TITLE 176
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSION - BEER

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
NONINTOXICATING BEER LICENSING AND OPERATIONS PROCEDURES

§176-1-1. General.

1.1. Scope. -- These legislative rules repeal and replace 176CSR1 and establish rules for the West Virginia Alcohol Beverage Control 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 17, 2015.

1.4. Effective Date. -- April 17, 2015.

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

2.2. "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 chapter eleven, section sixteen and in chapter sixty of the West Virginia code shall not be construed to include or embrace nonintoxicating beer or nonintoxicating craft beer.

2.3. "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled or otherwise produced, or 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.

2.4. "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.

2.5. "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.

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

2.7. "Brewpub" means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a licensed resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

2.8. "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.

2.9. "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.

2.10. "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.

2.11. "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner or his delegate.

2.12. "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. 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.

2.13. "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 2.12 above.

2.14. "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, 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, nut 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.

2.15. "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.

2.16. "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.

2.17. "Grocery Store" means any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises.

2.18. "Growler" means a glass, ceramic or metal container or jug not more than two gallons in size, capable of being securely sealed, utilized by a licensed resident brewer's brewpub for purposes of off-premises sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premises and not for resale.

2.19. "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.

2.20. "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.

2.21. "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; advertising promotion or pricing.

2.22. "Nonintoxicating Beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by

the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent (.5%) alcohol by volume, but not more than nine and six-tenths percent (9.6%) of alcohol by weight, or twelve percent (12%) 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.

2.23. "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent (.5%) by volume and not more than twelve percent (12%) alcohol by volume or nine and six tenths (9.6%) percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect. 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 craft beer.

2.24. "Original Container" means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

2.25. "Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

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

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

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

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

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

2.26.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,

2.26.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.

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

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

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

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

2.26.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,

2.26.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.

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

2.26.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,

2.26.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.

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

2.26.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;

2.26.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,

2.26.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.

2.27. "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:

2.27.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;

2.27.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,

2.27.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.

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

2.28.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;

2.28.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,

2.28.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.

2.29. "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:

2.29.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;

2.29.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,

2.29.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.

2.30. "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.

§176-1-3. Licenses.

3.1. General License Requirement: Each person seeking to manufacture, sell, possess for sale, transport 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 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 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 security, criminal and credit investigation of an applicant who has applied for the issuance or renewal of a retail liquor license. The applicant 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 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 check will be returned to the West Virginia Lottery Commission and the Alcohol Beverage Control Commission.

3.1.c. The applicant will reimburse the ABCC for all fees or charges that are incurred by the ABCC 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.

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

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 or place for manufacturing. However, a distributor's license is required for that person to distribute nonintoxicating beer from a place other than where it is brewed or manufactured. 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.

3.2.d. License Application: An applicant shall submit a verified application (provided by the commissioner) to the commissioner, which shall state:

3.2.d.1. the name of the applicant, where incorporated and the date incorporated;

3.2.d.2. the applicant's federal identification number or social security number;

3.2.d.3. the address of the applicant's main office;

3.2.d.4. the names and respective addresses of the applicant's partners, members, owners, shareholders or for a corporation, its officers and directors;

3.2.d.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; and,

3.2.d.6. any other information required by the Commissioner.

3.2.e. Bonds:

3.2.e.1. A brewer shall provide the commissioner with a surety bond in an amount not less than $5,000.00 nor more than $25,000.00 payable to the state of West Virginia and conditioned upon the payment of any and all taxes accruing during the license period and faithfully observing the provisions of W. Va. Code §11-16-1 et seq., this rule, regulations and orders of the commissioner and of any other laws of the State of West Virginia relating to the sale, transportation, storage and distribution of nonintoxicating beer and nonintoxicating craft beer, in a form provided by the Commissioner.

3.2.e.2. A resident brewer shall provide the commissioner with a surety bond in an amount not less than $5,000.00 nor more than $10,000.00 payable to the state of West Virginia and conditioned upon the payment of any and all taxes accruing during the license period and faithfully observing the provisions of W. Va. Code §11-16-1 et seq., this rule, regulations and orders of the commissioner and of any other laws of the State of West Virginia relating to the sale, transportation, storage and distribution of nonintoxicating beer and nonintoxicating craft beer, in a form provided by the Commissioner.

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

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;

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

3.3.f. 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 surety bond in an amount not less than $5,000.00 nor more than $25,000.00 payable to the state of West Virginia and conditioned upon the payment of any and all taxes accruing during the license period and faithfully observing the provisions of W. Va. Code §11-16-1 et seq., this rule, regulations and orders of the commissioner and of any other laws of the State of West Virginia relating to the sale, transportation, storage and distribution of nonintoxicating beer and nonintoxicating craft beer, in a form provided by the Commissioner;

3.4.b. 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.c. 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 principle place of business is located, is $1,500.00.

3.5.a. If the period of the original license commences on or after January 1 or 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;

3.6.a.1. If the applicant is an individual, that the applicant is at least twenty-one (21) years of age and a resident of West Virginia for a period of two (2) years immediately preceding the date of application;

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 for the two (2) year period immediately preceding the date of application: 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 relating to the license have each been a bona fide resident of West Virginia for the four (4) years immediately preceding the date of application;

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. That the applicant is a citizen 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 that each officer is a United States citizen and a person of good moral character;

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 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 three hundred (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;

3.6.f. That the applicant is not incarcerated and has not been convicted of a felony or other crime involving moral turpitude. An applicant 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 has 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.

3.7. 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 private club per the requirements of W. Va. Code §60-7-1 et seq.

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 fails to satisfy any of the requirements of section 3 or if in the Commissioner's opinion the applicant has engaged in conduct declared to be unlawful by W. Va. Code §11-16-1 et seq. or is an unsuitable person to be licensed.

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

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;

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

3.10.h. Resident Brewer: $1,500.00 for each location; and

3.10.i. Brewpub: $1,000.00 for each location.

3.11. Class S License.

3.11.a. An applicant shall submit the application, as provided by the Commissioner, for a Class S license to the Commissioner at least thirty (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.b. The Commissioner may issue a Class S license for a term of no longer than 10 consecutive days.

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

3.12. Brewery Representatives, Permits, Fee, Term, Suitability: No person shall act as agent, representative, solicitor or salesman in the state of West Virginia for any brewer 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: The fee for a permit to act as an agent, representative, solicitor or salesman is $50.00.

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

3.12.d. Suitability: The Commissioner shall issue a permit to any suitable 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 eighteen (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. Is a person of good morals and reputation; and,

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

3.12.e. Bond: In order to receive a permit the applicant shall file with the Commissioner a bond, with a solvent surety company approved by the Commissioner and registered to do business in this state, in the penalty of $500.00, conditioned upon the observance of the West Virginia Nonintoxicating Beer Act and Rules promulgated under the Act.

3.12.f. Suspension or Revocation: Permits may be suspended or revoked by the Commissioner for noncompliance with the West Virginia Nonintoxicating Beer Act and rules promulgated under the Act, 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 ten (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.

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.

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 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 three hundred (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 and for assuring that the chart is displayed in accordance with the provisions of this rule.

3.19. 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.

§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 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 or retailer or group of retailers, or use any trademark other than that of a licensed brewer or manufacturer.

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.

4.2. Serving Bottled Beer From Which Labels Have Been Removed: No licensed retailer of beer shall serve to any customer any bottle of nonintoxicating beer from which the label has been removed unless the retailer exhibits the bottle with crown intact, to the customer prior to opening the bottle.

4.3. 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 manufacturing or producing nonintoxicating beer in this state for sale in this state shall, on or before the tenth (10th) 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 which is the original consignee of nonintoxicating beer manufactured or produced out of this state, or who brings the nonintoxicating beer into this state shall, on or before the tenth (10th) day of each month, file the report prescribed by the Commissioner stating the total estimated purchases of nonintoxicating beer during that month and pay the tax on the estimated purchases.

4.3.c. Any brewer which manufactures or produces nonintoxicating beer outside this state may, upon obtaining 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 and Distributors must file adjusted monthly reports by the twenty-fifth (25th) day of each reporting month.

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

4.4. Records Management by Brewers and Distributors: 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. Reserved For Future Use.

§176-1-6. Unlawful Acts.

6.1. It shall be unlawful:

6.1.a. 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 on weekdays between the hours of two o'clock (2:00) a.m. and seven o'clock (7:00) a.m., or between the hours of two o'clock (2:00) a.m. and one o'clock (1:00) p.m. on any Sunday 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 to any person known to be insane or known to be a habitual drunkard;

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 twenty-one (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 a 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 a 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, brewer, resident brewer acting in a limited capacity as a distributor of his or her own product as specified in the code, or manufacturer licensed under the laws of this state;

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: Provided, that no licensee shall have in connection with the licensed place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

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 eighteen (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 eighteen (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; and,

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 license to permit nonintoxicating beer in an open container to be carried into or out of any licensed premises; provided that a brewpub may lawfully sell up to 2 sealed growlers per customer for personal consumption off of the licensed premises and not for resale.

6.2. Nothing in this rule shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen (18) years of age to serve in the licensee's lawful employ, including the sale or delivery 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 eighteen (18) years of age but at least sixteen (16) years of age: Provided, that the person's duties shall not include the sale or delivery on nonintoxicating beer or alcoholic liquors: Provided, however, that the authorization to employ persons under the age of eighteen (18) years shall be clearly indicated on the licensee's license.

6.3. The following acts, when performed by distributors, manufacturers or brewers are unlawful:

6.3.a. 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 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.

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 Commissioner in the exact amount as required by W. Va. Code §11-16-9.

6.3.b. A brewer or distributor or his or her agents, may not transport or deliver nonintoxicating beer to any licensed retailer on Sunday.

6.3.c. A brewer or distributor may not give, furnish, rent or sell any equipment including trailers or draft trucks, fixtures, signs or supplies directly or indirectly or though a subsidiary or affiliate to any licensed retailer engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided: that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in such events: 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.c.1. No brewer or distributor shall contribute to or support, either directly or indirectly, any baseball, football, bowling or other athletic team or contest (except a recognized professional athletic team or contest) unless the brewer or distributor has first obtained written permission from the Commissioner to do so.

6.3.d. Any brewer or distributor, or any salesman, agent or representative of any 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, distributor, salesman or 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. Brewers or their representatives, and distributors or their representatives, are prohibited from trade spending in any licensed retail establishment.

6.3.d.3. A distributor may rotate, stock and price nonintoxicating beer in a licensed nonintoxicating beer retail establishment, except on Sundays; Provided, that products purchased from other distributors are not altered or disturbed.

6.3.e. A distributor may not sell, possess for sale, transport or distribute nonintoxicating beer except in the original container.

6.3.f. 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.

6.3.g. A 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 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 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 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 sold to licensed distributors. This filing is in addition to any other filing required pursuant to these rules.

6.3.h. A brewer or 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, 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 1st 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 shall not sell or deliver nonintoxicating beer to any licensed retailer unless the 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

and are effective on the 10th day of the applicable quarterly period through the 9th day of the next 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. 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. For example, a licensed beer distributor would submit wholesale prices, by brands and container sizes, on the form provided by the Commissioner on or before February 1, for the wholesale prices to be effective for the quarterly period from April 10 through July 9 (90 day pricing period) and so forth. 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 or e-mail, 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 file with the Commissioner prices which would reflect quantity discounts.

6.3.i. No brewer, resident brewer or foreign corporation brewer 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, place of manufacture or bottling.

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

6.4.a. Any person under the age of twenty-one (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 seventy-two (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 twenty-one (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 ten (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 six and seventy-five hundredths (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, or imprisoned for ten (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 only in the following manner:

7.1.a. By a display or displays of such products and their containers within licensed establishments.

7.1.b. Within licensed establishments by signs, posters, placards, graphic displays, decorations or other similar advertising matter where the combined area for any one brand of nonintoxicating beer does not exceed a maximum area of two thousand two hundred (2,200) square inches, including crepe paper or other background or decorative material, signs, placards, posters or other similar advertising matter.

7.1.c. By advertisements in newspapers, advertising circulars and similar publications that nonintoxicating beer is for sale on the licensed premises.

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

7.2.a. No brewer or distributor shall directly or indirectly pay or credit the licensed retailer for displaying any advertisement or for any expense incidental to the advertisement.

7.2.b. These rules shall not be construed to permit the display of nonintoxicating beer or advertisement in show windows or to prohibit the display of faucet advertising indicating the brand or brands of draft nonintoxicating beer offered for sale.

7.2.c. No brewer or distributor shall paint the interior or exterior of a licensed retailer's licensed premises under the guise of advertising.

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;

7.3.c. Any statement that is false or misleading 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.

7.4. Advertising gifts not exceeding $25.00 in value, may be given if prior written approval of the Commissioner has been obtained.

7.5. The brewers and distributors furnishing the advertisements and the retailer in whose establishment or on whose grounds the advertisements are located are equally responsible for the displaying of the advertising prohibited in this rule.

7.6. Posters, placard, mirrors, windows, doors: All signs advertising the brand or the price of

nonintoxicating beer on the windows or doors of licensed retailers are prohibited.

7.7. Point of Sale Materials: Materials used for point of sale of an electrical or mechanical construction are prohibited.

§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 tavern in 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 tavern in the new location, as described in licensee's application for transfer.

8.2. Health, Sanitation, Toilets: Class A licensed establishments must be kept in a sanitary condition, as required by the appropriate Health Department. Class A licensees shall maintain separate toilets for each sex, properly labeled and conveniently located.

8.3. Sanitation Schools, Classes and Demonstrations: Brewers and distributors, either jointly or severally, with the cooperation of the Commissioner, may hold classes for the instruction of Class A 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 refreshments shall be served except nonintoxicating beer for demonstration as to the impairment of its quality and taste by the use of improper cleansing and sterilizing of glasses and equipment.

8.4. Cleansing Beer Bottles, Pipe Lines, Registration:

8.4.a. Cleansing of beer bottles and bottling: Beer bottle soakers and cleansers shall be of such mechanical construction and operation as to entirely eliminate manual handling or contact with the bottles from the point the bottles are placed in the soaker until filled with beer and crowned. Soakers and cleansers used must be so equipped as to provide, at the least, one (1) outside and two (2) inside brushings, and five (5) individual rinsings of each bottle, using properly decreasing alkali solution, or an equivalent, and at proper temperature, until the bottles reach the fresh water compartment.

8.4.b. Cleansing of beer pipe lines and barrel tubes: Beer pipe lines and barrel tubes must be cleansed simultaneously, not less than twice each week (approximately ninety (90) hour intervals) by the use of a hydraulic pressure mechanism, hand pump suction or force cleaner, in conjunction with a suitable detergent, or detergent and sterilizer combined, or any other apparatus approved by the Commissioner. When coils are cleansed in either of these manners, the detergent must be permitted to remain in the line not less than ten (10) minutes, and may lie still or be agitated. After cleansing, lines shall be rinsed with clear water until all chemicals have been removed. All compounds used for cleansing beer pipe lines and barrel tubes must be approved by the Health Department in the county where the establishment is located.

8.4.c. Pipe lines and equipment: The use of any tubing or pipes through which nonintoxicating beer flows or is forced, other than tubing or pipes made of vinyl, polyethylene or similar materials is prohibited; and the use of rubber hose or 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. Cleansing and sterilizing of receptacles in which nonintoxicating beer is served: All glasses and similar containers used in serving nonintoxicating beer shall, after each use and before being used again, be thoroughly cleansed and sterilized:

8.4.e.1. Cleansing: Glasses and containers shall be washed in hot water containing an effective cleansing agent.

8.4.e.2. Sterilization: Glasses shall be sterilized by either of the following methods:

8.4.e.2.A. Method 1: Each glass or container shall be immersed for not less than one minute in clean water containing not less than one hundred (100) parts per million (1,000,000) of available chlorine. The glass or container shall be rinsed free from the washing solution. After the sterilizing operation, the chlorine odor may be eliminated by draining the glass for a period or rinsing in clean water. The most practical and effective arrangement for complying with Method 1 is to provide a small three (3) compartment vat. Each compartment should be provided with a means of draining. Hot and cold running water should be piped to the vat if available. The first compartment should contain the hot alkaline wash water; the second compartment clean rinse water, and the third compartment the chlorine sterilizing solution; and,

8.4.e.2.B. Method 2: Each glass or container shall be immersed for not less than two (2) minutes in clean hot water maintained at a temperature of at least one hundred seventy (170) degrees Fahrenheit.

8.4.f. Registration: Every person, firm or corporation conducting a business in the state of West Virginia which involves the cleansing of beer coils and barrel tubes shall register with the Health Department in the county in which the establishment is located and the Commissioner's office by providing the business's name and address, and the method and chemicals used in the cleansing of the beer pipe lines and barrel tubes. Licensed retailers who do their own cleansing shall register as in the case of a person, firm or corporation.

8.4.f.1. All persons, firms or corporations engaged in the business of cleansing beer coils and barrel tubes shall furnish, without cost, to each licensed retailer a record card, which shall be approved by the Commissioner's office. The record card shall show the date of each cleansing, the method used and be signed by the person who performed the cleansing. The card shall provide for a period of six (6) months, and at the end of each six (6) months, shall be signed by the licensed retailer, notarized and forwarded immediately to the Commissioner's office. The card in use shall be kept upon the licensed premises and shall be available at all times for inspection by Health Department in the county in which the establishment is located and agents and employees of the Commissioner's office.

§176-1-9. Reserved For Future Use.

§176-1-10. Deposit For Packages, Container Deposits, Rebates.

10.1. Container Deposits, Rebates: On all wholesale and retail sales of nonintoxicating beer, ale, malt beverages or malt coolers in returnable bottles of any size, there shall be a minimum cash deposit charge of $.75 per case, regardless of case size.

10.1.a. Each brewer, distributor or retailer authorized by the Commissioner to sell, ship or deliver nonintoxicating beer in the state of West Virginia shall not buy, sell, rent, lend, give or offer to buy, sell, rent, lend or give returnable bottles upon which a deposit charge has been paid. Bottles of the same type, color, and size shall be returned for rebate to the brewer or distributor to whom the deposit charge was paid in the cases in which originally sold or delivered.

10.1.b. Each brewer, distributor or retailer authorized by the Commissioner to sell, ship or deliver nonintoxicating beer in the state of West Virginia, shall accept for rebate all usable, returnable bottles upon which a deposit charge was made when sold or delivered, if the bottles are the same type, color, and size and in the cases in which originally sold or delivered, and shall pay rebates in the amount equal to the deposit charge.

§176-1-11. Chipped or Broken Bottles.

11.1. No allowances shall be made by any distributor to any licensed retailer for chipped bottles. Replacement may be made by any distributor to any licensed retailer as a result of broken bottles, where the crown and neck are intact. Breweries may share equally with distributors in replacement of broken bottles where the crown and neck are intact.

§176-1-12. Flat 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 beer in excess of a ratio of one (1) bottle to five hundred (500) bottles 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 five hundred (500) bottles 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, whether situate in or out of the state of West Virginia, unless the brewer is qualified to manufacture or ship nonintoxicating beer into the state by posting bond with the Commissioner. The bond must be conditioned upon the faithful observance of W. Va. Code §11-16-1 et seq. and the rules promulgated thereunder, and obtaining a 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;

13.1.c. For the delivery, upon request, to the office of the Commissioner, the 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; and

13.1.d. For the posting of bond, with surety, in the amount of $25,000.00 conditioned upon the compliance by the brewer with all rules and laws of the state of West Virginia relating to nonintoxicating beer.

13.2. 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.

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; 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 for at least ninety (90) days after written notice of the action has been served on the affected party and the Commissioner by certified mail, return receipt requested.

13.2.b.2.B. The ninety (90) day 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;

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 thirty (30) 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 ten (10) 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 sixty (60) 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 sixty (60) days to approve or disapprove the sale or transfer. If the brewer neither approves nor disapproves of the sale or transfer within sixty (60) 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 twenty (20) 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 ten (10) 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 ten (10) 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 then twenty (20) 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 ten (10) 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 the forfeiture of the bond furnished by the brewer in accordance with W. Va. Code §11-16-12. 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 and Distributors Interceding for Licensed Retailers: No brewer or distributor may intercede on behalf of any licensed retailer with respect to a refusal or revocation of a license.

13.4. Brewers and Distributors Territorial Assignments: All brewers shall submit to the Commissioner, in duplicate, a written description showing the assigned territories by brewers to each distributor. The description shall bear the signature of the brewer or its authorized agent and the distributor involved. A territorial assignment shall bind the distributor and brewer, 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 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 twelve (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 ten (10) 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 thirty (30) 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 thirty (30) 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.