nonintoxicating beer products, brands or family of brands, including line extensions, through the franchised distributor as though the acquiring brewer had made the franchise agreement, unless all the parties mutually agree, in writing, to change or cancel the existing franchise agreement and franchise distributor network or the acquiring brewer may terminate the franchise agreement only in accordance with W. Va. Code §11-16-21(b)(2) and paragraph 13.2.b.2 of this rule. The acquiring brewer may continue to distribute any of its other nonintoxicating beer products, brands or family of brands, including line extensions, through its duly authorized franchises in accordance with all other provisions of this section.

13.2.a.3. In the event a brewer withdraws products from the state and subsequently reintroduces the products to the state at a later date, that brewer or any successor brewer shall offer the territorial franchise distribution rights for those withdrawn products to the distributors who had a franchise agreement with the brewer in effect at the time of the original withdrawal of the brewer's nonintoxicating beer products.

13.2.a.4. A brewer must list every nonintoxicating beer brand and line extension it has registered, imports and offers for sale in West Virginia in its approved franchise agreements or in an approved amendment to the franchise agreement.

13.2.a.5. At the time of licensure, a brewer must list all its registered brands to be distributed in West Virginia that it imports and will offer for sale in its franchise agreements and such brands must be appointed to its approved franchise distributor network. A brewer shall file amendments, subject to the Commissioner's approval, to its approved franchise agreements in its approved franchise distributor network for any new brands or line extensions to be imported, distributed, and offered for sale in West Virginia.

13.2.a.6. In the process of investigating and reviewing: (i) any franchise agreement; (ii) any amendments to a franchise agreement; (iii) registration of container labels; (iv) registration of all brands and line extensions; (v) appointment of all brands or line extensions to a brewer's established franchise distributor network and to a distributor's assigned territory; and (vi) appointment of all brands or line extensions as an acquiring brewer, successor brewer and also any successor entities to the selling brewer's established franchise distributor network and to a distributor's assigned territory, the Commissioner may include in his investigation and review, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, associated entities, or other related entities, the brewer's corporate structure, the nature of the relatedness of various entities, ownership, trade names or partial trade names, logos, copyrights, trademarks, or trade design; and product codes, marketing and advertising, promotion, or pricing.

13.2.a.7. The Commissioner shall review franchise agreements and any amendments to verify that brands and line extensions are offered to the correct distributors in a brewer's established franchise distributor network and territories. The Commissioner may approve franchise agreements or amendments to franchise agreements for any brands or line extensions a brewer offers to the correct distributors as determined by the Commissioner, as the facts and circumstances dictate. The Commissioner may deny franchise agreements or amendments to franchise agreements for any brands or line extensions a brewer offers to the incorrect distributors as determined by the Commissioner, as the facts and circumstances dictate.

13.2.a.8. Any nonintoxicating beer product denied as a brand or as a line extension may not be sold in the West Virginia, and further any illegal sale, distribution or transportation of such a product would subject the brewer, distributor or retailer to the penalties in Section 14 of this rule.

13.2.a.9. Any brewer adversely affected by a denial per paragraph 13.2.a.6., subparagraphs (iv) or (v) only, may request, in writing a final written determination from the Commissioner.

13.2.a.10. Per paragraph 13.2.a.9., the brewer, upon receipt of a final determination from the Commissioner, may request a hearing per W.Va. Code §11-16-24 and Section 15 of this rule by filing a written petition and a \$1,000 deposit via certified check or money order to cover the costs of the hearing. Such certified check or money order shall be made payable to the Commissioner. Further, in any brewer requested hearing, the brewer has the burden of proof and the standard of review in the administrative hearing is by a preponderance of the evidence.

13.2.a.11. The provisions of this rule and W. Va. Code §11-16-1 et. seq. shall be part of all franchise agreements subject to the provisions of W. Va. Code §11-16-21 and may not be altered by the parties.

13.2.b. A Brewer, Resident Brewer, or Distributor Shall Not:

13.2.b.1. Coerce or persuade, or attempt to coerce or persuade, any licensee to enter into any contracts or agreements, whether written or oral, or to take any other action, which will violate or tend to violate any provision of W. Va. Code §11-6-1 et seq. or any of the rules, standards, requirements, or orders of the Commissioner; or

13.2.b.2. Cancel, terminate or rescind without due regard for the equities of the brewer or distributor, and without just cause, any oral franchise agreement entered into on or before June 11, 1971, or any written franchise agreement entered into on, before, or subsequent to July 1, 1971.

13.2.b.2.A. The cancellation, termination or rescission of any franchise agreement shall not become effective until 90 calendar days after written notice of the action has been served contemporaneously on the affected party and the Commissioner by certified mail, return receipt requested

or other express mail service with a return receipt requested, by the brewer. The 90 day calendar period shall start on the date received by the affected party and the Commissioner, or whichever date is later. The brewer shall provide the Commissioner with proof of receipt to any affected party.

13.2.b.2.B. The 90 day calendar period and the notice of cancellation, termination or rescission shall not apply if action is agreed to in writing by both the brewer and the distributor involved.

13.2.b.2.C. If a brewer seeks to terminate dealings with a distributor and the distributor does not agree in writing to the termination the brewer must:

13.2.b.2.C.1. Notify the Commissioner and the distributor in writing of the brewer's intent to terminate dealings with the distributor after the 90<sup>th</sup> day. A distributor must notify the Commissioner and the brewer, in writing and via certified mail, return receipt requested or other express mail service with a return receipt requested, within the 90 day period referenced in subparagraph 13.2.b.2.A., of any objections to the cancellation, termination, or rescission of its franchise agreement. Failure of a distributor to object on or before the 90<sup>th</sup> day, will authorize the Commissioner to issue an approval of the termination. The Commissioner will consider any timely filed written objections by a distributor prior to determining whether to approve or disapprove a termination and may set a hearing per subparagraph 13.2.b.2.G., to decide this matter;

13.2.b.2.C.2. After receipt of approval of the termination from the Commissioner, offer to purchase all marketable nonintoxicating beer manufactured by the brewer in the possession of the distributor as of the date of termination at the then existing brewery platform price, plus transportation costs; and

13.2.b.2.C.3. Refrain from making any statement, or performing or causing to be performed, any act (other than the termination) detrimental to the distributor or to the distributor's business.

13.2.b.2.D. After receipt from a brewer of a written notice of termination and receipt from the Commissioner of approval of the termination, the distributor must:

13.2.b.2.D.1. Sell to the brewer all marketable nonintoxicating beer, ale, malt beverages or malt coolers manufactured by the brewer and in the possession of the distributor as of the date of the termination at the then existing brewery platform price, plus transportation; and

13.2.b.2.D.2. Refrain from making any statement, or performing or causing to be performed, any act detrimental to the brewer or to the brewer's product or business.

13.2.b.2.E. If a distributor seeks to terminate dealings with a brewer, the distributor must:

13.2.b.2.E.1. Notify the Commissioner and the brewer, in writing, of the distributor's termination of dealings with the brewer;

13.2.b.2.E.2. Offer to sell to the brewer all marketable nonintoxicating beer, ale, malt beverages or malt coolers manufactured by the brewer in the possession of the West Virginia distributor as of the date of the termination at the then existing brewery platform price, not including transportation; and

13.2.b.2.E.3. Refrain from making any statement, or performing or causing to be performed, any act (other than the termination) detrimental to the brewer or to the brewer's product or business.

13.2.b.2.F. After receipt from a distributor of a written notice of termination, the brewer must:

13.2.b.2.F.1. Purchase from the distributor all marketable nonintoxicating beer manufactured by the brewer and in the possession of the distributor as of the date of the termination at the then existing brewery platform price, not including transportation; and

13.2.b.2.F.2. Refrain from making any statement, or performing or causing to be performed, any act detrimental to the distributor or to the distributor's business.

13.2.b.2.G. Hearing: If the Commissioner has grounds to believe that there has occurred a violation of section 13.2 of this rule by either a brewer or a distributor, the Commissioner may in his or her discretion order a hearing to determine whether or not a violation has occurred. If a hearing is ordered by the Commissioner, the hearing shall be held in the office of the Commissioner within 30 calendar days after the termination in question. Any hearing shall be conducted in the manner described in the W. Va. Code §11-16-1 *et seq.*, and the burden of proving that a violation has been committed rests upon the brewer or distributor, as the case may be, against whom the termination has been effected. The Commissioner shall, within 10 calendar days after the close of any hearing, make his or her determination and issue an appropriate order of findings as to whether or not a violation of this rule has occurred.

13.2.c. A distributor seeking to sell or transfer the distributor's franchise must give to the brewer at least 60 calendar days notice in writing of the impending sale or transfer, the identity of the person, firm, or corporation to whom such sale or transfer is to be made, and any other information the brewer may reasonably request. The notice shall be made upon forms and contain such additional information as the Commissioner prescribes by rule. A copy of the notice shall be forwarded to the Commissioner.

13.2.c.1. The brewer must be given 60 calendar days to approve or disapprove the sale or transfer. If the brewer neither approves nor disapproves of the sale or transfer within 6 calendar days of the date of the receipt of the notice, the sale or transfer shall be considered approved.

13.2.c.2. In the event the brewer disapproves of the sale or transfer, the brewer must give written notice to the distributor, setting forth the reasons for the disapproval.

13.2.c.2.A. The brewer may not unreasonably withhold approval of the sale or transfer. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business is not considered sufficient reason for a valid disapproval; however, lack of experience may be considered in conjunction with other adverse factors in supporting the position of the brewer.

13.2.c.2.B. The brewer may not impose requirements which are more stringent or restrictive than those currently demanded or imposed upon the brewer's other distributors in the state of West Virginia.

13.2.c.3. A copy of the notice of disapproval must be forwarded to the Commissioner and to the prospective franchisee, transferee or purchaser. If the issue is not resolved within 20 calendar days from the date of the disapproval, any of the parties may demand arbitration and shall notify the other parties and the Commissioner of the demand for arbitration.

13.2.c.3.A. The matter must be submitted to a board of three (3) arbitrators in the county in which the distributor's principal place of business is located; the party requesting arbitration shall name one arbitrator. The party receiving the notice for arbitration shall, within 10 calendar days after receipt, by notice name the second arbitrator.

13.2.c.3.B. If the party receiving notice fails to name the second arbitrator, the appointment may be made by the chief judge of the circuit court of the county in which the distributor's principal place of business is located if such action is requested by the party requesting arbitration in the first instance.

13.2.c.3.C. The two (2) appointed arbitrators must name the third, or if they fail to do so within 10 calendar days after appointment of the second arbitrator, the third arbitrator may be appointed by the chief judge upon request of either party.

13.2.c.4. The arbitrators shall promptly hear and determine the questions submitted pursuant to the procedures established by the American Arbitration Association. The arbitrators shall render the decision with all reasonable speed and dispatch but in no event later than 20 calendar days after the conclusion of evidence. The decision must include findings of fact and conclusion of law and it must be based upon the justice and equity of the matter. The arbitrators shall give each party shall be given notice of the decision.

13.2.c.5. If the decision of the arbitrators approves the proposed sale or transfer, the brewer shall forthwith agree to the same and shall immediately transfer the franchise, unless notice of intent to appeal the decision is given the arbitrators and all other parties within 10 calendar days of notification of the decision. If any party considers himself or herself aggrieved by the decision, that party has a right to bring an appropriate action in circuit court. Any and all notices shall be given to all parties by certified or registered mail, return receipt requested.

13.2.d. The violation of any provision of this subsection by any brewer constitutes grounds sufficient for revocation of the brewer or resident brewer's license. Moreover, any circuit court of the county in which a distributor's principal place of business is located has the jurisdiction and power to enjoin the cancellation, termination, or rescission of any franchise agreement between a brewer and the distributor, and, in granting an injunction to a distributor, the court shall provide that the brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

13.3. Brewers, Resident Brewers, and Distributors Interceding for Licensed Retailers: No brewer, resident brewer, or distributor may intercede on behalf of any licensed retailer with respect to the application, approval, refusal, sanctioning, suspension, or revocation of a license.

13.4. Brewers and Distributors Territorial Assignments: All brewers or resident brewers shall submit to the Commissioner, in duplicate, a written description showing the assigned territories by brewers or resident brewers to each distributor. The description shall bear the signature of the brewer, resident brewer, or its authorized agent and the distributor involved. A territorial assignment shall bind the distributor and brewer or resident brewers, and its successors, unless both parties mutually agree in writing to a change in territory as specified in sub-section 13.4.a.

13.4.a. Duly assigned territories shall then become the responsibility of the brewer or resident brewer, and distributor. No distributor shall sell any nonintoxicating beer to any licensed retailer not located within the distributor's assigned territory, and no licensed retailer shall purchase any nonintoxicating beer except from duly authorized distributors in whose assigned territory the licensed retailer is located. The brewer or duly authorized agent is responsible for submitting, by registered mail, to the office of the Commissioner, two (2) copies of any new written description showing any proposed change of territory, including signatures of the brewer or his or her authorized agent or the distributor. The new territorial assignment then becomes effective upon receipt by the parties of the written approval of the Commissioner.

13.5. Resident brewers who are producing his or her own product over 10,000 barrels or who are

using the services of licensed distributors must appoint distributors, utilize franchise agreements and be subject to those requirements and violations in the manner provided in the code and this rule. For the purpose of appointing distributors and utilizing and enforcing franchise agreements, a resident brewer must meet and abide by the requirements in the Code and this rule for brewers in that respect.

#### **§176-1-14. Revocation or Suspension of License.**

14.1. Upon a determination of the Commissioner that a licensee has violated the provisions of West Virginia Code §11-16-1, *et seq.* acted in such a way as would have precluded initial or renewal licensure, or violated any rule or order promulgated by the Commissioner, the Commissioner may:

14.1.a. Revoke the licensee's license;

14.1.b. Suspend the licensee's license;

14.1.c. Place the licensee on probationary status for a period not to exceed 12 months; and/or,

14.1.d. Impose a monetary penalty not to exceed \$1,000.00 for each violation where revocation is not imposed.

14.2. In addition to the grounds for revocation, suspension or other sanction of a license set forth in this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer or alcoholic liquor shall be mandatory grounds for sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to: prostitution or the sale, possession, or distribution of narcotics or controlled substances shall be mandatory grounds for revocation of the licensee's license for a period of at least one (1) year.

#### **§176-1-15. Hearing On Sanctioning of License.**

15.1. The Commissioner shall not revoke nor suspend any license issued pursuant to W. Va. Code §11-16-1 *et seq.* or impose any civil penalties authorized by the code unless and until a hearing is held after at least 10 calendar days' notice to the licensee of the time and place of the hearing, unless the suspension is for failure to meet or maintain licensing requirements or the suspension is based on the Commissioner's belief that public safety will be adversely affected by the licensee's continued operation, and then the suspension shall be immediate and the licensee must cease all operations. The notice shall contain a statement or specification of the charges, grounds, or reasons for the proposed action, and shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which the license was issued. At the time and place designated in the notice, the licensee has the right to appear and produce evidence on his or her behalf, and to be represented by counsel.

15.2. The Commissioner has the authority to summon witnesses in the hearings, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement of W. Va. Code §11-16-1 *et seq.* The fees shall be the same as those in similar hearings in the circuit courts of this state. The Commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed \$150.00 per violation, to reimburse the Commissioner for expenditures for witness fees, court reporter fees and travel costs incurred in holding the hearing.

15.3. If, at the request of the licensee or on his or her motion, the hearing is continued and does not take place on the day fixed by the Commissioner in the notice, the Commissioner shall suspend the licensee's license until the hearing and decision of the Commissioner. In the event the license is revoked or suspended, upon hearing before the Commissioner, the licensee may not sell nonintoxicating beer

pending an appeal of the Commissioner's decision. Any person continuing to sell nonintoxicating beer after his or her license has been suspended or revoked, is guilty of a misdemeanor and is subject to the penalties provided in W. Va. Code §11-16-19.

15.4. The action of the Commissioner in revoking or suspending a license is subject to review by the Circuit Court of Kanawha County, West Virginia, or in the manner provided in W. Va. Code § 11-16-24. The licensee shall file a petition for review with the circuit court within a period of 30 calendar days from the date of revocation or suspension by the Commissioner. Any licensee obtaining an order for review shall pay the costs and fees incident to transcribing, certifying and transmitting the records to the circuit court. A licensee shall apply to the Supreme Court of Appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter within 30 calendar days from the entry of the final order.

15.5. All hearings regarding the proposed revocation or suspension of a license shall be held in the offices of the Commissioner unless otherwise provided in notice, or agreed upon between the licensee and the Commissioner. When a hearing is held elsewhere than in the Commissioner's office, the licensee may be required to make deposits of the estimated costs of the hearing.

15.6. Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to nonintoxicating beer, or alcoholic liquor, and such conviction has become final, the clerk of the court in which the licensee has been convicted shall forward to the Commissioner a certified copy of the order or judgment of conviction if the clerk has knowledge that the person convicted is a licensee, together with certification of the clerk that the conviction is final.

15.7. In the case of a Class B licensee with multiple licensed locations, the Commissioner may, in his or her discretion, revoke, suspend, or otherwise sanction, as provided in W. Va. Code §11-16-23, only the license for the location or locations involved in the unlawful conduct as opposed to all separately licensed locations of the licensee.