# TITLE 175
# LEGISLATIVE RULE
# ALCOHOL BEVERAGE CONTROL COMMISSION

## SERIES 5
## LICENSING OF RETAIL ~~LIQUOR STORES~~ OUTLETS

### §175-5-1. General.

1.1. Scope. -- This legislative rule explains and clarifies certain powers and duties of the West Virginia Alcohol Beverage Control Commissioner as set forth in W. Va. Code §60-3A-1 et seq., which relate to the sale of ~~new~~ 10-year franchises to operate retail ~~liquor stores~~ outlets to take effect on July 1, 2000, and on July 1st for every ten year license period thereafter. Specific emphasis is given to the Commissioner's duties relative to the development of recommendations to be made to the West Virginia Retail Liquor Licensing Board relating to the establishment of minimum bids for the new licenses; the number and types of Class A retail licenses and Class B retail licenses to be authorized in each market zone; the development of purchase option licensing process, license bidding procedures and a deferred payment financing option; the award of residential preferences and the award of an additional preference for current licensees and the right to match; and the methodology for ~~selecting~~ the purchase options and selecting successful bidders. This legislative rule ~~repeals and replaces~~ amends 175 C.S.R. 5. and ~~establishes~~ the general licensure rules for the West Virginia Alcohol Beverage Control Commissioner.

1.2. Authority. -- W. Va. Code §60-3A-~~6~~1 et seq.

1.3. Filing Date. -- ~~May 7, 2007~~.

1.4. Effective Date. -- ~~May 7, 2007~~.

1.5. Type of rule. -- This rule is a legislative rule within the meaning of W. Va. Code §29A-1-2(d).

1.6. Citation. -- This rule may be cited as 175 CSR 5.

1.7. Short Title. -- This rule shall be known and may be cited as the "~~State~~ Retail Liquor License Rule."

### §175-5-2. Definitions.

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

2.1. "Active retail license" means a current license for a retail outlet that has been open and in continuous operation for a period of not less than 12 months prior to July 1, 2010, or July 1st for every ten year license period thereafter.

2.2. "Active retail licensee" means a person who holds an active retail license as of June 2, 2009, that person's successor or any person who holds and operates an active retail license when it expires at the end of a ten-year period.

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

2.~~2~~4. "Alcohol Beverage Control Commission," or "ABCC", or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner or his or her designee.

2.~~3~~5. "Alcoholic liquor" or "liquor" means alcohol, beer, fortified wine and distilled spirits, and any liquid or solid capable of being used as an alcoholic beverage, but shall not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

2.6. "Alcohol-related products" means any non-alcoholic beer or beverages; non-alcoholic

mixers; decanters; glass or plastic cups; openers, corks, or stoppers; gift bags; books, magazines or novelties; traditional West Virginia lottery products, such as: instant games, Keno, Powerball, Hot Lotto, daily games and Cash 25, but not limited video lottery; or such other alcohol related items as determined by the Commissioner, on a case by case basis, after receipt of a written request from an active retail licensee which must be sent to the Commissioner's office via certified mail.

2.~~4~~7. "Applicant" means any person who elects to pay a purchase option for a Class A license, who bids for a retail license~~;~~ or who seeks the Commissioner's approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of the Retail Liquor Licensing Act and this rule.

2.~~5~~8. "Application" means the form prescribed by the Commissioner which must be filed with the Commissioner by any person bidding for a retail license.

2.~~6~~9. "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, article sixteen and in chapter sixty of the code and shall not be construed to include or embrace nonintoxicating beer or nonintoxicating craft beer.

2.10. "Board" means the retail liquor licensing ~~B~~board created by W. Va. Code §60-3A-5.

2.~~7~~11. "Class A retail license" means a retail license permitting the retail sale of liquor at ~~more than one~~ a freestanding liquor retail outlet.

2.~~8~~12. "Class B retail license" means a retail license permitting the sale of liquor at ~~only one~~ a mixed retail liquor outlet.

2.~~9~~13. "Current licensee" means a person who holds and operates a retail license on ~~March 13, 1999,~~ June 2, 2009, on June 2 of the year prior to then end of every ten year license period thereafter or that person's successor or any person who holds and operates a retail license when it expires at the end of a ten-year (10) period.

2.1~~0~~4. "Designated areas" mean one or more geographic areas within a market zone designated by the Board.

2.15. "Displayed inventory" means the current inventory of West Virginia product in the quantity as required for a Class A retail license or a Class B retail license that is available for sale in the set square footage of retail floor space of a retail outlet as established for a freestanding liquor retail outlet or a mixed retail liquor outlet and in sufficient quantities to service consumer demand at the retail outlet.

2.1~~1~~6. "Distilled spirits" means ethyl alcohol, ethanol or spirits, or wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, natural spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage or other food product containing more than twenty-four percent (24%) of alcohol by volume shall be deemed to be distilled spirits.

2.17. "Deferred payment financing option" means the deferred payment financing available to active retail licensees who elect the purchase option and operate or seek to operate a freestanding liquor retail outlet and requires a down payment and either monthly or quarterly installment payments, plus interest, to pay the balance due in the first five (5) years or sixty (60) months of the ten-year license period.

2.1~~2~~8. "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy making function.

2.19. "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products.

2.~~13~~20. "Fortified wine" means any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) of alcohol by volume.

2.~~14~~21. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

2.22. "Inventory" means the inventory of West Virginia product available at a retail outlet that is maintained in non-retail floor space of the retail outlet.

2.~~15~~23. "Liquor" means alcoholic liquor that includes alcohol, beer, wine and distilled spirits, and any liquid or solid capable of being used as a alcoholic beverage or food product, but shall not include nonintoxicating beer and also includes wine which means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar and to which no alcohol has been added and shall include table wine, and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer; and shall include fortified wine which shall mean any wine to which brandy or other alcohol has been added and shall include dessert wines which are not fortified.

2.~~16~~24. "Lineal descendant" means that kind of consanguinity which subsists between persons of whom one is descended in a direct line from the other; as between a particular person and his father, grandfather, great-grandfather and so upward, in the direct ascending line; or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line.

2.~~17~~25. "Market zone" means a geographical area designated as such by the Board for the purpose of issuing retail licenses.

2.26. "Mixed retail liquor outlet" means a retail outlet that sells liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products, in addition to convenience and other retail products.

2.~~18~~27. "Nonintoxicating beer" means any cereal malt beverages~~;~~ or products of the brewing industry commonly referred to as beer, lager, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers ~~obtained by the fermentation of barley, malt, hops, or similar products or substitute and~~ containing at least one half of one percent (.5%) alcohol by volume, but not more that ~~four and two~~ nine and six-tenths percent (~~4.2~~9.6%) of alcohol by weight, or ~~six~~ twelve percent (~~6~~12%) of alcohol by volume, whichever is greater, all of which are declared to be nonintoxicating beer and the word "liquor" as used in W. Va. Code §60-1-1 et seq., shall not be construed to include or embrace nonintoxicating beer or any of the beverages, products, mixtures or preparations included within this definition.

2.28. "Nonintoxicating craft beer" means any beverage obtained by the 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.

2.~~19~~29. "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

2.2~~0~~30. "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

2.~~21~~31. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including but not limited to, establishments that provide lodging and/or sell food for consumption on or off the

premises, and any highway, street, lane, park or place of public resort or amusement: Provided, that the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of W. Va. Code §60-1-1, et seq. to sell alcoholic liquors for consumption on the premises.

2.32. "Purchase option" means the choice provided to all active retail licensees who operate or seek to operate a Class A retail license or freestanding liquor retail outlet, and who elect, in advance of bidding licenses, to pay ten percent over and above the minimum bid set by the board for such licensee's active retail license, all subject to the requirements of the rules and the code.

2.~~22~~33. "Retail license" means a license issued under the provisions of W. Va. Code §60-3A-1, et seq., and this rule, permitting the sale of liquor at retail.

2.~~23~~4. "Retail licensee" means the holder of a retail license.

2.~~24~~35. "Retail outlet" means a specific location or store where ~~liquor~~ West Virginia product may be lawfully sold by a retail licensee in the original package for consumption off the premises.

2.~~25~~36. "Secretary" means the Secretary of the West Virginia Department of Revenue.

2.~~26~~37. "State" means the State of West Virginia.

2.38. "Tobacco-related products" means tobacco; snuff; chew tobacco; pipe tobacco, cigarettes, specialty cigarettes; cigars; pipes; hookahs; rolling papers; matches; lighters; lighter fluid; tobacco water; tobacco topical paste; cigar cutters or punches; humidors and products to maintain a humidor; nicotine gum; smoking prevention products; smoke cleaning products or smoke smell erasing products; other tobacco-related products or accessories; or such other tobacco-related items as determined by the Commissioner, on a case by case basis, after receipt of a written request from an active retail licensee which must be sent to the Commissioner's office via certified mail.

2.~~27~~39. "TTB" means U.S. Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau.

2.40. "West Virginia product" means all bourbon, brandy, cognac, cordials, gin, grain alcohol, rye, rum, scotch, tequila, vermouth, vodka, whisky, apertifs, pre-mixed cocktails, fortified wines, spirit blends, marsala, sake, sherry and all other liquor types and classes as approved by the Commissioner and maintained on the ABCC retail liquor product list.

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

**§175-5-3. Criteria, Limitation and Necessity for Retail Operations.**

3.1. State stores. -- In general, the Commissioner may not operate state retail ~~liquor stores~~ outlets. However, when circumstances prescribed by law exist, the Commissioner may open and operate a state ~~liquor store~~ retail outlet in a market zone provided the Board gives its prior consent.

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

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

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

3.2.3. Any other information the Commissioner desires to submit.

Upon receipt of the petition, the Chairman of the Board, who is also the Secretary ~~of the West Virginia Department of Revenue~~, shall set a date, acquire a meeting place, and conduct a meeting on such date at the prescribed place for purposes of considering the application.

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

3.3.1. Failure of a licensee to open a retail outlet in a market zone and operate it in a commercially reasonable manner within ~~one hundred twenty~~ ninety (~~120~~90) days after June 30, 2000, and after June 30th for every ten year license period thereafter or the date the retail license is issued to the licensee, whichever occurs last, shall be prima facie evidence that the licensee is unable or unwilling to open a retail outlet in that market zone. In any proceeding before the Board on this issue, the burden of proof shall be on the licensee to show by clear and convincing evidence that the licensee is not unwilling and not unable to open a retail outlet in the market zone.

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

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

3.3.3.a. Probative evidence that the licensee is unable to obtain financing necessary to open a retail outlet or is unable or unwilling to pay the installment payments required by the deferred payment financing option;

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

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

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

3.3.4.a. Probative evidence that the licensee failed to make reasonable efforts to obtain, by purchase or lease, a location for the retail outlet or, having a location, the licensee failed to construct a building, or prepare an existing building, to house a retail outlet to operate either a Class A retail license or a Class B retail license.

3.3.4.b. Probative evidence that the licensee failed to make reasonable efforts to:

3.3.4.b.1. Apply for or obtain financing for the retail outlet;

3.3.4.b.2. Interview or hire employees for the retail outlet;

3.3.4.b.3. Apply for or obtain fire and liability insurance for the retail outlet;

3.3.4.b.4. Apply for all necessary certificates, licenses, permits or stamps to do business at a retail outlet including, but not limited to, the basic permit and retail and wholesale stamps issued by the ~~Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau~~ TTB and a business registration certificate issued by the Tax Commissioner.

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

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

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

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

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

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

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

3.6.1. Whether the absence of any operating retail outlet in a market zone is due to the current licensee or licensees' inability or unwillingness to operate a retail outlet, or is prevented by a matter in controversy pending judicial adjudication that will continue for some duration and the facts upon which the Commissioner relies;

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

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

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

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

3.6.6. A map showing the boundaries of

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

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

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

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

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

3.7.2. Act upon the petition or resolution;

3.7.3. Defer action on the petition or resolution;

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

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

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

**§175-5-4. Limitations on ~~Holding~~ Licenses.**

4.1. In general. -- A person may hold, directly or indirectly, one or more Class A retail licenses and one or more Class B retail licenses. ~~However, no individual or other person may directly or indirectly hold, for the same market zone, a Class A retail license and a Class B retail license, or more than one Class B retail license~~ for a market zone. ~~The following constitutes examples of the instant rule:~~

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

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

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

~~Example 4. -- In market zone Delta, a Class A license will be issued authorizing the holder to operate two retail outlets. One Class B license will also be issued. ABC Corporation submits the high bid for the Class A license. L&S Partnership submits the high bid for the Class B license. John~~

~~Smith owns fifty-one percent (51%) of the L&S Partnership and sixty percent (60%) of the stock of ABC Corporation. The Class A license may be issued to ABC Corporation or the Class B license may be issued to L&S Partnership. However, the Class A license may not be issued to ABC Corporation and the Class B license issued to L&S Partnership because no individual or other person may directly or indirectly hold more than one license for a market zone.~~

4.2. Aggregate limitation rule. -- No individual or other person may directly or indirectly hold a combination of licenses that, in the aggregate, authorizes that person to operate more than ~~twenty-five~~ thirty percent (~~25~~30%) of the total number of Class A and Class B retail outlets authorized under the provisions of W. Va. Code §60-3A-1 et seq. to be operated in this state during the ten-year (10) license period that begins ~~July 1, 2000, or~~ July 1, 2010. The following constitutes examples of the instant rule:

Example 1. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow one hundred eighty (180) retail outlets to be operated in this state during the ten-year (10) period that begins July 1, ~~2000~~2010. ~~Twenty-five~~ Thirty percent (~~25~~30%) of one hundred eighty (180) retail outlets is ~~forty-five~~ fifty-four (~~45~~54) retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate 55 retail outlets should ABC Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate ~~50~~ 55 retail outlets. Due to the aggregate limitation rule, ABC Corporation may only be issued licenses that allow it to operate no more than ~~45~~54 retail outlets.

Example 2. -- The Commissioner advertises for bid Class A and Class B retail licenses that, in the aggregate, will allow one hundred eighty (180) retail outlets to be operated in this state during the ten-year (10) period that begins July 1, ~~2000~~2010. ~~Twenty-five~~ Thirty percent (~~25~~30%) of one hundred eighty (180) retail outlets is ~~forty-five~~ fifty-four (~~45~~54) retail outlets. ABC Corporation submits bids for Class A and Class B licenses that would authorize it to operate ~~twenty-five~~ thirty (~~25~~30) retail outlets should ABC Corporation be the winning bidder for all of those licenses. D&E Corporation submits bids for Class A and Class B licenses that would authorize it to operate ~~twenty-five~~ thirty (~~25~~30) retail outlets should D&E Corporation be the winning bidder for all of those licenses. After the bids are opened, it is determined that ABC Corporation would be the winning bidder for licenses authorizing it to operate ~~25~~30 retail outlets and that D&E Corporation would be the winning bidder for licenses authorizing it to operate ~~25~~30 retail outlets. However, because ABC Corporation and D&E Corporation are wholly owned subsidiaries of Alphabet Corporation, they are disqualified from holding a license that allows them to operate, in the aggregate, more than ~~45~~54 retail outlets due to application of the ~~twenty-five~~ thirty percent (~~25~~30%) rule. No individual or other person may directly or indirectly hold a license that authorizes the operation of more than ~~45~~54 retail outlets.

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

4.3.1. Members of a family. For purposes of this rule, the family of an individual includes only his or her brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants, whether by birth or adoption and within the degree of consanguinity of second cousins and persons related by current marriage;

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

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

4.3.4. A partnership and another partnership if the same persons own, directly or indirectly, more than fifty percent (50%) of the

capital interest, or the profits interest, in each partnership;

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

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

4.3.7. Two corporations that are members of the same "controlled group" as that term is defined in section 4.6 of this rule;

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

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

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

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

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

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

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

4.3.15. An S corporation and a C corporation, if the same persons own, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of each corporation.

4.4. Constructive ownership of stock. -- For purposes of applying section 4.3 of this rule; when determining the ownership of stock:

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

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

4.4.3. An individual owning (otherwise than by the application of subsection 4.4.2 of this section) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his or her spouse;

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

4.4.5. Stock constructively owned by a person by reason of the application of subsection 4.4.1 of this section shall, for the purpose of applying subsections 4.4.1, 4.4.2 or 4.4.3 of this section, be treated as actually owned by that person. However, stock constructively owned by an individual by reason of the application of subsections 4.4.2 or 4.4.3 of this section shall not be treated as owned by him or her for the purpose of again applying either of these paragraphs in order to make another the constructive owner of the stock.

4.5. Constructive ownership in the case of partnerships and limited liability companies. For purposes of determining ownership of a capital interest, or profits interest, in a partnership or

limited liability company, the principles of section 4.4 shall apply, except that:

4.5.1. Subsection 4.4.3 of this rule shall not apply, and

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

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

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

4.6.1.a. Stock possessing at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or at least fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection 4.7.1 of section 4.7) by one or more of the other corporations; and

4.6.1.b. The common parent corporation owns (within the meaning of subsection 4.7.1 of section 4.7) stock possessing at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or at least fifty percent (50%) of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

4.6.2. Brother-sister controlled group. -- Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection 4.7.2 of section 4.7) stock possessing:

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

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

4.6.3. Combined group. -- Three (3) or more corporations each of which is a member of a group of corporations described in subsections 4.6.1 or 4.6.2 of this section and one of which:

4.6.3.a. Is a common parent corporation included in a group of corporations described in subsection 4.6.1 of this section, and also

4.6.3.b. Is included in a group of corporations described in subsection 4.6.2 of this section.

4.7. Rules for determining stock ownership of controlled group.

4.7.1. Parent-subsidiary controlled group. -- For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection 4.6.1 of section 4.6), stock owned by a corporation means:

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

4.7.1.b. Stock owned with the application of subsections 4.8.1, 4.8.2 and 4.8.3 of section 4.8.

4.7.2. Brother-sister controlled group. -- For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the meaning of subsection 4.6.2 of section 4.6), stock owned by a person who

is an individual, estate, or trust means:

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

4.7.2.b. Stock owned with the application of section 4.8 of this rule.

4.8. Constructive ownership of stock of corporation.

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

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

4.8.3. Attribution from estates or trusts.

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

4.8.3.b. Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under Internal Revenue Code of 1986, as amended; 26 U.S.C. §§ 671 through 679 (relating to grantors and others treated as substantial owners) shall be considered as owned by the person.

4.8.4. Attribution from corporations. -- Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of section 4.7 of this rule) five percent (5) or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in the corporation.

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

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

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

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

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

4.8.6. Children, grandchildren, parents, and grandparents.

4.8.6.a. Minor children. -- An individual shall be considered as owning stock owned, directly or indirectly, by or for his or her children who have not attained the age of twenty-

one (21) years, and, if the individual has not attained the age of twenty-one (21) years, the stock owned, directly or indirectly, by or for his or her parents.

4.8.6.b. Adult children and grandchildren. -- An individual who owns (within the meaning of subsection 4.7.2 of this rule, but without regard to this subparagraph) more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of twenty-one (21) years.

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

**§175-5-5. General Powers and Duties of Commissioner.**

5.1. Based upon an ~~definitive~~ evaluation and analysis of relevant economic and demographic factors in each county of the State, the Commissioner shall make recommendations to the Board as to how many market zones are necessary, and the Board shall create market zones in each county and provide for the issue of retail ~~liquor store~~ licenses in each market zone. For the ten year license period beginning on July 1, 2010, and for every ten year license period beginning July 1st thereafter, the Commissioner shall determine the minimum bid based upon a review of the inflation data, demographic data, sales data at each retail outlet and such other factors that are relevant for the State to generate revenues. Thereafter, the Commissioner shall develop recommendations for the Board to consider relating to:

5.1.1. ~~T~~For each market zone, setting the number of Class A retail licenses and Class B retail licenses to be issued, if any, within ~~each~~ a market zone;

5.1.1.a. The number of Class A retail licenses is only limited by the total number of licenses issued by the Board for all market zones, and all retail licenses made available by Board could be Class A retail licenses and meet the freestanding liquor retail outlet requirements~~;~~;

5.1.1.b. In no market zone may the number of Class B retail licenses exceed 150% of the Class A retail licenses except: (i) as otherwise authorized in W. Va. Code § 60-3A-7(d); or (ii) only during the ten year license period beginning July 1, 2010, all mixed retail liquor outlets in existence as of October 31, 2009, must choose between either a Class A retail license or a Class B retail license, the number of Class B retail licenses in a market zone may exceed the 150% limit. In determining the 150% limit for a market zone, the Commissioner may round up to the next highest whole number if the number of Class A retail licenses is an odd number;

5.1.2. The number, if any, of designated areas recommended for the market zones;

5.1.3. The minimum bid amounts to be established for each Class A and Class B licenses and designated areas to be authorized by the Board;

5.1.4. The bidding procedures to be utilized;

5.1.5. The factors to be considered in determining a bidder's entitlement to a 5% residential preference (*See* section 12 of this rule) and a 5% current licensee's preference and right to match the highest bidder's bid amount (*See* section 13 of this rule); ~~and~~

5.1.6. The standards, criteria and formulae or utilized by the board when establishing the minimum bid for each license and the methodology to be followed for the purchase option and in selecting ~~the~~ successful bidders.

5.1.7. The formula to calculate the minimum bid, as determined by the board, which is:

5.1.7.a. $Z = X(B) + Y_a(B) + [.50(B) + .50(C)]$.

5.1.7.b. The methodology of the formula is: (i) Z = 2010 Minimum Bid; (ii) B = 2000 Minimum Bid; (iii) X = Inflation Factor; (iv) $Y_a$ = Sales Factor; and (v) C = 2000 Actual Bid paid for a retail outlet in 2000 or the 2000 Minimum Bid, whichever is higher; and

5.1.7.c. The Commissioner may make assumptions on the time periods, indexes and practical application of the formulas and methodology to determine the inflation factor, sales factor and make the necessary calculations.

5.1.8. The board shall direct the Commissioner or his or her designee to calculate the minimum bid.

5.2. The Commissioner shall:

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

5.2.1.a. The prescribed form which has been designed and used for this purpose ~~is attached at Appendix A~~ shall be provided by the Commissioner. The Licensing and Enforcement Divisions of the ABCC work hand-in-hand under the direction of their respective Directors, in an orderly procedure in the initial evaluation of initial applications, inspections and investigators are detailed to make Initial Inspection Reports~~;~~ ~~attached at Appendix D,~~ which are completed promptly in order that a decision to grant or deny licensure can be made within 30 days following the receipt of the application or until such time as Commissioner has completed his inspection, background investigation, credit check and any other additional investigation or request for information.

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

5.2.2.a. The prescribed form which has been designed and used for this purpose will be provided by the Commissioner ~~is located at Appendix B~~.

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

5.2.3.a. The Commissioner shall advertise on a state-wide coverage plan giving details about the procedure to be used in the making of sealed, competitive bids for ten-year ~~(10)~~ franchises for retail licenses ~~as retail liquor store owners~~. These advertisements must contain particulars as to how a person can receive a bid package containing all the information a bidder would need in order to make a bid on a retail store. (In addition, ~~full particulars~~ the information and advertisements relating to the bidding procedures are available on the ABCC web site).

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

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

5.2.5. Set minimum standards for retail outlets regarding: (i) the amount and variety of alcoholic liquors which they must offer for sale at each retail outlet; (ii) the size space and design of each retail outlet; (iii) the amount of inventory and displayed inventory of liquor in each retail outlet (For i, ii, iii, and viii *See* this rule); (iv) order quantities sufficient to qualify for delivery to each retail outlet; (v) phone, computer and internet requirements for each retail outlet; (vi) the verification of liquor orders; (vii) liquor delivery dates and routes for each retail outlet; and (viii) such other requirements the Commissioner deems necessary (For iv, v, vi, vii and viii *See* 175 CSR 1);

5.2.5.a. The standard for each retail outlet shall be determined by the Commissioner

based upon community/market zone needs and best management practices.

5.2.5.b. Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class A retail license which shall include, without limitation, the requirement that a minimum square footage of displayed inventory available for retail purchase at the retail outlet be composed of alcoholic liquors, beer and nonintoxicating beer products and that alcoholic liquors, beer and nonintoxicating beer products available for sale are placed for sale throughout the entire retail area of the retail outlet including the retail floor space and shelving.

5.2.5.b.1. All Class A retail licenses or freestanding liquor retail outlets must have a minimum of 750 square feet of retail floor space, as measured by the Commissioner, devoted to the retail sale West Virginia product, wine and nonintoxicating beer, and shall maintain a displayed inventory of at least 4 brands of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.

5.2.5.b.2. A freestanding liquor retail outlet shall only sell West Virginia product, wine, beer, nonintoxicating beer, and other alcohol related products, including tobacco related products, throughout the entire area of retail outlet including the retail floor space and shelving.

5.2.5.b.3. A freestanding liquor retail outlet must not have direct access to another business and must be separate and apart from other businesses.

5.2.5.b.4. A freestanding liquor retail outlet must meet the requirements of the rules and the code in order to be licensed and maintain its license and is subject to penalties for failure to meet or maintain these requirements.

5.2.5.c. Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class B retail license which shall include, without limitation, the requirements that a minimum square footage of the displayed inventory available for purchase at the retail outlet be composed of liquor products; that liquor available for sale in the retail outlet is placed only in an area of the retail outlet that prominently displays signage identifying the area as a restricted area and stating that no one under the age of twenty-one (21) may purchase liquor, wine or beer; and that the area is separate and apart from other retail floor space and is not highly visible to persons outside of the restricted area.

5.2.5.c.1. All Class B retail licenses or mixed retail liquor outlets must have a minimum of 150 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product and no limit on the amount of total retail floor space.

5.2.5.c.1.a. Retail outlets with 150 square feet to 449 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product, shall maintain a displayed inventory of at least 2 brands of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.

5.2.5.c.1.b. Retail outlets with 450 square feet up to 749 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product shall maintain a displayed inventory of at least 3 brands of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.

5.2.5.c.1.c. Retail outlets with 750 square feet and above of retail floor space as measured by the Commissioner, devoted solely to the retail sale of West Virginia product shall maintain a displayed inventory of at least 4 brands of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.

5.2.5.c.2. All Class B retail licenses or mixed retail liquor outlets must restrict the view of the retail floor space devoted solely to the sale of West Virginia product, wine and nonintoxicating beer by constructing barriers,

shelving or other apparatus of sufficient height and width, as approved by the Commissioner, that would prevent persons from viewing the items in the restricted area and make such items not highly visible.

5.2.5.c.3. All Class B retail licenses or mixed retail liquor outlets must maintain separate retail floor space devoted solely to the sale of West Virginia product, wine and nonintoxicating beer that is prominently marked with signage located in the retail floor space consisting of at least six signs sized at a minimum of 24 inches in height by 24 inches in width with prominent and highly visible uppercase and bold lettering indicating that persons are entering a restricted liquor, wine and beer area, and "NO PERSON UNDER THE AGE OF 21 MAY PURCHASE LIQUOR, WINE OR BEER", all in the form, color, lettering and with the ABCC logo as provided in a format approved by the Commissioner.

5.2.5.c.4. A mixed retail liquor outlet shall only sell West Virginia product, wine, beer, nonintoxicating beer, and other alcohol related products, including tobacco related products, in addition to convenience and other retail products. West Virginia product, wine, beer and nonintoxicating beer shall only be sold in the restricted area retail floor space of the mixed retail liquor outlet and such products shall not be viewable, displayed or available for sale outside the restricted area.

5.2.5.c.5. A mixed retail liquor outlet must meet the requirements of the rules and the code in order to be licensed and maintain its license and is subject to penalties for failure to meet or maintain these requirements.

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

5.2.7. Impose civil and administrative penalties upon retail licensees;

5.2.7.a. The procedures to be followed by the Commissioner in imposing civil penalties upon retail licensees are set forth and explained in section 2~~6~~9 of this rule and in W. Va. Code §60-3A-26.

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

5.2.9. Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of W. Va. Code §§60-3A-26 or 60-3A-27 or 60-3A-28 and sections ~~28~~31, and ~~29~~32 of this rule which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees and shall be enforced in the manner specified in W. Va. Code §29A-5-1 with like effect as if §29A-5-1 were set forth in extenso in W. Va. Code §60-3A-1, et seq., and this rule.

5.2.10. Settle, through the hearing procedure provided in 175 CSR 5-~~29~~32 disputes relative to the boundaries of market zones and designated areas within market zones.

**§175-5-6. Duties of Purchase Option Applicants and Applicants who are Successful Bidders for Class A Retail Licenses and Class B Retail Licenses To Open and Operate Its Authorized Stores; Limitation on Number of Retail Outlets a Person May Hold.**

6.1. An applicant who meets all requirements and who becomes a purchase option applicant or a successful bidder for a Class A ten-year (10) retail license or Class B ~~A2, A3, A4, or A5~~ ten-year (10) retail license to become effective on July 1, 20~~0~~10, and on July 1st for every ten year license period thereafter shall be required to open and operate all authorized retail stores for each ~~of such~~ licenses within ninety (90) days following July 1, 20~~0~~10, and on July 1st for every ten year license period thereafter, or within ninety (90) days following the date upon which he or she or it is issued a Class A retail license, whichever comes last. The holder of such a license shall operate

each of the authorized retail stores for a minimum period of one year.

6.1.1. Any person who acquires such a license subsequent to July 1, 20~~0~~10, and subsequent to July 1st for every ten year license period thereafter, as a result of a purchase option, purchase made during a competitive, rebid process, or as a result of a license transfer or purchase approved by the Commissioner, shall be required to comply with the opening of all authorized stores on a date specified by the Commissioner and shall open and operate such stores for a minimum period of one year.

6.2. No person may hold a combination of licenses that, in the aggregate, authorizes the operation of more than ~~twenty-five~~ thirty percent (~~25~~30%) of the total number of retail outlets authorized to operate in the State.

**§175-5-7. Retail License Application Requirements; Federal Licensing Requirements.**

7.1. Following the purchase option licensing process and the license bidding procedure for selection of the successful bidders, the~~y~~ successful applicants shall file an "Application For Retail ~~Liquor Store~~ License" form~~, a copy of which is attached as Appendix A,~~ with the Commissioner. In addition to answering the questions asked on the application, the applicant shall attach a copy of its corporate charter or other agreements under which the entity operates to its application, and shall add the name of the market zone and the county ~~in question number four (4) relating to its mailing address~~.

7.2. A person who purchases alcoholic liquors for resale to retail customers is required to register for and obtain a retail dealer in liquors tax stamp from the TTB ~~U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau~~. This stamp must be obtained before engaging in any business which will involve the retail sales of alcoholic liquors. As of July 1, 2008~~0~~9, the cost of this tax stamp is two hundred and fifty dollars ($250.00) per year.

7.2.1. Current licensees who are purchase option applicants or who are successful bidders will have an opportunity to have this stamp renewed and the TTB ~~U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau~~ will notify those licensees as to when they must renew.

7.2.2. Purchase option applicants or ~~S~~successful bidders who are not current licensees shall be required to submit ~~Alcohol and Tobacco Tax and Trade Bureau~~. Form TTB 5630.5, Special Tax Registration And Return, to TTB ~~Alcohol and Tobacco Tax and Trade Bureau~~, P.O. Box 371962, Pittsburgh, PA 15250-7962 and enclose a check or money order for two hundred fifty dollars ($250.00) to pay the Retail Special Occupation Tax which will result in the issue of a Retail Dealer In Liquors Tax Stamp. This stamp must be purchased and displayed in each retail store before a retail licensee can engage in the retail sale of liquor.

7.3. The Commissioner shall not issue a retail license to an applicant who does not hold a license issued by the TTB ~~U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau~~ pursuant to federal law to sell liquor at wholesale.

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

7.3.2. Successful bidders who are not current licensees shall be required to obtain a Wholesaler's Basic Permit by submitting ~~Alcohol and Tobacco Tax and Trade Bureau~~ Form TTB 5100.24 Application For Basic Permit Under The Federal Alcohol Administration Act and mailing it to TTB ~~Alcohol and Tobacco Tax and Trade Bureau~~, 550 Main Street, Cincinnati, OH 45202-3263. If this permit is issued, the successful bidder shall submit an ~~ATFF~~ TTB Form 5630.5, Special Tax Registration and Return, to qualify for a Wholesale Dealer In Liquors Tax Stamp and

mailing it along with a check or money order for five hundred dollars ($500.00) made payable to TTB ~~Alcohol and Tobacco Tax and Trade Bureau~~, P.O. Box 371962, Pittsburgh, PA 15250-7962. Questions about this matter can be answered by telephoning TTB, 1-800-937-8865 at its Cincinnati, OH office.

7.3.3. A "NOTICE TO ALL BIDDERS FOR RETAIL LICENSES -- FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS REQUIRED" ~~is attached as Appendix C~~ will be provided by the Commissioner.

**§175-5-8. Investigation of Applicants for Retail License.**

8.1. Following receipt of a completed application for a retail license containing additional or supplemental information as the Commissioner may require, the Commissioner may conduct such investigation of an applicant as deemed necessary or desirable in determining whether the applicant is qualified to receive a retail ~~liquor store~~ license. The Commissioner may request any additional information necessary to complete a review of an applicant's application.

8.1.1. 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 ~~(Appendix L)~~ for this purpose. The applicant will submit a full set of fingerprints to facilitate a criminal background check and the ~~c~~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.

8.1.2. 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 8.1.1. of this rule.

8.1.3. The applicant must verify that it is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of West Virginia, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

8.1.~~3~~4. The Commissioner, after initial examination and evaluation of the application may determine that an Initial Inspection Report is warranted and, accordingly, have one made by a staff investigator using the "~~West Virginia Alcohol Beverage Control Commission Licensing Division~~ Initial Inspection Report ~~Form~~"~~, a copy of which is attached as Appendix D~~.

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

**§175-5-9. Purchase Option and the Purchase Option Licensing Process for Active Retail Licensees operating a Class A retail license.**

9.1. At least 60 days prior to the bidding procedure for July 1, 2010, and prior to July 1st for every ten year license period thereafter:

9.1.a. All active retail licensees will receive information from the Commissioner explaining the choice between the purchase option licensing process and the license bidding procedure; and

9.1.b. All active retail licensees will receive information from the Commissioner explaining Class A retail licenses, Class B retail licenses, freestanding liquor retail outlets, mixed retail liquor outlets, the purchase option, the deferred payment financing option, eligibility, forms and other requirements.

9.2. All active retail licensees must respond on the form provided by the Commissioner, in writing, and indicate their choice and intent to operate: (i) a Class A retail license, select the purchase option and select the deferred payment financing option; or (ii) a Class B retail license.

9.2.a. All active retail licensees electing a Class A Retail license must be licensed and operate a freestanding liquor retail outlet either on July 1, 2010, or July 1st for every ten year license period thereafter, or within 90 days of July 1, 2010, or July 1st for every ten year license period thereafter.

9.2.b. All active retail licensees electing a Class B retail license must be licensed and operate a mixed retail liquor outlet either on July 1, 2010, or July 1st for every ten year license period thereafter, or within 90 days of July 1, 2010, or July 1st for every ten year license period thereafter

9.3. An active retail licensee is limited to applying the purchase option to active retail licenses held and operated by the active retail licensee and to the lesser of: (i) four (4) Class A retail licenses held and operated by the active retail licensee; or (ii) the number of active retail licenses currently held and operated by the active retail licensee.

9.4. Within 30 days prior to the bidding procedure an active retail licensee electing the purchase option shall either:

9.4.a. Agree to pay and pay in full to the Commissioner an amount equal to ten percent (10%) over and above the minimum bid amount, as determined by the board, for each active retail license upon which the active retail licensee has elected the purchase option, or

9.4.b. Agree to pay to the Commissioner an amount equal to ten percent (10%) over and above the minimum bid amount, as determined by the board, for each active retail license upon which the active retail licensee has elected the purchase option, by paying to the Commissioner an amount equal to the down payment required by the deferred payment financing option (*See* section 10) for each active retail license upon which the active retail licensee has elected the purchase option.

9.5. An active retail licensee electing the purchase option and the deferred payment financing option must make all payments and installment payments timely, subject to the requirements and penalties in section 10 of this rule.

9.6. An active retail licensee electing the purchase option will receive notice that the purchase option was accepted for each active retail license upon which the active retail licensee elected the purchase option.

9.7. An active retail licensee electing the purchase option must complete an application form provided by the Commissioner, meet all other licensure, rule and code requirements; be in good standing with all branches of government and meet all requirements to operate a Class A retail license.

9.8. Upon meeting the requirements and paying the annual retail license fee, an active retail licensee electing the purchase option will receive a license, subject to making any installment payments, completing renewal forms, continually meeting Class A retail license requirements and paying the annual retail license fee during the ten year license period beginning July 1, 2010, or July 1 for every ten year license period thereafter, and expiring on June 30, 2020, or on June 30 for every ten year license period thereafter.

9.9. Failure of an active retail licensee, who elected the purchase option and indicated its intent to operate freestanding liquor retail outlets, to open and operate any of its retail outlets on July 1, 2010, or July 1 every ten year license period

thereafter, or within 90 days of July 1, 2010, or July 1 for every ten year license period thereafter, shall be considered prima facie evidence that the licensee falsified documentation to the Commissioner regarding the operation and licensure of a Class A retail license(s) and result in the immediate suspension of the license(s) and is grounds for revocation of all retail outlet licenses held by the licensee, and also shall result in the forfeiture of all moneys paid to the Commissioner, including any bond or other down payments, installment payments, payments in full or annual retail license fees as agreed to by the active retail licensee in the deferred payment financing agreement (*See* also section 31).

9.10. The purchase option is not available to any active retail licensee, applicant or subsequent licensee who is a successful bidder or purchaser of a retail license and who subsequently chooses to open and operate a Class A retail license or freestanding liquor retail outlet or who converts a Class B retail license to a Class A retail license.

9.11. This rule and the code do not create any expectation or rights in any retail licensee that the purchase option will or will not be available for any subsequent ten year license period.

**§175-5-10. Deferred payment financing option.**

10.1. Any active retail licensee who elects the purchase option for a Class A retail license or licenses and complies with the requirements of W. Va. Code 60-3A-10d shall be permitted to apply for the deferred payment financing option for each such license.

10.2. The Commissioner shall require a signed letter of intent and a deferred payment financing agreement, in the form provided by the Commissioner, from any such active retail licensee electing the purchase option and the deferred payment financing option.

10.3.As part of the application for the deferred financing payment option, to be provided by the Commissioner at least 60 days prior to the license bidding procedure, the Commissioner shall require, at a minimum, the following information:

10.3.a. Certification that the applicant elects to pay the purchase option for a Class A retail license or licenses as provided in W. Va. Code §60-3A-10b;

10.3.b. Certification that the applicant is the current holder and operator of the active retail license issued by the board and for which the purchase option and the deferred payment financing option is elected;

10.3.c. A description of the retail license or licenses currently held by the applicant;

10.3.d. Any information the Commissioner requires to evaluate the creditworthiness of the applicant, including without limitation the applicant's authorization to perform a criminal background check and credit check; and

10.3.e. Any additional information the Commissioner requires to effectuate the purposes of W. Va. Code 60-3A-10d.

10.4. Any applicant must submit with its deferred payment financing option application, a down payment of fifty percent (50%) of the total amount due under the deferred payment financing agreement and subject to W. Va. Code 60-3A-10d(d) no later than May 1, 2010, or May 1st for every ten year license period thereafter. Installment payments are subject to interest. All payments shall be payable via electronic funds transfer, certified check or money order.

10.4.a. The total amount due is an amount equal to the ten percent (10%) over and above the minimum bid amount, as determined by the board.

10.4.b. The down payment is fifty (50%) percent of the total amount due.

10.4.c. The remaining balance of the total amount due is the total amount due minus the down payment.

10.4.d. The interest rate is a rate computed by using the adjusted prime lending rate minus one hundred basis points. The interest rate shall

be set on the date the financing is approved by the Commissioner.

10.5. Upon review of each applicant's completed deferred payment financing option application, the Commissioner shall make a determination of the applicant's eligibility within fifteen (15) days.

10.5.a. If the Commissioner determines an applicant is ineligible for deferred payment financing, is not in good standing with the state or does not otherwise meet the requirements of chapter 60, article 3A of the code for the issuance of a Class A retail license, the Commissioner shall notify the applicant that his or her application for deferred payment financing is denied and shall refund in full any moneys paid to the Commissioner as a down payment.

10.5.b. If the applicant's deferred payment financing application is denied for any reason other than the fact that the applicant is not in good standing with the state or is not otherwise eligible for the issuance of a Class A retail license, the Commissioner shall allow the applicant to pay the full amount of a purchase option for its Class A retail license or licenses as provided in W. Va. Code 60-3A-10d. At the request of the applicant, the Commissioner may credit any moneys received as a down payment towards payment of the full amount of a purchase option for its Class A retail license or licenses.

10.6. All eligible applicants shall enter a deferred payment financing agreement with the Commissioner, which shall contain such terms and conditions as required by the Commissioner but at a minimum shall contain the following:

10.6.a. The total amount due;

10.6.b. The interest amount to be charged on the total amount due; and

10.6.c. The remaining balance of the total amount due, and the installment payments (including interest) which are payable over a period of the first sixty (60) months from July 1, 2010, or for every July 1st for every ten year license period thereafter.

10.6.c.1. The installment payments are payable in monthly or quarterly installment payments as elected by the retail licensee on its deferred payment financing application.

10.6.c.2. If a retail licensee elects to pay monthly, his or her first installment payment is due on August 1, 2010, or on August 1st for every ten year license period thereafter, and successive installment payments are due on the first day of each month thereafter until the remaining balance of the total amount due, plus interest, is retired.

10.6.c.3. If a retail licensee elects to pay quarterly, his or her first installment payment is due on October 1, 2010, or on October 1st for every ten year license period thereafter, and successive installment payments are due on the first day of every third month thereafter until the remaining balance of the total amount due, plus interest, is retired.

10.6.c.4. A retail licensee may elect at some point during the deferred payment financing process to pay the remaining balance of the total amount due, plus interest. There is no prepayment penalty for such a payment in full.

10.7. The failure of a retail licensee to make an installment payment in accordance with the terms of the deferred payment financing agreement shall result in the entire remaining balance of the total amount due, plus interest, becoming immediately due and payable to the Commissioner;

10.7.a. Upon the retail licensee's payment of remaining balance of the total amount due, plus interest, the Commissioner may review the facts and circumstances surrounding the failure to make an installment payment and determine if the retail licensee should continue to be licensed and operate its Class A retail license or licenses. The Commissioner may choose a number of penalties, including probation, suspension, monetary penalties, any combination of such penalties or revocation;

10.7.b. The revocation of a retail license for non-payment of an installment payment or failure to pay in full of the remaining balance of the total amount due, plus interest, shall result in the forfeiture of the down payment and any moneys paid to the Commissioner in accordance with W. Va. Code 60-3A-10d.

10.8. The failure of a retail licensee to make an installment payment in accordance with the terms of the deferred payment financing agreement, as agreed to by the retail license, within thirty (30) days of the day on which the payment was due shall result in the immediate revocation of the Class A retail license held by the licensee for which the non-payment occurred.

10.9. The Commissioner shall reissue any license revoked pursuant to Section 10.8 and proceed to advertise and offer for sale by sealed competitive bid in accordance with this rule and the code.

10.10. A retail licensee whose retail license is revoked for failure to make payments as provided in the deferred payment financing agreement and pursuant to Section 10.8 is deemed an unsuitable retail licensee who would not qualify to hold a Class A retail license or Class B retail license or any such license provided by the Commissioner and shall be permanently prohibited from bidding on a retail license in any subsequent bids in any ten year license period.

10.11. The purchase option and the deferred payment financing option are not available to any active retail licensee, applicant or subsequent licensee who is a successful bidder or purchaser of a retail license and who subsequently chooses to open and operate a Class A retail license or freestanding liquor retail outlet or who converts a Class B retail license to a Class A retail license..

10.12. This rule and the code do not create any expectation or rights in any retail licensee that the deferred payment financing option will or will not be available for any subsequent ten year license period.

**§175-5-9~~1~~11. License Bidding Procedure.**

9~~1~~11.1. The issuance of retail licenses shall be based on sealed competitive bids which have been submitted on Bid Forms which have been completed in accordance with written instructions from the Commissioner.

9~~1~~11.1.1. A "BID FORM" ~~is attached as Appendix E~~ and a 2-page "INSTRUCTIONS TO COMPLETE BID FORM" ~~is attached as Appendix F~~ will be provided by the Commissioner.

9~~1~~11.1.2. Bidders submitting bids on forty-five (45) or more of the authorized retail stores shall submit in the bid package a prioritized list of the stores in numerical order for which they have bid. In the event that such bidders are not successful bidders on any of their listed, prioritized stores, such stores shall be removed from the list in descending order, and may be replaced in ascending order with any retail stores listed above number forty-five (45) on their list and for which they are successful bidders. ~~For each Class A license listed, the number of stores authorized thereunder shall be listed as separate numbers. For example, a listing of an A-3 license bid, shall be prioritized as three separate stores.~~

9~~1~~11.2. Each person desiring to submit a bid shall file the bid with the ~~West Virginia Secretary of Administration, Purchasing Division, 2019 Washington Street, East, P.O. Box 50130, Charleston, West Virginia 25305-0130 prior to March 3, 2000 at 1:30 o'clock p.m~~ Commissioner or his or her designee at a date, time and location specified by the Commissioner in the bid information packet. The ~~Purchasing Division~~ Commissioner or his or her designee will safeguard the bids and will conduct the opening of the bids on ~~March 3, 2000 at 1:30 o'clock p.m.~~ a date and time specified by the Commissioner. ~~It~~ The Commissioner or his or her designee will also determine if the bids have been submitted in compliance with the bidding requirements established by the provisions of W. Va. Code §§60-3A-1 et seq., 60-3A-10, 60-3A-10a and 60-3A-10b. ~~For this purpose, the Secretary of Administration, Purchasing Division will be acting as the agent of the Commissioner by virtue of a Memorandum of Understanding between the~~

~~Commissioner and the Secretary of Administration.~~

~~9~~11.2.1. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the bid opening process is completed, the Commissioner or his or her designee ~~Director of the Purchasing Division~~, shall, by Affidavit, certify the name of each bidder, the correct amount bid after adjusting for each applicable preference, and whether the bid was submitted timely and in correct form~~,~~; ~~and~~ The Commissioner's designee shall have ~~the State Police~~ a secure and bonded delivery firm or its own employees securely deliver all of the bids and the Affidavits to the Commissioner's office ~~or to his designee~~.

~~9~~11.2.2. After the award of the retail license, the Commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record in the Commissioner's office. It shall be open to public inspection during normal business hours of the Commissioner. These documents shall not be destroyed without the written consent of the Legislative Auditor.

~~9~~11.3. The Commissioner shall notify the successful bidders of their winning bids and of the deadline for bid payment which shall be by certified mail, return receipt requested, by express delivery with delivery confirmation or by personal service in accordance with Rule 4, West Virginia Rules of Civil Procedure for Trial Courts of Record, the provisions of which are incorporated into this rule by reference.

~~9~~11.3.1. If the successful bidder fails to pay to the Commissioner the bid price within the deadline date specified by the Commissioner, the bid bond provided for in W. Va. Code §§60-3A-11 and 175 CSR 5-12 shall be forfeited and the bidder shall not be issued the retail license and be prohibited from bidding on or purchasing a retail license for any ten year license period.

~~9~~11.3.2. A bid bond shall not be forfeited but shall be released if a purchase option applicant or the successful bidder fails to qualify for the Federal Wholesaler's Basic Permit or the wholesale dealer in liquors tax stamp and the retail dealer in liquors tax stamp, unless the bidder provided false information to the federal government or to the Commissioner and such false information was the basis for denial of the basic permit in which case the bid bond shall be forfeited.

~~9~~11.3.3. In either event, the Commissioner shall issue the retail license to the next highest bidder for the retail license or reject all bids and rebid the license in accordance with the bid procedures contained in the provisions of W. Va. Code §60-3A-1 et seq., 60-3A-10, 60-3A-10a, 60-3A-10b and this rule.

~~9~~11.4. The successful bidder shall remit the bid price and the annual retail license fee, as specified in W. Va. Code §60-3A-10(e), to the Commissioner by electronic funds transfer, money order, certified check, or cashier's check. Payment must be received in the Commissioner's office no later than the date and time specified by the Commissioner in the bid information packet ~~4:00 p.m. on Thursday, May 25, 2000~~. In the event that the Board determines that a necessity exists to require additional bids, then bids will be taken pursuant to the provisions of W. Va. Code §60-3A-1, et seq., and this rule.

9.5. In the event two (2) more bids for the same retail license are for the same amount, the following procedure will be followed to determine the successful bidder.

~~9~~11.5.1. The bidders shall be notified to meet at the Commissioner's office at a specified date and time.

~~9~~11.5.2. At the time of the meeting the names of the affected bidders shall be written on individual slips of paper, and placed in a hat or similar container.

~~9~~11.5.3. The Commissioner shall then draw from the hat one of the pieces of paper and the bidder named thereon shall be declared the

successful bidder.

**§175-5-~~10~~12. License Bidding Procedure and the Preference for Resident Bidders.**

~~10~~12.1. In determining the highest bidder for purposes of W. Va. Code §60-3A-10a, and 175 CSR 5-10, the Board shall afford a five percent (5%) preference for West Virginia resident bidders. This preference shall be computed by adding five percent (5) of the bid price to the bid price submitted by the West Virginia resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license.

~~10~~12.1.1. This preference shall not be added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.

~~10~~12.2. For purposes of W. Va. Code §60-3A-10a and this section of the rule, a bidder shall be considered a West Virginia resident if the bidder:

~~10~~12.2.1. Being an individual, has resided in West Virginia for at least four (4) years during the 48 consecutive month period immediately prior to the date on which the bid is opened; or:

Example 1. The minimum bid for a Class ~~A~~ B retail license is $300,000. Two (2) bids are received. A West Virginia resident bidder submits a bid of $305,000 and a nonresident submits a bid of $310,000 for that license. The bid is awarded to the West Virginia resident bidder. [$30~~0~~5,000 + $15,250.00 (which is five percent (5%) of $305,000) equals $3~~15~~20,250.00 which is greater than the bid of $310,000 submitted by the nonresident bidder.]

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

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

~~10~~12.2.2. Being a person other than an individual, has had its headquarters or principal place of business in this State for at least four (4) years during the forty-eight (48) consecutive month period immediately prior to the date on which the bid is opened.

~~10~~12.3. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.

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

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

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

Example 4. A partnership, limited liability company or other legal entity that is not a corporation, whether formed under the laws of this

or another state, that operates one or more retail outlets in this State but does not maintain its headquarters or principal place of business in this State is not a West Virginia resident for purposes of the resident vendor preferences allowed under W. Va. Code §§60-3A-10a and 60-3A-10b and this rule.

~~10~~12.4. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened, did as follows:

~~10~~12.4.1. Had registered in accordance with W. Va. Code §11-12-1, et seq., ["Business Registration Tax"] to transact business within the State of West Virginia;

~~10~~12.4.2. Maintained its headquarters or principal place of business in this State:

~~10~~12.4.2.a. Whether or not the person other than an individual maintained its headquarters or principal place of business in this State for the required period can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, that the period of time the person's headquarters or principal place of business was continuously located in this State met the time requirement, as of the date the affidavit is signed and properly acknowledged, and stating that that address will remain the same as of the date on which the bids are to be opened. In addition to the submission of an affidavit, the person shall also be required to provide documentary proof that that person has complied with all other requirements specified in section 1~~0~~2.4. of this rule.

~~10~~12.4.3. Had actually paid, and not just applied to pay, county personal property taxes on the equipment used in the regular course of its business activity; and

~~10~~12.4.4. Had actually paid, and not just applied to pay, required business taxes imposed by W. Va. Code §11-1-1, et seq.; a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCC Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential. An "Authorization to Release Information" will be provided by the Commissioner ~~form prepared by the West Virginia State Tax Commissioner is attached as Appendix G~~.

~~10~~12.5. A bidder who is an individual shall be able to meet the four year continuous residency requirement by providing the Commissioner with documentary proof that he/she has resided continuously in West Virginia for four (4) years during the forty-eight (48) month period immediately preceding the filing of the bid. Copies of receipts from the Sheriff of a County indicating payment of personal property taxes and/or real estate taxes for each of the four (4) years which indicate a West Virginia address for the bidder; copies of Department of Motor Vehicle documents such as a Driver's License, Registration Card, and Certificate of Title indicating a West Virginia address for the bidder during those four years; copies of Voter Registration office documents indicating a West Virginia residence address for the bidder during those four years; certification from the Tax Commissioner that the bidder had filed Income Tax Returns for the previous four year period prior to the bid which indicated a West Virginia residence address for the bidder are examples of documents which can be submitted to the Commissioner in proof of a bidder's residence address during the four (4) years in question. Copies of any two documents mentioned above shall be submitted with the bid form and to the Commissioner's office by any individual bidder who desires to be granted a Preference For Resident Bidders.

~~10~~12.5.1. An individual may prove that he or she continuously resided in this State during the required period ending with the day the individual's bid is opened by submitting with his or her bid form an affidavit signed and acknowledged, under penalty of perjury, certifying

the period of time the individual continuously resided in this State, as of the date the affidavit is signed and acknowledged, and stating that he or she intends to be a resident of this State on the day his or her bid is opened. In addition to this affidavit, the individual will also be required to submit supporting documents in proof of his or her residency during the required period.

~~10~~12.6. A bidder who is other than an individual and is claiming a preference for residential bidders, shall submit documents in its bid package which prove its entitlement to this preferential treatment. The documents must establish that the requirements of section 1~~0~~2.4 of this rule have been satisfied.

~~10~~12.7. A bidder who believes he meets the requirements for residency must affirmatively assert his or her claim on the official application form to receive this preferential treatment.

~~10~~12.8. A supplemental two-page (2) guideline for bidders seeking a residential preference ~~is attached as form~~ entitled "Residential Bid Preferences" will be provided by the Commissioner~~(Appendix H)~~.

**§175-5-~~11~~13. License Bidding Procedure and the Current Licensee's Preference and the Current Licensee's right to match highest bidder.**

13.1. In determining the highest bidder for purposes of W. Va. Code §60-3A-10b, and 175 CSR 5-10, the Board shall apply a current licensee preference and a current licensee's right to match the highest bidder's bid price. Any current licensee who fails to submit the minimum bid amount specified by the Board for its active retail license or who is not operating a retail outlet for which he or she is authorized under his or her current license is not eligible for the current license preference or the right to match the highest bidder's bid price.

13.2. No current licensee preference or right to match shall reduce a bid below the minimum bid established by the Board.

13.3. Current licensee preference.

13.3.1. An unsuccessful bidder who is a current licensee and meets the Code and the rule's requirements shall have a 5% current licensee preference for a retail license it holds and operates.

13.3.2. The 5% current licensee preference for a current licensee who is an unsuccessful bidder shall be computed by subtracting 5% of the highest bid price from that bid price. For any bidder who qualifies for the West Virginia resident bidder preference and who is also a current licensee, this preference shall be an additional 5% preference.

13.4. Current licensee's right to match the highest bidder's bid price.

13.4.1. An unsuccessful bidder who is a current and active retail licensee, submitted a bid higher than the minimum bid and who after applying all preferences remains an unsuccessful bidder, shall have the right to match the highest bid for its active retail license subject to complying with the requirements of this rule and W. Va. §60-3A-1 et seq. and W. Va. Code §60-3A-10b(e).

13.5. The Commissioner will provide a guideline entitled "Current Licensee Preferences" for bidders seeking a current licensee preference and a current licensee right to match.

**§175-5-14. Criminal Penalties For Unlawful Inducement.**

1~~1~~4.1. It is unlawful for any person to give another person any thing of value to induce the other to refrain from bidding for a retail license. Any person doing so is guilty of a misdemeanor, and upon conviction, shall be fined not more than ten thousand dollars ($10,000), and in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars ($1,000,000).

1~~1~~4.2. It is unlawful for any person to give another person any thing of value to induce the other to refrain from operating an outlet

authorized under a retail license. Any person doing so is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars ($10,000), and, in addition, shall be subject to a civil penalty payable to the Commissioner of not more than one million dollars ($1,000,000).

**§175-5-1~~2~~5. Bonding Requirements.**

1~~2~~5.1. Each purchase option applicant or applicant submitting a bid or bids for a retail license under the provisions of this rule, shall furnish to the Commissioner a bond at the time of the purchase option or bidding. The bond shall guarantee the payment of twenty-five percent (25%) of the total price of the purchase option or the bid for each retail license. In the event that a winning bid is not paid, the ~~bid~~ bond will be forfeited to the State.

1~~2~~5.2. A four-page (4) "Approved Format for an "Irrevocable Letter of Credit" will be provided by the Commissioner ~~is attached as Appendix I~~.

**§175-5-1~~3~~6. Annual Retail License Fee.**

1~~3~~6.1. The annual retail license fee for a Class A retail license or a Class B retail license is ~~the sum obtained by multiplying the number of retail outlets authorized for the retail licensee in the market zone to which the Class A retail license applies by one~~ two thousand dollars ($~~1~~2,000) per each retail license operated by a retail licensee and is due on or before June 30, 2010, or on or before June 30th for every year thereafter during a ten year license period.

~~13.2. The annual retail license fee for a Class B retail license shall be one thousand dollars ($1,000).~~

**§175-5-1~~4~~7. Sale, Assignment or Transfer of Retail License.**

1~~4~~7.1. No person may purchase or otherwise acquire a retail license unless the Commissioner has first approved the person's qualifications to hold a retail license. Those qualifications are the same as those required by W. Va. Code §§60-3A-1 et seq.~~8~~ and ~~175 CSR 5-8~~ this rule.

~~147.1.1. In no case may the holder of a Class A license sell one or more authorized locations or in any way seek to divide a Class A license.~~

1~~4~~7.2. No person may sell, assign or otherwise transfer a retail license without the prior written approval of the Commissioner. The Commissioner's approval shall not be unreasonably withheld. For purposes of W. Va. Code §§60-3A-14 and this 175-5-14, the merger of a retail licensee or the sale of more than fifty percent (50%) of the outstanding stock of a licensee which is a corporation, or of the partnership or ownership interests of a partnership or other entity that is not a corporation, shall be deemed to be a sale, assignment or transfer of a retail license.

**§175-5-1~~5~~8. Surrender of Retail License.**

1~~5~~8.1. When a retail licensee surrenders a retail license to the Commissioner or when it is revoked or forfeited, the Commissioner shall then proceed to reissue the retail license by following the bidding and other procedures set forth in W. Va. Code §60-3A-1, et seq., and this rule for the initial issuance of a retail license.

1~~5~~8.2. The effective date of a rebid license under this section shall be only for the portion of the ten-year (10) license remaining after the bid is awarded.

**§175-5-1~~6~~9. Restriction on Location of Retail Outlets.**

1~~6~~9.1. No retail outlet may be located within the immediate vicinity of a school or church.

1~~6~~9.2. The provisions of W. Va. Code §60-3A-16 and this subsection do not apply to the location of a retail licensee who, on February 27, 1990, held a license for the retail sale of wine, fortified wine or nonintoxicating beer at such a location.

**§175-5-~~17~~20. Wholesale Prices Set By**

**Commissioner.**

~~17~~20.1. The Commissioner has fixed wholesale prices for the sale of liquor, other than wine, to retail licensees. The Commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule.

~~17~~20.1.1. The Commissioner has established wholesale prices for the sale of liquor to retail licensees which is based upon the delivered cost of distilled spirits which ABCC purchases plus a mark-up of 2~~5~~8%, or a percentage the Commissioner may otherwise determine. A shipping, delivery and handling charge ~~of one dollar and five cents ($1.05)~~ per case delivered as periodically set by the Commissioner will be added to the total purchase price. The Commissioner charges additional fees pursuant to 175 CSR 6 to ensure the efficient operation of the ABCC warehouse

~~17~~20.1.2. A uniform pricing schedule is maintained by the publication of an ABCC "Quarterly Spirits Price List ~~Wholesale Spirits Catalog~~" which is sent to all retail licensees on a quarterly basis on February 1, May 1, August 1 and November 1 of each year or shall be made available by the Commissioner on the ABCC website. This catalog contains all alcoholic products normally available from the ABCC in addition to complete product information and pricing structure. Further pricing is disseminated in the annual ABCC Tradeshow Catalog with pricing, as submitted by manufacturers and suppliers, for West Virginia product available for purchase at the ABCC Tradeshow by retail licensees.

**§175-5-~~18~~21. Days and Hours Retail Licensees May Sell Liquor.**

~~18~~21.1. Retail licensees may not sell liquor on Sundays, Christmas or election day, or between ~~the hours of ten o'clock~~ 12:00 ~~p.m.~~, midnight, and eight o'clock a.m. on weekdays and Saturdays. Wine and fortified wines may not be sold between the hours of two o'clock a.m. and one o'clock p.m. on Sundays, or between the hours of two o'clock a.m. and seven o'clock a.m. on week days and Saturdays.

~~18~~21.2. For purpose of this section, "election day" shall mean only statewide primary election or general election days, and shall not mean any other State or local election day.

**§175-5-~~19~~22. Limitation on Amount to be Sold.**

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

**§175-5-2~~0~~3. Nonapplication of Rules to Retail Sales of Nonintoxicating Beer.**

2~~0~~3.1. This rule does not apply to retail sales of nonintoxicating beer. 17~~5~~6 CSR 1, contains the rule for nonintoxicating beer licensing and operations procedures.

**§175-5-2~~1~~4. Tax on Purchases of Alcoholic Liquor.**

2~~1~~4.1. In addition to the cost of alcoholic liquor, a State tax authorized by W. Va. Code §60-3A-21 of five percent (5%) of the purchase price must be added to all purchases from retail licensees, and the tax must be collected with the purchase price by the retail licensee.

**§175-5-2~~2~~5. Requirement for Posting Information Signs.**

2~~2~~5.1. Each retail licensee shall post in an open and prominent place within each retail outlet a blood-alcohol chart in the form prescribed by W. Va. Code §60-6-24, the provisions of which are incorporated in this rule by reference. The chart will be provided by the Commissioner ~~(Appendix M)~~.

2~~2~~5.2. All persons licensed to sell alcoholic liquor, wine, beer, ~~or~~ nonintoxicating beer, nonintoxicating craft beer or other alcohol product

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 ~~(Appendix N)~~.

25.3. All Class B retail licensees or mixed retail liquor outlets shall post and display, in and around their restricted area or separate retail floor space devoted solely to the sale of West Virginia product, wine and nonintoxicating beer, at least six prominently marked signs as provided in subsection 5.2.5.c.3.

2~~2~~5.~~3~~4. Upon a determination by the Commissioner that a licensee has failed to comply with these provisions, the Commissioner may impose a civil administrative penalty for not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation, suspend the retail licensee, or a combination of monetary penalty and suspension.

**§175-5-2~~3~~6. Records Required of Retail Licensees; Inspection of Records.**

2~~3~~6.1. Each retail licensee must keep a record in book form showing the date that all West Virginia product, distilled spirits, wine and beer were received on his or her, or its premises, and from whom received.

2~~3~~6.2. Each retail licensee shall also maintain records including ABCC Form 190 showing the merchandise code, the total quantity of sales, and the quantity of each sale to a religious organization or to a private club as defined in W. Va. Code §60-7-2. A copy of ABCC Form 190 ~~is attached as Appendix J~~ will be provided by the Commissioner.

2~~3~~6.2.1. In the case of sales to a private club, ABCC Form 190 shall be maintained by the retail licensee and the club must be identified by name, address and ABCC license number, and the full name of the person receiving the order must be clearly listed.

2~~3~~6.2.2. Each retail licensee must send a copy of ABCC Form 190 to the ABCC Warehouse each week, together with the Weekly Invoice which is a computer printout of the products ordered and delivered each week to a retail licensee. The driver of the delivery truck will take the ABCC Form 190 and the ABCC Weekly Invoice to the ABCC Warehouse each week. A copy of the ABCC Weekly Invoice ~~is attached as Appendix J~~ will be provided by the Commissioner.

2~~3~~6.2.3. Failure by a retail licensee to comply with the provisions of subsection 2~~3~~6.2.2 will subject him, or her, or it, to assessment of a Civil Penalty under the provisions of W. Va. Code §60-3A-26.

2~~3~~6.3. Records required to be maintained by this Section 2~~3~~6 shall not be destroyed, erased or altered for at least four (4) complete calendar years or until the year the retail licensee is audited and accepted by the department of revenue.

**§175-5-2~~4~~7. Unlawful Acts by Persons.**

2~~4~~7.1. It shall be unlawful for any person under the age of twenty-one (21) years who, for the purpose of purchasing alcoholic liquor from a retail licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase alcoholic liquor from a retail licensee. Any person who violates the provisions of W. Va. Code §60-3A-24(b) is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars ($50.00) or imprisoned in the regional jail for a period not to exceed seventy-two (72) hours, or both fined and imprisoned, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one (1) year.

2~~4~~7.2. It shall be unlawful for any person to knowingly buy for, give to or furnish to anyone under the age of twenty-one (21) to whom he or she is not related by blood or marriage any alcoholic liquor from whatever source. Any person who violates the provision of W. Va. Code

§60-3A-24(c) is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars ($100.00) or imprisoned in the regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

247.3. It shall be unlawful for a person while on the premises of a retail outlet to consume alcoholic liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of W. Va. Code §60-3A-24(d) and this subsection is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars ($100.00) or imprisoned in the regional jail for a period not to exceed ten (10) days, or both fined and imprisoned.

247.4. It shall be unlawful for any person under the age of twenty-one years to purchase, consume, sell, serve or possess alcoholic liquor. Any person who violates the provisions of W. Va. Code §60-3A-24(a) is guilty of a misdemeanor and upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars or shall be incarcerated in the regional jail for a period not to exceed seventy-two hours, or both fined and imprisoned, or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year.

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

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

**§175-5-258. Certain Acts of Retail Licensees Prohibited; Criminal Penalties.**

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

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

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

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

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

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

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

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

258.1.8. Purchase or otherwise obtain alcoholic liquor in any manner or from any source other than the Commissioner; or

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

258.2. Any person who violates any provision of this section is guilty of a misdemeanor, and shall, upon conviction thereof, for each offense be fined not less than one hundred dollars ($100) or no more than five thousand dollars ($5,000), or

imprisoned in the regional jail for not less than thirty (30) days nor more than one (1) year or both fined and imprisoned.

2~~5~~8.3. Nothing in W. Va. Code §60-3A-1 et seq., or this rule, or any other rule of the Board or Commissioner, prevents or prohibits any retail licensee from employing any person who is at least eighteen (18) years of age to serve in any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or from having such person sell liquor under the provisions of W. Va. Code §60-3A-1 et seq., and this rule.

2~~5~~8.3.1. With the prior written approval of the Commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than eighteen (18) years of age but at least sixteen (16) years of age, but such persons' duties shall not include the sale of liquor: Provided, that the authorization to employ such persons under the age of eighteen (18) years shall be clearly indicated on the retail license issued to any such retail licensee.

2~~5~~8.3.2. Permission to employ persons who are sixteen (16) or seventeen (17) years of age must be sought on the application for license or on any annual license renewal form only and such approval will not be unreasonably withheld.

2~~5~~8.3.3. The age restrictions in his section apply to minor children of the licensee.

**§175-5-2~~6~~9. Civil Penalties.**

2~~6~~9.1. Any retail licensee who violates any provision of W. Va. Code §60-3A-1 et seq., any rule promulgated by the Board or any rule promulgated by the Commissioner may be assessed a civil money penalty by the Commissioner. The amount of this money penalty may not exceed one thousand dollars ($1,000) for each violation of the Act, the Board rule or a rule of the Commissioner.

2~~6~~9.2. Each day the violation continues shall constitute a separate violation.

**§175-5-~~27~~30. Suspension or Revocation of Retail License.**

~~27~~30.1. The Commissioner may, upon his or her motion, or upon the sworn complaint of any person, conduct an investigation to determine if any provision of W. Va. Code §60-3A-1 et seq., this rule or of any other rule promulgated by the Board or Commissioner under authority of W. Va. Code §60-3A-6 has been violated by any retail licensee. The Commissioner may immediately suspend a retail licensee for failing to meet and maintain licensure requirements, purchase option requirements or deferred payment financing requirements, or if the Commissioner determines that public safety will be adversely affected by the licensee's continued operation. The Commissioner may suspend or revoke a retail license if the retail licensee, or any employee thereof acting in the scope of his or her employment, has violated any such provision, and may suspend a retail license without hearing for a period not to exceed twenty (20) days if he or she finds probable cause to believe that the retail licensee, or any employee thereof acting in the scope of his or her employment, has willfully violated any such provision.

~~27~~30.2. The Commissioner may revoke a retail license for any reason which would constitute grounds for the denial of an application for retail license filed pursuant to W. Va. Code §60-3A-8.

**§175-5-~~28~~31. Revocation of License For Failure to Operate Retail Outlet & Forfeiture of Retail Outlet for Failure to Operate Retail Outlet.**

~~28~~31.1. Revocation. -- The Commissioner, ~~after employing criteria prescribed by the Board in §202-1-19 of its pending, proposed legislative rule,~~ may revoke a Class A retail license if the licensee fails to operate ~~at least one of the~~ a freestanding liquor retail outlet~~s~~ authorized under the license and may revoke a Class B retail license if the licensee fails to operate ~~the~~ a mixed retail liquor outlet authorized under the license.

31.1.a. The Commissioner may revoke a

retail licensee who fails to meet the requirements of section 9.

31.1.b. The Commissioner may revoke a retail licensee who fails to meet the requirements of section 10.

31.1.c. The Commissioner may revoke a retail licensee who fails to meet the requirements of this rule and the code.

~~28~~31.2. Disqualification of current licensee whose license is revoked. -- When a license is revoked under W. Va. Code §60-3A-27a(a), the Commissioner may not accept the bid of the person who has had ~~the~~ a license revoked, or of a related person, when the license is offered for bid following the revocation. As used in this subsection, a bidder is a "related person" when the relationship between the bidder and the person whose license was revoked is such that the latter indirectly owns or controls the bidder under the provisions set forth in section ~~5.3~~ 4 of this rule.

~~28~~31.3. Procedural due process. -- A revocation of a Class A retail license or Class B retail license under W. Va. Code §60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28.

~~28~~31.4. Forfeiture of authorization to operate retail outlet. -- When a person operates ~~at least one of the~~ aretail outlets authorized under a Class A retail license but fails to operate ~~the entire number of~~ another retail outlets authorized ~~under the~~ as a separate license, the Commissioner may, after employing criteria prescribed by the Board, reduce the number of retail outlets the person is authorized to operate ~~under that license~~ by the number not being operated. As used here, "failure to operate a retail outlet" includes, but is not limited to:

~~28~~31.4.1. Total failure to open and operate a retail outlet within ninety (90) days after July 1, 2000, and July 1st for every ten year license period thereafter or the day the person is awarded the license, whichever day occurs last;

~~28~~31.4.2. Failure to reopen the retail outlet within 90 days after it is closed, unless the closure was due to fire, flood or other act of God, war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause, unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 60th day;

~~28~~31.4.3. Failure to reopen the retail outlet within 180 days after it was closed due to fire, flood or other act of God, war, riot, or other catastrophe as to which negligence or willful misconduct on the part of the licensee or a person under the control of the licensee was not the proximate cause, unless the reopening is prevented by a matter in controversy pending judicial adjudication on or before the 180th day; or

~~28~~31.4.4. Failure to operate a retail outlet in a commercially reasonable manner as defined in ~~sub~~section 3~~.3.3.~~ of this rule.

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

~~28~~31.5. Issuance of Class B license. -- The Board may authorize the Commissioner to issue, subject to the bid requirements of W. Va. Code §60-3A-1~~0~~ et seq., a Class B license for each retail outlet for which authority to operate is forfeited under this section ~~28~~ of this rule. The Board shall set a minimum bid for each Class B license.

~~28~~31.6. Procedural due process. -- A reduction in the number of retail outlets that may be operated by the holder of a Class A retail license under W. Va. Code §60-3A-27a is subject to the provisions for notice, hearing and judicial review prescribed in W. Va. Code §60-3A-28.

**§175-5-~~29~~32. Notice of and Hearing on Boundary Disputes.**

~~29~~32.1. Any retail licensee who disputes the placement of any part of the boundary which

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

~~29~~32.1.1. The petition shall be in writing, and shall state the boundary in dispute, the grounds of the petition and all persons who may be affected by the Commissioner's decision.

~~29~~32.1.2. A copy of the petition shall be concurrently served upon all persons who may be affected by the Commissioner's decision and the petitioner shall verify under oath that such service has occurred.

~~29~~32.1.3. Within ten (10) days after receipt of the petition, the Commissioner shall schedule a hearing on the matter. At least twenty (20) days' notice of the hearing shall be provided to affected persons. Notice is to be sent by certified mail, return receipt requested to the addresses provided by the petitioner.

~~29~~32.2. The hearing and the administrative procedures prior to, during and following the same, shall be governed by and in accordance with the provisions of W. Va. Code §29A-5-1, et seq., in like manner as if those provisions were fully set forth in this section.

~~29~~32.3. Any person adversely affected by an order entered following a hearing shall have the right of judicial review thereof in accordance with the provisions of W. Va. Code §29A-5-4 with like effect as if those provisions of said §29A-5-4 were fully set forth in this section.

~~29~~32.4. The judgment of a circuit court reviewing such order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1.

~~29~~32.5. Each party shall be responsible for his or her own legal representation.

~~APPENDIX A~~

~~APPLICATION FOR RETAIL LIQUOR STORE LICENSE~~

~~REMITTANCE:~~ ~~FOR OFFICE USE ONLY~~

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

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

~~APPROVED_____~~
~~DISAPPROVED_____~~
~~DATE_____~~

~~Payable To 'WV ABCA'~~

~~2001 - 2002~~

~~LICENSE CLASS G A $1,000.00 G B - $1,000,00 (CHECK BOX) LICENSE NUMBER~~

~~1. NAME OF APPLICANT: PHONE: RES( )~~

~~2. NAME OR TITLE OF BUSINESS: PHONE: BUS( )~~

~~3. STREET ADDRESS OF BUSINESS:~~

~~4. MAILING ADDRESS (IF DIFFERENT): NAME:~~

~~STREET OR P.O. BOX:~~

~~CITY: STATE: ZIP CODE:~~

~~5. FEDERAL IDENTIFICATION NUMBER (FEIN OR SOC.SEC.#):~~

~~6. DO YOU CURRENTLY HOLD ANY OTHER RETAIL LIQUOR LICENSES, WINE PERMITS, OR BEER PERMITS? YES/NO~~

~~IF 'YES', LIST STATE AND LICENSE/PERMIT NUMBER:~~

~~7. OWNERSHIP: DO YOU INTEND TO OPERATE YOUR BUSINESS AND HOLD LIQUOR LICENSE AS A(N):~~

~~INDIVIDUAL PARTNERSHIP OR JOINT VENTURE CORPORATION~~

~~8. COMPLETE THE FOLLOWING BASED ON RESPONSE TO NO. 7 ABOVE:~~

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

| ~~NAME~~ | ~~TITLE~~ | ~~HOME ADDRESS~~ | ~~DATE OF BIRTH MO/DAY/YR~~ | ~~U.S. CITIZEN? YES/NO~~ | ~~% OF OWNERSHIP~~ |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

~~APPENDIX A - P2~~

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

~~• CORPORATION:~~

~~PLACE AND DATE OF INCORPORATION: / /~~

~~• PARTNERSHIP:~~

~~REGISTERED NAME:~~

~~PLACE AND DATE OF INCORPORATION: / /~~
~~(DATE)~~

~~10. CONVICTIONS - MUST BE ANSWERED. HAVE ANY OF THE PERSONS OR ENTITIES LISTED IN ITEM NUMBER EIGHT (8) BEEN CONVICTED OF ANY OFFENSE AGAINST THE LIQUOR LAWS OF THE UNITED STATES, OR ANY STATE THEREOF, OR ANY FELONY CONVICTION IN THE STATE OF WEST VIRGINIA? YES____ NO____ IF ANSWER IS 'YES', THE FOLLOWING INFORMATION MUST BE FURNISHED ALONG WITH THIS FORM:~~

~~10A. NAME OF PERSON OR ENTITY. 10C. PLACE AND DATE OF JURISDICTION AND COURT.~~

~~10B. NATURE OF OFFENSE OR CONVICTION. 10D. THE SENTENCE AND/OR FINE.~~

~~11. A COPY OF: FEDERAL BASIC PERMIT OR WHOLESALE PERMIT, FOR PERIOD ENDING 30 JUNE 2002, MUST BE ATTACHED.~~

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

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

~~THE UNDERSIGNED HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENTS SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED. I/WE AGREE TO NECESSARY BUSINESS, FINANCIAL, AND CONVICTION BACKGROUND INVESTIGATIONS NECESSARY TO ISSUE THE REQUESTED LICENSE. IF ONE OR MORE LICENSES ARE GRANTED, THE PERSON(S) MAKING THIS APPLICATION HEREBY AGREE(S) TO COMPLY AT ALL TIMES WITH, AND OBSERVE ALL PROVISIONS OF CHAPTER 60 OF THE WEST VIRGINIA CODE AND ALL LAWS OF THIS STATE AND THE RULES AND REGULATIONS PROMULGATED BY THE ALCOHOLIC BEVERAGES DIVISION RELATING TO ALCOHOLIC LIQUORS, WINE, AND BEER.~~
~~(SIGNATURE): SOCIAL SECURITY NO.: DATE:~~
~~DATE~~
~~(SIGNATURE): SOCIAL SECURITY NO.: DATE:~~
~~DATE~~
~~(SIGNATURE): SOCIAL SECURITY NO.:DATE:~~
~~DATE~~
~~(SIGNATURE): SOCIAL SECURITY NO.: DATE:~~
~~DATE~~
~~**NOTARY:**~~
~~STATE OF COUNTY OF~~
~~ON THIS DAY OF , THE ABOVE~~
~~(DAY) (MONTH) (YEAR) (NAMES OF PERSONS SIGNING ABOVE)~~
~~BEFORE ME, HEREBY SWEARS OR AFFIRMS THAT HE OR SHE HAS READ THIS APPLICATION, THAT ALL THE STATEMENTS SET FORTH HEREIN ARE TRUE AND CORRECT, AND THAT THE APPLICANT IS THE ONLY PECUNIARY INTERESTED IN THE BUSINESS FOR WHICH LICENSE IS REQUIRED.~~

~~SWORN TO AND SUBSCRIBED BEFORE ME~~

~~(SIGNATURE OF NOTARY PUBLIC)~~
~~(SEAL) , **MY COMMISSION EXPIRES:**~~

~~APPENDIX B~~

~~PLEASE SEE REVERSE SIDE FOR AN IMPORTANT MESSAGE!~~

| ~~EFFECTIVE DATES:~~ ~~JUL 1ST, 1999 - JUNE 30TH, 2000~~ ~~1999-2000~~ | | ~~LICENSE NUMBER~~ |
|---|---|---|

~~State of West Virginia~~

~~Office of West Virginia Alcohol Beverage Control Commissioner, ss:~~

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

~~CHAPTER 60, ARTICLE 3A-1~~

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

~~LICENSE TO ENGAGE IN THE BUSINESS OF~~

~~RETAILER~~

~~LICENSE TO OPERATE A LIQUOR STORE - LIQUOR SALES ONLY PERMITTED~~

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

| MAILING ADDRESS: | PHYSICAL ADDRESS: |
|---|---|
| **Notice:** This license is issued only to the Licensee named above for use as specified, and cannot be abandoned, loaned, rented or leased, and is not assignable or transferable. | Given under my hand this, the day of |
| 992842 FILE-COPY | Commissioner |

~~APPENDIX C~~

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

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

~~2. A person who purchases alcoholic liquors for resale to consumers is required to register for and obtain a retail dealer in liquors tax stamp from the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau. This stamp must be obtained before making any retail sales of alcoholic liquors. The cost of this tax stamp is currently two hundred and fifty dollars ($250.00) per year.~~

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

~~4. Successful bidders who are not the current licensee will submit Alcohol and Tobacco Tax and Trade Bureau Form No. TTB 5630.5, Special Tax Registration And Return, to Alcohol and Tobacco Tax and Trade Bureau P.O. Box 371962, Pittsburgh, PA 15250-7962 and enclose a check or money order for Two Hundred Fifty Dollars ($250.00) to pay the Retail Special Occupation Tax to obtain a Retail Dealer in Liquors Tax Stamp. This stamp must be purchased for and displayed in each retail store before a retail licensee can engage in the retail sale of liquor at that location.~~

~~5. The Commissioner will not issue a retail license to an applicant that does not hold a basic permit issued by the U. S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau to sell liquor at wholesale.~~

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

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

~~APPENDIX D~~

~~West Virginia Alcohol Beverage Control Commission~~

~~Licensing Division~~
~~Initial Inspection Report~~

~~CLASS B~~

~~County:~~ ~~Telephone #:~~

~~Applicant:~~

~~DBA:~~

~~Phys. Address:~~
~~Street/Route~~ ~~City~~ ~~Zip~~
~~Mailing Address:~~
~~Street/Route~~ ~~City~~ ~~Zip~~

~~Type of License Applying for:~~
~~** If Corporation, Association or Limited Liability Company, list the name, address, title, & telephone number of the person report is completed on:~~

~~1. State Tax #:~~

~~2. Previously licensed by:~~ ~~DBA:~~
~~License number:~~

~~3. Has applicant been previously licensed:~~ ~~Applicant name:~~
~~Date:~~ ~~License number:~~

~~4. Has the applicant been convicted of a felony?~~
~~If yes, when?~~ ~~Where?~~
~~Misdemeanor conviction within the last 5 years of violation of any ABC laws?~~

~~5. Years of WV residency:~~ ~~Age:~~ ~~Sex:~~ ~~DOB:~~
~~Place of birth:~~ ~~Social Security #:~~
~~U.S. citizen?~~ ~~By birth or naturalization?~~
~~If naturalization, When:~~ ~~Where:~~

~~6. WV operator's license #:~~ ~~Date issued:~~
~~Vehicle license in WV:~~

~~7. Is applicant owner of building?~~ ~~Leasing?~~ ~~Verified?~~
~~If leased, give name and address of owner:~~

~~8. Are the following acceptable? General appearance inside and outside?~~
~~Number of floors:~~ ~~Floor location:~~

~~APPENDIX D - P2~~

~~9. Estimated wholesale value of inventory of food (for the table)? $~~
~~This estimate is based on:~~

~~10. Estimate retail sales per month of food (for the table): $~~
~~This estimate is based on:~~

~~11. If a wine specialty shop, will applicant sell only wine accessories and food or food stuffs normally associated with wine?: Explain:~~

~~12. Is there in the store $3,000 or more in food items, excluding snack food and soft drinks?~~
~~Explain:~~

~~13. If this is a new business, will sales and inventory exceed $3,000?~~

~~14. Please note anything that should be considered before license is issued:~~

~~Applicant's signature~~

~~Title: Date:~~

~~Inspector's signature: Date:~~

~~Recommendation:~~

~~APPENDIX E~~

~~**BID FORM**~~

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

~~**1. Name, Address, Phone Number of Applicant:**~~

~~a. Full Name: _____ Phone ( ) _____~~

~~b. Business Name: _____~~

~~c. Street Address: _____~~

~~d. City, State _____ Zip Code _____~~

~~e. Name of Person(s) to contact: _____~~

~~f. Contact phone number concerning bid acceptance and right of first refusal: _____~~

~~**2. Preferences:**~~

~~a. Claiming West Virginia Residency Status? ☐ Yes ☐ No~~

~~b. Claiming current Retailer Licensee Preference ☐ Yes ☐ No~~

~~**3. Market Zone Bid Information:**~~

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

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

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

~~Signature of Applicant: _____ Date _____~~

~~Title _____~~

~~APPENDIX F~~

~~**INSTRUCTIONS TO COMPLETE BID FORM**~~

~~The completed Bid Form must be received in the WV Department of Administration, Purchasing Division~~ ~~***no later than 1:30 P. M. E.S.T., October 5, 2000***~~ ~~The pre-addressed (blue) envelope which is included with this package~~ ~~***must be used***~~ ~~for your bid. Additional envelopes are available at the ABCC Central Office. If additional bid envelopes are needed, please call (304) 558-2481.~~

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

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

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

~~**Section 1**~~

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

~~**Section 2**~~

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

~~**Section 3**~~

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

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

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

~~**APPENDIX F – P-2**~~

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

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

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

~~**DISCLAIMER**~~

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

~~APPENDIX G~~

~~AUTHORIZATION TO RELEASE INFORMATION~~

~~Name of taxpayer~~ _____ ~~Date~~

~~Address~~

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

~~West Virginia Identification No. or Social Security No.~~

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

~~1. Persons to whom information may be released:~~

~~Name:~~ _____ ~~Capacity~~

~~Address~~

~~2. Effective period of this waiver:~~

~~Authorization terminates~~

_____ ~~month~~ _____ ~~day~~ _____ ~~year~~

~~until my liability for West Virginia taxes is liquidated.~~

~~(other: explain)~~

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

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

~~APPENDIX G - P2~~

~~4. Information to be released: (describe specifically)~~

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

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

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

_____ ~~Signature~~

_____ ~~Capacity~~

_____ ~~Date~~

~~State of West Virginia,~~
~~County of .~~
~~to-wit,~~

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

_____ ~~Notary Public~~

_____ ~~Date~~

_____ ~~My commission expires~~

~~APPENDIX II~~

~~RESIDENTIAL BID PREFERENCES~~

~~Preference for resident bidders.~~

~~1. In determining the highest bidder for retail liquor store licenses, a five percent (5%) preference for West Virginia resident bidders, shall be computed by adding five percent (5%) of the bid price to the bid price submitted by the resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license.~~

~~2. This preference shall not be added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.~~

~~3. A bidder shall be considered a West Virginia resident if the bidder:~~

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

~~b. Being a person other than an individual, has had its headquarters or principal place of business in this state for at least four (4) years during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened.~~

~~4. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.~~

~~5. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened, did as follows:~~

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

~~b. Maintained its headquarters or principal place of business in this State; this can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, the period of time the person's headquarters or principal place of business was continuously located in this state, as of the date the affidavit is signed, and stating that the address will remain the same as of the date on which the bids are opened;~~

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

~~d. Had actually paid, and not just applied to pay, required business taxes imposed by W. Va. Code §11-1-1 et seq.; a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCA Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential. An "Authorization to Release Information" form is attached which has been prepared by the West Virginia State Tax Commissioner for this purpose. Bidders shall complete this form and mail it to the West Virginia State Tax Commissioner, Building 1, Room W-300, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0842; and~~

~~APPENDIX H P-2~~

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

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

~~a. Copies of receipts from the sheriff of a county indicating payment of personal property taxes and/or real estate taxes for each of the four (4) years which indicate a West Virginia address for the bidder;~~

~~b. Copies of Department of Motor Vehicle documents such as a driver's license, registration card, or certificate of title of a motor vehicle indicating a West Virginia address for the bidder during those four (4) years;~~

~~c. Certification from the Tax Commissioner that the bidder had filed West Virginia Resident Income Tax Returns for the previous four (4) year period prior to the bid which indicated a West Virginia residence address for the bidder;~~

~~d. Copies of insurance policies on the person's primary residence, whether owned or rented, showing its location for each of the four (4) years immediately preceding the day the person's bid is opened;~~

~~e. A letter signed by the clerk of the individual's county of residence certifying the date on which the individual registered to vote in that county and that the individual is still eligible to vote in that county and that the individual has remained eligible to vote in any election held in the forty-eight (48) month period immediately preceding the opening of the bids; and if during such four (4) year period the individual resided in two (2) or more West Virginia counties, the separate certificates from the clerk of each county in which the individual resided will be accepted; and~~

~~f. Copies of any documents mentioned above shall be submitted with the bid form by any individual bidder who desires to be grated a Preference for Residence Bidders;~~

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

~~APPENDIX I~~

~~APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT~~

~~**Agreement**~~

~~In consideration of your issuing the standby letter of credit applied for therein called the "credit" we hereby agree as follows:~~

~~1. We agree to pay to you on demand at your above address and in United States currency, the amount of each draft payable in United States currency and drawn under the credit, or purporting to be so drawn.~~

~~2. We agree to pay to you on demand, at your above address and in United States currency, the equivalent (at your then selling rate for cable transfers to the place where and in the currency in which such draft or instrument is payable) of the amount of each draft payable in other than United States currency and drawn under the credit, or purporting to be so drawn.~~

~~3. We agree to pay to you on demand a commission for the credit at such rate as you have quoted to us, together with the amount of any and all charges and expenses paid or incurred by you or by any of your agents or correspondents in connection with the credit. In addition to such commission and any such charges and expenses, we agree that if at any time any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority:~~

~~A. shall subject you to any tax, duty or other charge with respect to this agreement, or shall materially change the basis of taxation of payments to you of the principal of or interest on any amounts payable by us under this agreement (except for the imposition of or changes in respect of the rate of tax on your overall net income): or~~

~~B. shall impose or deem applicable or increase any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by you because of this agreement or the credit; or~~

~~C. shall require you to include the credit in your calculations relating to your capitalization, and if the result is to increase the cost to you of maintaining the credit, or to reduce the amount of any sum received or receivable by you under this agreement, then within thirty (30) days after demand we agree to pay you such additional amount or amounts as will compensate you for such increased cost or reduction. Your certificate in reasonable detail setting forth the basis for the determination of such additional amount or amounts shall be conclusive evidence of such amount or amounts.~~

~~4. All amounts payable by us under paragraphs 1 and 2 of this agreement shall, if unpaid, bear interest from the date of demand: all other amounts payable by us under any provision of this agreement, except this paragraph 4, shall, if unpaid, bear interest from the date you are first entitled to demand payment thereof, regardless of whether you actually do make demand. In all cases, such indebtedness shall bear interest at an annual rate equal to the highest rate or rates of interest payable by us (for periods of time such indebtedness is outstanding) pursuant to the provisions of any promissory note issued or endorsed by us and held by you, or for periods of time during which no such promissory note is outstanding at (check one): (13) _____% the annual rate of (14) _____%, (15) _____% an annual rate that shall be (16) _____% in excess of the base rate in effect from time to time, and that shall change when and as the base rate changes.~~

~~APPENDIX I. P-2~~

~~"Base rate" means the rate of interest established by (17) _____% from time to time as its "base" or "prime" rate. We agree to pay such interest to you, on a monthly basis and also on demand, based on a 360 day year.~~

~~5. Except to the extent we may hereafter give you contrary instructions in writing:~~

~~A. Your duty and that of your correspondents to examine certificates and other documents received by you or them under, or purporting to be under, the credit, shall be fully discharged if you or they exercise reasonable care to ascertain that they appear on their face to be in accordance with the terms of the credit.~~

~~B. Your liabilities and responsibilities and those of your correspondents shall be strictly limited in accordance with the most current revision of the Uniform Customs and practice for Documentary Credits (1983 Revision). ICC Publication Number 400, effective October 1, 1984.~~

~~C. You and your correspondents may receive and accept or pay as complying with the terms of the credit any drafts, documents or statements, otherwise in order, which may be signed by the administrator, executor, trustee in bankruptcy or of receiver of any of the property of (or any similar representative or trustee for), the person in whose name the credit provides that any such drafts, documents or statements must be drawn or issued.~~

~~6. You shall assume no liability or responsibility:~~

~~A. For the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or statements;~~

~~B. For the consequences arising out of any delay and/or loss in transit of any messages, letters or documents, or the delay, mutilation or other errors arising from the transmission of cables, telegrams or telex; or~~

~~C. For consequences arising out of the interruption of your business by acts of God, riots, civil commotions, insurrections, wars or other causes beyond your control or by any strikes or walkouts.~~

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

~~7. We agree to pay you on demand any and all expenses, including reasonable attorneys' fees and legal expenses, incurred or paid by you in protecting or collecting our indebtedness to you under this agreement or in protecting, exercising or enforcing any or all of your rights and remedies against us.~~

~~8. Should any of the following events of default occur, and if at the time of any such event there remains any portion of the Credit undisbursed, we shall, upon your demand, pay to your for application to drawings under the Credit the entire amount which has not been drawn; (i) we default in respect of any payment due you under this agreement; (ii) we default in the payment of any indebtedness which we may have for the repayment of borrowed monies; (iii) we become insolvent;~~

~~fail to pay our debts generally as they become due, make any assignment for the benefit of creditors, file or suffer the filing of laws for the relief of or relating to, debtors; (iv) there is a voluntary or involuntary appointment of a receiver, trustee, custodian or similar official to take possession of any of our property; (v) there is an attachment of any material involuntary lien of any kind to our property or assets; or (vi) any representation made in any financial statement or in any other statement or document presented to you by or on our behalf is, in any material respect, false or misleading when made. Any amount so paid which has not been drawn on the expiry date of the Credit shall be repaid to us.~~

~~9. We further agree that:~~

~~A. This agreement and your rights hereunder shall continue unimpaired and shall be binding upon us notwithstanding any delay, extension of time, increase in amount, renewal, compromise or other indulgence or modification granted or agreed to by you, with or without notice to or approval by us (or any of us) in respect of the credit or any of our indebtedness to you under this agreement.~~

~~B. You shall not be deemed to have waived or released any of your rights or remedies (whether specified in or arising under this agreement or otherwise available to you by law or agreement) unless you have signed a written waiver or release. Delay or failure to act on your part shall not constitute a waiver of or otherwise preclude enforcement of any of your rights and remedies. All of your rights and remedies shall be cumulative and may be exercised singularly or concurrently. You need not resort to any particular right or remedy before exercising or enforcing any other, and your resort to any right or remedy shall not preclude the exercise of enforcement of each other's right and remedy.~~

~~C. This agreement shall be governed by the laws of the state where your main banking office is located.~~

~~D. If any provision or clause of this agreement or the application thereof to any person or circumstance is invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, clauses or applications of this agreement which can be given effect, and this agreement shall be construed as if the invalid or illegal or unenforceable provision, clause or application has never been contained herein.~~

~~E. If the application is signed by or on behalf of several of us, this agreement shall be construed and interpreted so as to establish in all instances the joint and several obligations of each of us and this agreement shall be fully binding upon and enforceable against either, any or all of us. Each of us shall be deemed to be the agent of any others, and except as expressly provided otherwise herein, you may act at the direction or request of any one or more of us and you may give a notice or notices (whether or not required to be given), to any one or more us, all as you may from time to time elect, without notice to or approval by the others. You may terminate this agreement with respect to, or release or discharge, any one or more of us without affecting or impairing the obligations of the rest of us. The death, incompetence or dissolution of any of us or any change in the composition of any partnership or any other firm which may be a party hereto shall not affect in any way the credit or any rights with respect to indebtedness incurred under this agreement or with respect to transactions theretofore initiated. In this agreement, the terms "we," "us" and "our" refer to any one or more applicants and correspondent banks that have executed the application, and the terms "you" and "your" refer to the bank to which such application is directed.~~

~~APPENDIX I – P-4~~

~~F. This agreement is without limitation as to duration or amount and shall be binding upon our respective heirs, legal representatives, successors and assigns and shall inure to the benefit of and be enforceable by you, your successors and assigns. You may assign or transfer this agreement and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all of your rights and remedies specified in or arising under this agreement with respect to any and all instruments and rights not so assigned or transferred.~~

~~G. Unless you agree otherwise, the credit shall be subject to Uniform Customs and Practice for Documentary Credits (1993 revision), ICC Publication number 500, effective January 1, 1994, but all of your rights arising under said Customs and practice shall be in addition to, and not in limitation of, your rights under this agreement.~~

~~We waive notice of your acceptance of this agreement.~~

~~Dated this _____ day of _____, 20~~

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

~~APPENDIX J~~

FOR ABC USE ONLY
ORDER NUMBER

~~CLUB ORDER FORM 190~~
~~West Virginia Alcohol Beverage Control Administration~~
~~322 70th Street SE Charleston WV 25304~~
~~Facsimile 866-558-6178~~

~~FRANCHISE INFORMATION~~

| | |
|---|---|
| ~~Store Number~~ | |
| ~~Store Name~~ | |
| ~~City~~ | |

~~CLUB INFORMATION~~

| | |
|---|---|
| ~~License Number (all 12 digits)~~ | |
| ~~Club Name~~ | |
| ~~City~~ | |

| ~~CODE~~ | ~~BRAND NAME~~ | ~~BOTTLE SIZE~~ | ~~NO OF BTLS~~ | ~~COST PER BTL~~ | ~~TOTAL~~ |
|---|---|---|---|---|---|
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| | | | ~~Retail Total~~ | | |
| | | | ~~Less Discount~~ | | |
| | | | ~~Sub Total~~ | | |
| | | | ~~Municipal Tax (5%)~~ | | |
| | | | ~~Sales Tax (6%)~~ | | |
| | | | ~~Total Order~~ | | |

~~Order Date~~ ~~Authorized Signature~~

~~Distribution: (1) copy for Retail location, (1) copy for Club location, (1) copy to WV ABC Administration~~

~~APPENDIX K~~

~~STATE OF WEST VIRGINIA~~
~~ALCOHOL BEVERAGE CONTROL ADMINISTRATION~~
~~322 70TH STREET, CHARLESTON, WV 25304~~

~~NAME OF RETAIL LIQUOR STORE~~ ~~INVOICE NO.:~~
~~ADDRESS~~ ~~DATE:~~

~~PAGE:~~

| ~~DESCRIPTION~~ | ~~BOTTLE CODE~~ | ~~SIZE~~ | ~~FULL CASES~~ | ~~CHK RCV~~ | ~~SPLIT BOTTLES~~ ~~$~~ | ~~UNIT PRICE~~ | ~~EXTENDED PRICE~~ |
|---|---|---|---|---|---|---|---|
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~~*-----SHIPPED-----*~~

| ~~FULL CASES~~ | ~~SPLIT BOTTLES~~ | ~~ORDER AMOUNT~~ | ~~SPLIT CASE CHARGE~~ | ~~CREDIT DUE~~ | ~~INVOICE TOTAL~~ |
|---|---|---|---|---|---|
| | | | | | |

~~APPENDIX K - P.2~~

| ~~INVOICE EXCEPTIONS~~ | | | | | ~~CLAIMS SECTION~~ | | | |
|---|---|---|---|---|---|---|---|---|
| ~~INVOICE NUMBER~~ | ~~BOTTLE CODE~~ | ~~CASES~~ | ~~RET~~ | ~~APP~~ | ~~BOTTLE CODE~~ | ~~BOTTLE RETURNED~~ | ~~BOTTLE CODE~~ | ~~BOTTLES RETURNED~~ |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| ~~INVOICE COMMENTS~~ | | | | | ~~CLAIMS COMMENTS~~ | | | |
| ~~TOTALS - TRUCK~~ | | | | | | | | |
| ~~TOTALS - COMM~~ | | | | | | | | |
| ~~x~~<br>~~x~~ | | | | | ~~x~~<br>~~x~~ | | | |
| ~~TRUCK DRIVER/DATE~~ | | | ~~RETAILER/ DATE~~ | | ~~TRUCK DRIVER/DATE~~ | | ~~RETAILER/DATE~~ | |

~~APPENDIX L.~~

~~Applicant/Entity Name:~~ _____

~~Doing Business As (DBA) Name:~~ _____

~~**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION**~~

~~**RELEASE OF INFORMATION AND WAIVER OF CONFIDENTIALITY OF RECORDS**~~

~~I or we, having made application with the West Virginia Alcohol Beverage Control Administration for issuance of a license to sell alcoholic beverages within the State of West Virginia, hereby waive the benefit of any municipal, county, state, or federal statute, rule, ordinance, regulation or other law prescribing the confidentiality of any records or documents, whether formal or informal, pending or closed, maintained by any public or private agency or organization as those records or documents pertain to residency, business location, business activities, education and/or training, employment, criminal history, civil litigation, or law enforcement investigation.~~

~~I or we, hereby authorize and request every public or private agency, organization, or person maintaining such records to furnish to the West Virginia Alcohol Beverage Control Administration, or their agents or representatives, any information contained therein and to permit them to inspect and make copies of such records and documents.~~

~~I or we, hereby authorize the West Virginia Alcohol Beverage Control Administration to disclose any information pertaining to the licensure to any municipal, county, state, federal or private agency or organization that has any interest in the licensing of said applicant.~~

~~I or we, hereby release the West Virginia Alcohol Beverage Control Administration, their agents and representatives, and any agency, organization, or person furnishing information from all liability arising out of any investigation concerning the applicant. I or we further agree that a copy of this Release and Waiver shall function as an original.~~

~~I or we acknowledge that by affixing a signature(s) below gives this document full force and upon this date all aforementioned information may be received and shared as prescribed.~~

| ~~**Name (Must include owner's, officer's, member's and manager's printed and written signature)**~~ | ~~**Title**~~ | ~~**Date**~~ |
|---|---|---|
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~~(Addendum B) ABCA-Lic.RIWCR.2~~

~~APPENDIX M~~

## ~~HAS ALCOHOL AFFECTED YOUR DRIVING ABILITY?~~

~~The % of alcohol in your blood will tell you. This % can be estimated by -- COUNTING YOUR DRINKS (1-drink equalling 1 volume oz. of 100 proof alcohol or 1-12 oz. bottle of beer).~~

~~Use Blood-Alcohol Chart below. Under number of DRINKS and opposite Body- Weight find the % of Blood-Alcohol listed.~~

~~SUBTRACT from this number the % of alcohol "burned up" during the time elapsed since your first drink.~~

| ~~No. Hours Since 1st Drink~~ | ~~1~~ | ~~2~~ | ~~3~~ | ~~4~~ | ~~5~~ | ~~6~~ |
|---|---|---|---|---|---|---|
| ~~SUBTRACT~~ | ~~0.15%~~ | ~~0.30%~~ | ~~0.45%~~ | ~~0.60%~~ | ~~0.75%~~ | ~~0.90%~~ |

~~THIS REMAINDER IS AN ESTIMATE of the % alcohol in your blood~~

| ~~% OF BLOOD ALCOHOL~~ | ~~INTERPRETATION OF RESULTS INTOXICATED?~~ | ~~IF YOU DRIVE A CAR~~ |
|---|---|---|
| ~~.000 to .050~~ | ~~You Are Not~~ | ~~Take It Easy~~ |
| ~~.050 to .100~~ | ~~You Probably Are~~ | ~~Better Not~~ |

~~FOR BEST RESULTS - DON'T DRINK AND DRIVE~~

~~BLOOD ALCOHOL CHART~~

~~SHOWING ESTIMATED % OF ALCOHOL IN THE BLOOD BY NO. OF DRINKS IN RELATION TO BODY WEIGHT~~

| | ~~Drinks~~ | ~~1~~ | ~~2~~ | ~~3~~ | ~~4~~ | ~~5~~ | ~~6~~ | ~~7~~ | ~~8~~ | ~~9~~ | ~~10~~ | ~~11~~ | ~~12~~ |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | ~~100 lbs~~ | ~~.038~~ | ~~.075~~ | | | | | | | | | | |
| | ~~120 lbs~~ | ~~.031~~ | ~~.063~~ | ~~.094~~ | | | | | | | | | |
| | ~~140 lbs~~ | ~~.027~~ | ~~.054~~ | ~~.080~~ | | | | | | | | | |
| ~~Body~~ | ~~160 lbs~~ | ~~.023~~ | ~~.047~~ | ~~.070~~ | ~~.094~~ | | | | | | | | |
| ~~Weight~~ | ~~180 lbs~~ | ~~.021~~ | ~~.042~~ | ~~.063~~ | ~~.083~~ | | | | | | | | |
| | ~~200 lbs~~ | ~~.019~~ | ~~.038~~ | ~~.056~~ | ~~.075~~ | ~~.094~~ | | | | | | | |
| | ~~220 lbs~~ | ~~.017~~ | ~~.034~~ | ~~.051~~ | ~~.068~~ | ~~.085~~ | | | | | | | |
| | ~~240 lbs~~ | ~~.016~~ | ~~.031~~ | ~~.047~~ | ~~.063~~ | ~~.078~~ | ~~.094~~ | | | | | | |

~~Pursuant to §60-6-24, this poster must be posted in any establishment selling alcoholic beverages or non intoxicating beer September 1, 1981. Enforcement of posting will be carried out by the West Virginia Alcohol Beverage Control Administration.~~

~~APPENDIX M~~

# ~~FETAL ALCOHOL SYNDROME~~

## ~~WARNING: BIRTH DEFECTS MAY RESULT FROM THE CONSUMPTION OF ALCOHOL DURING PREGNANCY.~~

**~~Effective July 1, 1998 HB 2394 requires this sign must be posted in any establishment selling alcoholic beverages or nonintoxicating beer. Enforcement of posting will be carried out by the West Virginia Alcohol Beverage Control Commissioner.~~**