TITLE 175
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL COMMISSION

SERIES 1
~~RETAIL LICENSEE~~ LICENSED RETAILER OPERATIONS

§175-1-1. General.

1.1. Scope. -- This rule explains and clarifies, the process for ordering, transporting and advertising alcoholic liquors by licensed retailers. This rule also explains and clarifies the permissible activities of a licensed retailer and the relationship between the manufacturer of alcoholic liquors and a licensed retailer.

1.2. Authority. -- W. Va. Code §§60-1-1 et seq., 60-3A-1 et seq., 60-3A-6 and 6~~4~~0-7-1 et seq.

1.3. Filing Date. -- ~~May 2, 2008~~.

1.4. Effective Date. -- ~~May 2, 2008~~.

§175-1-2. Definitions.

As used in this rule, and unless the context clearly requires a different meaning, the following terms have the following meaning and apply in the singular and in 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. "Advertisement" means any audio, visual or other electronic display promoting alcoholic liquors through the medium of billboards, newspapers, magazines, or similar publications and display materials or equipment. The term advertisement does not include:

2.~~1~~3.a. Any label, affixed to a container of alcoholic liquors or any individual covering, carton or other wrapper of the container, or

2.~~1~~3.b. Any editorial or other reading matter in any periodical or publication for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to this rule.

2.~~2~~4. "Alcohol" means ethyl alcohol, whatever its origin, and includes synthetic ethyl alcohol but not denatured alcohol.

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. The term alcoholic liquor does not include wine with an alcohol content of fourteen percent (14%) or less by volume, nonintoxicating beer or nonintoxicating beverages.

2.~~4~~6. "Alcohol Beverage Control Commission" or "ABCC" or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his or her designee.

2.7. "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.~~5~~8. "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer, including nonintoxicating craft beer, and shall be included in the definition of "liquor" and "alcoholic liquor", as used in chapter eleven, section sixteen and in chapter sixty of the West Virginia code and shall not be construed to include or embrace nonintoxicating beer or nonintoxicating craft beer.

2.~~6~~9. "Brewery" means an establishment where beer is manufactured or in any way prepared.

2.~~7~~10. "Case Lot" means a complete case of distilled spirits.

2.11. "Class A retail license" means a retail license permitting the retail sale of West Virginia product or alcoholic liquors at a freestanding liquor retail outlet, subject to the requirements of the rules and code.

2.12. "Class B retail license" means a retail license permitting the sale of West Virginia product or alcoholic liquors at a mixed retail liquor outlet, subject to the requirements of the rules and code.

2.~~8~~13. "Department" means the West Virginia Department of ~~Tax and~~ Revenue.

2.14. "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.~~9~~15. "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 includes, but is not limited to, neutral spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage or other food product containing more than 24% of alcohol by volume is considered distilled spirits.

2.~~10~~16. "Distillery" or "distiller" means an establishment where alcoholic liquor other than wine and beer is manufactured or in any way prepared.

2.~~11~~17. "Electronic funds transfer" or "EFT" means the transfer electronically of funds from one bank account to another bank account without the necessity of a personal or business check to initiate the transaction.

2.~~12~~18. "Equipment" means all functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retail licensee's business.

2.~~13~~19. "Federal law" means the laws and regulations of the United States and any court decisions interpreting them.

2.20. "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.~~14~~21. "Fortified wine" means any wine to which brandy or other alcohol has been added. For purposes of this rule, "fortified wine" includes dessert wines which are fortified but which have an alcohol content by volume of at least fourteen and one-tenths percent (14.1%) and not exceeding sixteen percent (16%).

2.~~15~~22. "Immediate family" means and includes, but is not necessarily limited to: spouse, brother, sister, son, daughter, mother, mother-in-law, father, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, uncle, aunt or cousin of a licensed retailer, a partner, and a corporation's directors, officers and employees.

2.~~16~~23. "Importer" means a person who brings in goods from a foreign country for sale in this country.

2.~~17~~24. "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point that physical or mental control or both are markedly diminished.

2.25. "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.~~18~~26. "Licensed representative" means a manufacturer's representative licensed and who has paid the fee under the provisions of W. Va. Code §60-4-22 or a broker authorized, in writing, by a manufacturer to represent the manufacturer's product in the State of West Virginia and who has paid the same fee to the ABCC. A licensed representative may contact a licensed retailer for the purpose of selling, offering to sell, soliciting, negotiating or promoting the sale of alcoholic liquor or distilled spirits, or conducting surveys, studies or similar activities pertaining to the sale, distribution or availability of alcoholic liquors or distilled spirits.

2.~~19~~27. "Licensed retailer" means a person licensed under W. Va. Code §60-3A-1, *et seq.* to operate a retail ~~liquor store~~ outlet holding a Class A retail license or Class B retail license and who must have computer(s) with web or internet access that meet ABCC requirements to order West Virginia product or alcoholic liquors from the ABCC's web or other internet based ordering system.

2.2~~0~~8. "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

2.2~~1~~9. "Manufacturer" means a person engaged in the manufacture of any alcoholic liquor, including, among others, a producer, bottler, importer, processor, broker, wholesaler, distributor, supplier, distiller, rectifier, winemaker or brewer.

2.30. "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.~~22~~31. "Neutral spirits" means ethyl alcohol of 190 proof or higher used especially for blending other alcoholic liquors.

2.~~23~~32. "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 than ~~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.~~24~~33. "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.

2.34. "Original package" means a closed or sealed container or receptacle used for holding alcoholic liquor.

2.~~25~~35. "Person" means an individual, partnership, joint stock company, business trust, association, limited liability company, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.~~26~~36. "Product" means alcoholic liquors whether located in the ABCC warehouse or on or off the premises of a retail ~~liquor store~~ outlet .

2.~~27~~37. "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, sell food for consumption on or off the premises which includes but is not limited to vessels, parks, airports, highways, streets, lanes, parks or places of public resort or amusement. The term "public place" does not include any place or any portion thereof which qualify and are licensed by the Commissioner to sell alcoholic liquors for consumption on the premises.

~~2.28. "Retail liquor store" means an establishment licensed and operated under the authority of W. Va. Code §60-3A-1 *et seq.* to sell alcoholic liquor in the original package for consumption off the premises.~~

2.38. "Retail outlet" means a specific location or store where West Virginia product or alcoholic liquors may be lawfully sold by a Class A retail license or Class B retail license in the original package for consumption off the premises.

2.~~29~~39. "Sale" means any transfer, exchange of goods or services in exchange for money, currency, checks, credit cards, or barter in any manner or by any means, for a consideration, and includes all sales made by principal, proprietor, agent or employee.

2.~~30~~40. "Selling" means solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.~~31~~41. "Spirits" means any alcoholic liquor obtained by distillation and mixed with potable water and other substances in solution including, but not limited to brandy, rum, whiskey, cordials and gin.

2.42. "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.

2.43. "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.~~32~~44. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar to which no alcohol has been added. Fortified wine and any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code are not included in the definition of "wine" for the purpose of this rule.

2.~~33~~45. "Winery" means an establishment where wine is manufactured or prepared.

§175-1-3. Authorized ~~Retail Licensee~~ Licensed Retailer Activities.

3.1. Only a retail ~~liquor store~~ outlet licensed in accordance with W. Va. Code §60-3A-1~~2~~ et seq., may sell West Virginia product or alcoholic liquors at retail in West Virginia. A licensed retail ~~liquor store~~ outlet may, in addition to selling alcoholic liquors for consumption away from the premises or off the premises of the retail ~~liquor store~~ outlet, do all things common and ordinary in the operation of such an establishment as permitted by its Class A retail license (freestanding liquor retail outlet) or Class B retail license (mixed retail liquor outlet). A licensed retailer that operates more than one (1) retail ~~liquor store~~ outlet within a market zone may transfer alcoholic liquors only from one retail ~~liquor store~~ outlet to another within the same market zone. Any other transfers of alcoholic liquors require prior written authorization from the ABCC.

3.1.a. A ~~licensed retailer~~ Class A retail license or freestanding liquor retail outlet shall ~~may sell other merchandise,~~ only sell West Virginia product, wine, beer, nonintoxicating beer and other alcohol related products, including tobacco related products, throughout the entire retail floor space of the retail outlet which shall, at minimum, be 750 square feet, as measured by the Commissioner, and further shall maintain displayed inventory and inventory as required by 175 CSR 5, all subject to the requirements of the

rules and the code.

3.1.b. A Class B retail license or 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 prominently marked restricted area retail floor space of the mixed retail liquor outlet, which shall, at minimum, be 150 square feet, and such products shall not be highly visible, displayed or available for sale outside the restricted area, and further shall maintain displayed inventory and inventory as required by 175 CSR 5, all subject to the requirements of the rules and the code.

3.1.c. A licensed retailer may establish the hours during which the business is open to the public. However, alcoholic liquors and fortified wine, may not be sold on Sundays, Christmas, or any primary or general statewide election day, or between 12:00~~ p.m.~~, midnight, and 8:00 a.m. on weekdays and Saturdays; wine may not be sold between 2:00 a.m. and 1:00 p.m. on Sundays or between 2:00 a.m. and 7:00 a.m. on weekdays and Saturdays.

3.1.~~c~~d. A licensed retailer may employ whom he or she pleases so long as:

3.1.~~c~~d.1. An employee must be at least eighteen (18) years of age in order to sell alcoholic liquors to customers.

3.1.~~c~~d.2. An employee must be at least twenty-one (21) years of age to take delivery of alcoholic liquor at the ABCC warehouse.

3.1.~~c~~d.3. A retail ~~liquor store~~ outlet may employ a person between sixteen (16) and eighteen (18) years of age to work in a retail ~~liquor store~~ outlet if the Commissioner has beforehand provided written approval to employ such persons. The Commissioner's approval must be requested in the initial application or annual license renewal form and such approval will not be unreasonably withheld. The authorization to employ persons under eighteen (18) years of age must be clearly stated on the retail liquor license.

3.1.~~c~~d.4. The age restrictions in this section apply to the minor children of the licensee.

3.1.~~d~~e. A licensed retailer may purchase any equipment deemed necessary to the operation of the retail ~~liquor store~~ outlet and in so doing may enter into appropriate contracts and financing agreements;

3.1.~~d~~e.1. ~~Att~~The Commissioner~~'s~~ has discretion to purchase or authorize another person to purchase, all or any portion of the liquor displayed inventory or inventory of ~~the~~a retail licensee~~,~~. ~~t~~The creditor of the retail licensee or the retail licensee shall sell the inventory as directed by the Commissioner, and upon the terms determined by the Commissioner. The creditor will be paid the price of the sale of the retail ~~liquor store~~ outlet's displayed inventory and inventory.

3.1.~~d~~e.2. The creditor is required to pay the applicable shipping and handling charge set by the Commissioner.

3.1.e.3. A creditor, when foreclosing on the assets of a licensed retailer, is required to abide by W. Va. Code §60-3A-29.

3.2. A licensed retailer is required to purchase all distilled spirits and fortified wines or West Virginia product ~~through~~ from the Commissioner. However, nonintoxicating beer, nonintoxicating craft beer, port, sherry and Madeira wines, wine other than fortified wine and other alcoholic liquors which are not distilled spirits shall be purchased through a manufacturer or distributor ~~authorized~~ licensed to do business within this state.

3.3. A licensed retailer may only sell alcoholic liquors which are listed as West Virginia product and which have been purchased from the Commissioner, wine other than fortified wine which was purchased from a licensed distributor or licensed farm winery, including port, sherry and Madeira wine, ~~and~~ nonintoxicating beer and nonintoxicating craft beer purchased from a licensed manufacturer or distributor. Any violation of this section may result in the immediate suspension or revocation of a retailer ~~liquor store~~ outlet's license.

3.3.a. Every licensed retailer shall maintain records of all purchases, sales, receipts~~,~~ and other pertinent papers required by the Commissioner. All records shall be preserved for at least four (4) years. The Commissioner may inspect the books, accounts and records of any licensed retailer relating to the purchase and sale of any alcoholic liquors and examine, under oath, any officer, agent or employee of any licensed retailer. The Commissioner may require the production, within this state, at the time and place he may designate, of any books, accounts, papers or records kept within or without the state, or verified copies in lieu thereof for the purpose of examination by the Commissioner.

3.3.b. Every retail licensee must keep a record in book form showing the date all West Virginia product, alcoholic liquors, wine and beer were received on his or her premises, and from whom the product was received. In addition a retail ~~liquor store~~ licensee shall maintain records showing the merchandise code and quantity for each sale to a religious organization or to a private club as defined in W. Va. Code §60-7-2(a). In the case of sales to a private club, the retail ~~liquor store~~ licensee must identify each club by name, address and ABCC license number, and provide the full name of the person receiving the order.

3.3.c. Records required to be maintained pursuant to this subsection may not be destroyed, erased or altered for at least four (4) complete calendar years or until the year the retail licensee is audited and accepted by the Department ~~of Tax and Revenue~~.

3.4. Each retail licensee shall post in an open and prominent place within each retail outlet operated by such person a blood-alcohol chart in the form prescribed by W. Va. Code §60-6-24 ~~(Appendix I.)~~; and the fetal alcohol syndrome warning of birth defects in the manner prescribed by W. Va. Code §60-6-25 ~~(Appendix II.)~~, both in a form provided by the ABCC.

3.4.a. Each mixed retail liquor outlet shall post, at minimum, the signage as required by 175 CSR 5 in and around its restricted area, subject to the requirements and penalties of the rules and the code.

3.5. A licensed retail ~~liquor store~~ outlet may not:

3.5.a. Sell or permit the sale of more than ten (10) gallons of alcoholic liquor to a person at one time without approval of the Commissioner, except that:

3.5.a.1. A religious organization may purchase more than ten (10) gallons of wine for sacramental purposes;

3.5.a.2. This prohibition does not apply to purchases of private clubs as defined in W. Va. Code §60-7-3.

3.5.b. Sell or offer to sell or permit the sale or offer to sell any alcoholic liquor in other than the original package or container.

3.5.c. Sell, give or procure, or permit the sale, gift, or procurement of any alcoholic liquor for or to any person under age twenty-one (21) or who is visibly intoxicated.

3.5.d. Permit the consumption of any alcoholic liquors on the retail ~~liquor store~~ outlet premises by any person.

3.5.e. Alter, change or misrepresent or permit the alteration, change or misrepresentation of the quality, quantity or brand name of any alcoholic liquor.

3.5.f. Permit any person under age eighteen (18) to sell, furnish or give alcoholic liquor to any other person.

3.5.g. Purchase or otherwise obtain alcoholic liquors in any manner other than that authorized in W. Va. Code §60-3A-1, *et seq.*, and this rule.

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

3.5.i. Permit any person other than a retail licensee or a regular employee thereof to unpack, shelve, arrange, shift, or otherwise manipulate bottles or other receptacles containing distilled spirits, except for the purpose of purchasing same.

3.5.j. Sell or permit the sale of alcoholic liquors or fortified wine purchased from the ABCC at a price which is less than one hundred ten percent (110%) of the wholesale cost of the product. For the purposes of determining the minimum price, the retailer shall multiply the ABCC wholesale cost of the product contained in the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List or the ABCC Tradeshow Catalog, available on the ABCC website, by one hundred ten percent (110%).

3.5.k. Sell or permit the sale of alcoholic liquors or fortified wine through a window at a drive-in or drive-through retail establishment.

§175-1-4. Alcoholic Liquors - Ordering, Receiving and Paying.

4.1. The ABCC will provide to retail outlets or make available on the ABCC website, ~~each retail liquor store with~~ the ~~"Wholesale Spirits Catalog~~ Quarterly Spirits Price List" on a quarterly basis. The ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List includes all price changes imposed by distillers, importers, suppliers and others. The Commissioner shall provide price changes no more often than four (4) times per twelve (12) month period, on the effective dates of February 1, May 1, August 1 and November 1. Distillers, importers, suppliers and others are required to provide notice of price increases at least sixty (60) days prior to the beginning of the next quarter. Failure to provide advance notice of price changes may result in the Commissioner delisting certain or all of the products of the noncompliant distiller, importer, supplier or other purveyor of alcoholic liquors. The Commissioner will provide a licensed retail ~~liquor store~~ outlet with an updated copy of the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List approximately two weeks in advance of each effective date or make it available on the ABCC website.

4.1.a. In addition to complete West Virginia product information and pricing structure, the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List will contain all alcoholic liquor products normally listed and available from the ABCC. Further pricing is disseminated by the annual publication of the ABCC Tradeshow Catalog with pricing as submitted by manufacturers or suppliers for wholesale sales at the annual ABCC Tradeshow to licensed retailers for his or her retail outlet. Following is a line by line explanation of ~~the~~ information in the Quarterly Spirits Price List and the ABCC Tradeshow Catalog ~~spirits catalog~~.

4.1.a.1. "Class Code." This line indicates the type of product in the respective listing; i.e., "bottled-in bond." Products are listed alphabetically and by ascending size within their respective class.

4.1.a.2. Column 1 - "Brand Name." An abbreviated twenty-five (25) character description of the distilled spirit.

4.1.a.3. Column 2 - "Unit Size." The product bottle size is listed in metric measurement.

Metric Conversion Table

Metric Size	Converted to Ounces
.50 ml.	1.7 oz.
.200 ml.	6.8 oz.
.375 ml.	12.7 oz.
.500 ml.	16.9 oz.
.750 ml.	25.4 oz.
1. Liter	33.8 oz.
1.75 Liter	59.2 oz.

4.1.a.4. Column 3 - "Proof." Indicates the alcoholic proof of the product.

4.1.a.5. Column 4 - "Case Pack." Indicates the number of bottles in a full case.

4.1.a.6. Column 5 - "Merchandise Code." This is the code number which identifies the product and is to be used when ordering from ABCC. The number can range from one (1) to four (4) digits in length.

4.1.a.7. Column 6 - "Case Price

Wholesale." The wholesale price charged for a full case.

4.1.b. The Commissioner will correct any mischarges due to an error in the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List or the ABCC Tradeshow Catalog at the earliest possible date after discovery of the error.

4.2. Special order spirits.

4.2.a. The ABCC warehouse does not stock all West Virginia product and spirits brands or ~~spirit~~ sizes at the ABCC warehouse. Those brands or sizes must be ordered through the Special Order Program. Any spirit product ordered through the Special Order Program must be ordered in case lots only.

4.2.b. A licensed retail ~~liquor store~~ outlet must use the "Special Order" form, developed and provided by the ABCC, to order non-listed alcoholic liquors.

4.2.c. The Commissioner may charge a Uniform Special Order Fee not exceeding ten dollars ($10.00) per case for each case specially ordered.

4.2.d. When a Special Order is received at the ABCC warehouse, the order will be automatically added to the retail ~~liquor store~~ outlet's next order. The Special Order dollar amount including service and handling charges may be included in the dollar total provided to the retail ~~liquor store~~ outlet when it accepts delivery of the regular order in which the special order is included for delivery.

4.2.e. The Commissioner will not refund price, fees, or costs or accept returns on any Special Order spirits product unless the product is deemed to be unsalable by ABCC.

4.3. Official Notice of Price Change.

4.3.a. The ABCC's spirit suppliers are authorized to add product and price changes on a quarterly interval as provided by subsection 4.1., of this section. Retail ~~liquor store~~ outlets will be notified of wholesale price changes by an "Official Notice of Price Change." Price change notices generally will be provided to the licensed retailer two (2) weeks in advance of the change. Official Notice of Price Change will be provided, regardless of whether the change is permanent or temporary.

4.3.b. The price change sheet will contain the code number and corresponding West Virginia product that is changing price, the old wholesale price, new wholesale price and the effective date of the change. Any product ordered on or after the date of a price change will be invoiced at the new price until the product changes price again. The Official Notice of Price Change shall be used to update prices until an updated version of the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List or the ABCC Tradeshow Catalog is issued. The order date determines the wholesale price to be charged to the retailer.

4.4. Temporary price reductions. -- Special Purchase Allowances (SPA).

4.4.a. Distillers and importers may occasionally give temporary price reductions called special purchase allowances or SPAs on certain products for a limited period of time. The Commissioner may pass on these price reductions to retail ~~liquor store~~ outlets on a dollar-for-dollar basis.

4.4.b. The Commissioner will notify retail ~~liquor store~~ outlets approximately two (2) weeks in advance of upcoming temporary price reductions by an Official Notice of Price Change. The Commissioner will also issue a flyer containing the period of time that the product will be eligible for purchase at discount. The retail ~~liquor store~~ outlet must order during the temporary price reduction period to take advantage of the discount.

4.4.c. A SPA price reduction reflected in the ~~Wholesale Spirits Catalog~~ Quarterly Spirits Price List or a price reduction for the ABCC Tradeshow in the ABCC Tradeshow Catalog will be allowed on orders regardless of whether or not the retailer specifically requests it.

4.5. Payment for purchases.

4.5.a. A licensed retailer is required to pay for West Virginia product or alcoholic liquors prior to delivery to the retail ~~liquor store~~ outlet . Payment must be made by an electronic funds transfer (EFT) initiated by the ABCC on the business day following the retailer's order day, or by a money order, certified check or cashier's check which the ABCC must receive at least twenty-four (24) hours prior to shipping.

4.5.b. In order to utilize electronic funds transfers, the licensed retailer shall provide to the ABCC the necessary written authorization to debit the retailer's checking account for purchases of West Virginia product or alcoholic liquors at the time of initial licensing.

4.5.c. An EFT may be made only for the amount of the purchase.

4.5.d. The ABCC will not deliver West Virginia product or alcoholic liquors purchased by methods other than EFT if the money order, certified check or cashier's check is not received at least twenty-four (24) hours prior to the shipping date.

4.5.e. An EFT that is not completed due to nonsufficient funds will result in the ABCC ~~will~~ not processing any other ~~liquor~~ orders by the licensee until payment is received either by a valid EFT, money order, certified check or cashier's check. Any retail licensee with two or more EFTs with insufficient funds in any calendar year may be required by the Commissioner to purchase only West Virginia product or alcoholic liquors by payment in advance via money order, certified check or cashier's check.

4.5.f. When a licensed retailer picks up West Virginia product or alcoholic liquors at the ABCC warehouse, only a money order, EFT, certified check or cashier's check may be used as payment.

4.6. Ordering West Virginia product or alcoholic liquors.

4.6.a. Each retail ~~liquor store~~ outlet will be assigned a specific day of the week or a regular order day to order ~~alcoholic liquors~~ from the ABCC. West Virginia product or ~~A~~alcoholic liquors ordered on Monday or Tuesday will be delivered on the following Wednesday or Thursday, respectively, and alcoholic liquors ordered on Thursday or Friday will be delivered on the following Monday or Tuesday, respectively. Additional days will be added to the delivery schedule for any week in which a holiday occurs. The ABCC will notify the licensed retail ~~liquor store~~ outlet of such amendments. Extenuating circumstances may also occasionally adjust the order day schedule for a week.

4.6.b. The Commissioner may modify the time of the day and the days of the week during which alcoholic beverages may be ordered from the ABCC. Notice shall be provided to each retailer at least ~~thirty~~ ten (~~3~~10) days prior to the changes taking effect.

4.6.c. Orders for West Virginia product or alcoholic liquors must be made by licensed retailers utilizing the ABCC's web or other internet based ordering system. Only during emergency situations, as authorized by the Commissioner, are licensed retailers permitted to place telephone or fax orders with the ABCC placed ~~by telephone~~ between the hours of 8:30 a.m. and 3:30 p.m. on the assigned order days or as otherwise required by the Commissioner. Orders will not be accepted after 3:30 p.m. Orders may be tape recorded or otherwise documented when received.

4.~~7~~6.d. A licensed retailer ~~retail liquor store~~ is able to order using ABCC's web or other internet based ordering system in advance of the retail outlet's regular order day and may change an order at any time up to 2:30 p.m. of the retail ~~liquor store~~ outlet 's regular order day.

4.6.e. The ABCC ~~will~~ shall not deliver ~~an~~ regular or special order for fewer than twenty-five (25) cases of West Virginia product or alcoholic liquors to a licensed retailer. Any order not amounting to 25 cases will not be delivered and the order will be held until such time the licensed retailer's regular order amounts to twenty-five (25) cases or more. Upon approval of the Commissioner, a licensed retailer may purchase with a money order, certified check or cashier's

check delivered to the ABCC offices and pick up at the ABCC warehouse a properly placed regular order on the retail outlet's regular delivery day that is more than five (5) cases and less than twenty-five (25) cases.

4.6.f. ~~Telephone o~~ Order placement procedure.

4.6.f.1. The licensed retailer ~~retail liquor store~~ must enter its order in the ABCC's web or other internet based ordering system either in advance of the licensed retailer's regular order day or between 8:30 a.m. and 3:30 p.m. on the licensed retailer's regular order day. The licensed retailer is responsible to verify the accuracy of the West Virginia product or alcoholic liquor codes entered in the ABCC's web or other internet based ordering system. In emergency situations, as authorized by the Commissioner, the licensed retailer will be directed to call the Order Department at ~~the~~ a specific telephone or fax number ~~provided~~ to order between 8:30 a.m. and 3:30 p.m. on the assigned order day.

4.6.f.2. The licensed retailer must login to the ABCC's web or other internet based ordering system using its username, secure password and any other requirements to verify the licensed retailer's identity. In an emergency situation, as authorized by the Commissioner, ~~T~~the ~~retail liquor store~~ licensed retailer must provide, via telephone or fax, the ~~store's~~ licensed retailer's name and last four (4) digits of the account number.

4.6.f.3. The licensed retailer may check messages, browse new and existing West Virginia product listings and then place its order by selecting or entering full case merchandise codes and the quantity of full cases in the order section of the ABCC's web or other internet based ordering system. In an emergency situation, as authorized by the Commissioner, ~~F~~full cases must be ordered , via telephone or fax, first by giving first the merchandise code from the catalog and then the quantity of full cases.

4.6.f.4. The ABCC will give the ~~retail liquor store~~ licensed retailer a dollar total of delivered cost when the order has been placed, a confirmation that all items are in the ABCC warehouse and available for shipment and an invoice number for the order. The ~~retail liquor store~~ licensed retailer may reorder out-of-stock product on its next regular order date. The licensed retailer must verify the accuracy of all orders before finalizing its West Virginia product selections as to case code, quantity, size, flavor and any other distinguishing characteristic. All orders are final when entered by the licensed retailer and the licensed retailer will be charged accordingly or its accounts deducted electronically.

4.6.g. Order pick-up procedure ("will-call").

4.6.g.1. A ~~retail liquor store~~ licensed retailer may order alcoholic liquors and pick up its order at the ABCC warehouse. This procedure is available only as a supplement to the regular ordering procedure and may not be used to circumvent the regular ordering procedure. The Commissioner may assess penalties against any licensed retailer abusing the order pick-up procedure.

4.6.g.2. The ABCC will sell West Virginia product or alcoholic liquor only ordered for pick up in full case lots.

4.6.g.3. A ~~retail liquor store~~ licensed retailer must order items for pickup between the hours of 8:30 a.m. and 3:30 p.m. All orders will be processed for pickup on the following work day.

4.6.g.4. When ordering, the ~~retail liquor store~~ licensed retailer must provide the store name and account number.

4.6.g.5. The ~~retail liquor store~~ licensed retailer must pay for the order, by prior to loading, completing payment by money order, EFT, certified check or cashier's check.

4.6.g.6. No claim for breakage or shortage will be honored after the order has been loaded. The licensed retailer shall give to the warehouse a signed receipt, "Invoice, State of West Virginia Alcohol Beverage Control Administration" ~~(Appendix III.)~~, signifying acceptance of the order.

4.7. Delivery of West Virginia product or alcoholic liquors.

4.7.a. The ABCC will deliver Monday, Tuesday, Wednesday, ~~and~~ Thursday, and Friday on a regular basis. Orders will generally be delivered between the hours of 6:00 a.m. and 6:30 p.m., depending upon the ~~retail liquor store~~ licensed retailer's assigned regular ordering day and the distance of the retail ~~liquor store~~ outlet from the ABCC warehouse. Deliveries will be made only to the retail ~~liquor store~~ outlet and not to a warehouse or other location where West Virginia product or alcoholic liquors are stored. The Commissioner may, for good cause shown, permit a ~~retail licensee~~ licensed retailer holding three or more private club licenses to receive and store West Virginia product or alcoholic liquors at warehouses or sites off premises.

4.7.b. Transport drivers ~~will~~ must assist in unloading the alcoholic liquors at the licensed retailer's retail ~~liquor store~~ outlet. The order must be placed inside the door of the retail ~~liquor store~~ outlet.

4.7.c. The transport driver will provide the retail ~~liquor store~~ outlet with a complete set of Invoice Forms so that the retail ~~liquor store~~ outlet can check the delivery for accuracy. All licensed retailers must verify the accuracy of the delivered order and acknowledge the verification of the order. Failure to do so could result in the Commissioner denying returns for misordered West Virginia product or alcoholic liquors. All alcoholic liquors must be kept separate from the ~~store~~ retail outlet's normal reserve until the delivery is completed and checked for accuracy. "Dry" breakage claims or other defects discovered after the driver has left will not be accepted unless reported to the ABCC (on the ABCC's form) within twenty-four (24) hours after delivery to the retail ~~liquor store~~ outlet and then only when the claim complies with any additional requirements provided in subsection 4.9 of this section. Except for concealed shortages or dry breakage, no claims for shortages or breakage will be allowed if the broken or shorted goods are not identified and noted on the Invoice Form before the driver has left the retail ~~liquor store~~ outlet.

4.7.d. Both the transport driver and the authorized representative of the retail ~~liquor store~~ outlet must sign the Invoice Form after it has been checked and any amendments or corrections made. The transport driver will return any claim made for breakage, shortage and overage on the Invoice Form, Exception Section, and Retailer Claim Form ~~(Appendix IV.)~~ to the ABCC warehouse.

4.7.e. Delivery Breakage. -- Any product that is broken during delivery or during unloading will be the responsibility of the transport driver, who will complete the "Invoice Exception" portion of the Invoice Form detailing the breakage, a copy of which will be retained by the retail ~~liquor store~~ outlet. The Invoice Exception will be processed by the ABCC and a credit memo will be applied to the next order after the claim has been approved.

4.7.f. Short Delivery. -- This occurs when a case that was ordered is not delivered. The transport driver and the retailer will complete their sections of an Invoice Exception Form for the shortage and they will also complete a Retailer Claim Form ~~(Appendix V.)~~. A copy of these forms will be retained by the transport driver and the retailer. The ABCC will process the Invoice Exception and apply any applicable credit memo to the retail ~~liquor store~~ outlet's next order.

4.7.g. Over Delivery. -- Returned to Warehouse. An over delivery will be returned to the warehouse. The transport driver will complete the Invoice Exception portion of the Invoice Form and return the overage to the ABCC warehouse. There will be no credit in this instance because the retail ~~liquor store~~ outlet was not billed for the product on the invoice.

4.7.h. No further changes may be made after all invoices and Invoice Exceptions have been signed.

4.8. Misordered product and defective product discovered after delivery.

4.8.a. Returns of product received in error due to wrong order number or not having been ordered will be authorized if the following procedures are adhered to:

4.8.a.1. The ~~retail liquor store~~ licensed retailer must notify the ABCC warehouse of a product received in error within twenty-four (24) hours following the date of delivery. Claims made after twenty-four (24) hours following delivery will not be approved. The transport driver is not authorized to return items on any day except the day delivery actually occurred.

4.8.a.2. The licensed retailer may return the entire quantity of the misordered product.

4.8.a.3. The licensed retailer may not return "Special Orders," "Decanter Collector Series" or one-time buy offerings.

4.8.a.4. Appropriate warehouse personnel will schedule pickup of the alcoholic liquors to be returned.

4.8.a.5. The driver, when picking up the misordered product, will verify the code and quantity, leave a copy of the Invoice Form and Retailer Claim Form with the retail ~~liquor store~~ outlet and return the misordered product to the warehouse.

4.8.a.6. The ABCC will process the claim and apply a credit memo to the ~~retail liquor store's~~ licensed retailer's next order after the claim has been approved.

4.8.b. Concealed shortage.

4.8.b.1. To receive credit for bottles missing inside full case, the ~~retail liquor store~~ licensed retailer must save the original carton in which the product was delivered. Credit will not be issued if the carton is unavailable for inspection by the ABCC.

4.8.b.2. The ABCC will dispose of the carton and record the concealed shortage on a "Concealed Shortage and Defective Merchandise" report.

4.8.b.3. The ABCC representative will provide a copy of the Invoice Form and Retailer Claim Form to the ~~retail licensee~~ licensed retailer.

4.8.b.4. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.8.c. Dry breakage.

4.8.c.1. To return and receive credit for breakage discovered inside full case the ~~retail liquor store~~ licensed retailer must return the breakage to the ABCC warehouse:

4.8.c.1.A. The neck of the broken bottle with cap/seal, label intact, any piece of glass where the seal or symbol is recognizable, or any label. The licensed retailer must follow shipping instructions for glass and shards of glass that may be dangerous.

4.8.c.1.B. The carton in which the breakage was discovered.

4.8.c.1.C. No credit will be issued without the above-mentioned items being available for inspection by the ABCC.

4.8.c.2. The ABCC will dispose of the carton and bottle neck and record the breakage on a "Concealed Shortage and Defective Merchandise" report.

4.8.c.3. The ABCC will provide the ~~retail liquor store~~ licensed retailer with a copy of the Invoice Form and Retailer Claim Form.

4.8.c.4. The ABCC will process the claim and apply a credit to the licensed retailer's next order after the claim has been approved.

4.8.d. Defective or spoiled merchandise.

4.8.d.1. To obtain a credit for a product discovered by the ~~retail liquor store~~ licensed retailer or returned by a consumer as unsalable (or unused portion) the ~~retail liquor store~~ licensed retailer must return the product to the ABCC warehouse. No credit will be issued if the product is not returned to the ABCC warehouse accompanied by an Invoice Form and Retailer Claim Form.

4.8.d.2. The ABCC will dispose of the unsalable product and apply a credit memo to

the ~~retail liquor store~~ licensed retailer's next order. The ABCC will process the claim and apply a credit to the next order after the claim has been approved.

4.8.e. Wrong product in case.

4.8.e.1. To obtain a credit for a mismarked case the ~~retail liquor store~~ licensed retailer must set aside and return the case and the entire contents to the ABCC warehouse.

4.8.e.2. The ABCC will send all documentation, Invoice Form and Retailer Claim Form, to the warehouse where pickup of the mismarked case from the ~~retail liquor store~~ licensed retailer will be scheduled as soon as possible.

4.8.e.3. When the transport driver picks up the mismarked case, a copy of the Invoice Form and Retailer Claim Form, will be left at the retail ~~liquor store~~ outlet.

4.8.e.4. The ABCC will process the claim and a credit will be applied to the ~~retail liquor store~~ licensed retailer's next order after the claim has been approved.

4.9. Credit pricing policy.

4.9.a. The ABCC will make every attempt to issue credit based on the invoice price the ~~retail liquor store~~ licensed retailer was charged for that product. In the event that such price cannot be determined, the ~~retail liquor store~~ licensed retailer will be credited using the price found on the most recent invoice containing that particular product. If the actual purchase price or the most recent price paid by the ~~retail liquor store~~ licensed retailer cannot be determined, the current wholesale price will be used for credit purposes.

4.9.b. The ABCC is not responsible for any breakage, shortage or spoiled product which was caused by the owner/manager, employees or customers of a retail ~~liquor store~~ outlet.

§175-1-5. Manufacturer Prohibitions.

5.1. Improper inducements. -- Federal and state law prohibits a manufacturer from providing inducements, directly or indirectly, to any licensed retailer to purchase alcoholic liquors from the manufacturer to the exclusion, in whole or in part, of products sold or offered for sale by another manufacturer. Prohibited inducements include:

5.1.a. Acquiring or holding any interest in any license with respect to the retail ~~liquor store~~ outlet or any other premises which is owned, occupied or used in any manner by the licensed retailer or his or her immediate family;

5.1.b. Acquiring any interest in real or personal property which is owned, occupied, or in any manner used by the licensed retailer or his or her immediate family in the conduct of the retail ~~liquor store~~ outlet or any other of his or her businesses;

5.1.c. Furnishing, giving, renting, lending, or selling to the licensed retailer or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value, except that a manufacturer may furnish to a licensed retailer items of nominal value for in-store display or sales purposes for use only within the licensed retail ~~liquor store~~ outlet.

5.1.d. Paying or crediting the licensed retailer or his or her immediate family for any advertising, display, or distribution services;

5.1.e. Guaranteeing any loan for the repayment of any financial obligation of the licensed retailer or his or her immediate family; or

5.1.f. Requiring the licensed retailer to take and dispose of a certain quota of any distilled spirits.

5.2. Interest in the retail ~~license~~ outlet. -- A manufacturer may not acquire or hold any interest in any license required to be obtained by the licensed retailer or his or her immediate family, with respect to the retail ~~liquor store~~ outlet or any other premises which are owned, occupied or in any manner used by the licensed retailer or his or her immediate family. This prohibition applies equally to:

5.2.a. The licensed retailer's ~~liquor~~

~~store's~~ officers, partners, employees, other representatives, and their immediate family;

5.2.b. Any separate corporation in which the manufacturer or its officers, partners, employees or other representatives, and their immediate family hold any ownership interests or with which such persons are otherwise affiliated.

5.3. Interest in real or personal property of the licensed retailer.

5.3.a. A manufacturer may not acquire or hold any interest in real or personal property which is owned, occupied, or in any manner used by the licensed retailer or his or her immediate family in the conduct of the retail ~~liquor store~~ outlet or of other businesses of the licensee and his or her immediate family. This prohibition also applies to:

5.3.a.1. Any interest acquired by the manufacturer's corporate officials, partners and employees or other representatives, or their immediate family; and

5.3.a.2. To any interest which is acquired by a separate corporation in which the manufacturer or its officers, partners, employees or other representatives, or their immediate family hold any ownership interest or in which they are otherwise affiliated.

5.3.b. A manufacturer may not acquire a mortgage on a licensed retailer's real or personal property or on the real or personal property of the licensed retailer's immediate family.

5.3.c. A manufacturer may not rent display space or shelf space at a retail ~~liquor store~~ outlet.

5.4. Furnishing things of value.

5.4.a. A manufacturer may not furnish, give, rent, or lend to a licensed retailer or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value. The prohibition does not apply to sales of goods by a manufacturer to a licensed retailer of goods that are to be resold to the general public and which are not alcoholic liquors so long as the licensed retailer pays the normal sales price for the goods.

5.4.a.1. This prohibition also applies to any similar activity which occurs through a third party, such as a retailer association or display company, where the benefits resulting to the licensed retailer may be considered as providing the licensed retailer with a thing of value without the payment of an appropriate purchase price.

5.4.a.2. This prohibition does not apply to signs and other display-related materials that are of negligible monetary value. As long as the manufacturer or retailer has prior written approval from the Commissioner.

5.4.b. A manufacturer must sell any equipment, supplies or fixtures to a licensed retailer at the current market value and may not provide a special price advantage for purchasing from one manufacturer as opposed to another manufacturer.

5.4.c. A manufacturer may not provide any assistance (financial, legal, administrative or influential) to a licensed retailer in acquiring the license required to operate a licensed retail ~~liquor store~~ outlet.

5.4.d. A manufacturer may not furnish any exterior advertising signs, but may provide interior signs to the licensed retailer. The manufacturer may advertise by billboards which display alcoholic liquors, wine or nonintoxicating beer, but may not identify any licensed retailer in or on the advertisement.

5.4.e. A manufacturer may not furnish things of value to the licensed retailer at less than the normal sale price, such as nonalcoholic mixers and pouring racks which the licensed retailer may market or sell in his or her business.

5.5. Paying for advertising, display or distribution service. A manufacturer may not provide a licensed retailer with free advertisement, exterior display or distribution services, or any similar types of services.

5.6. Quota sales. A licensed retailer may not be required to purchase any alcoholic liquors in

order to purchase nonalcoholic liquors or other products from a manufacturer.

5.7. Other.

5.7.a. A manufacturer may not touch, disturb or otherwise interfere with the product or displays of another manufacturer.

5.7.b. No person except a licensed manufacturer's representative may contact a licensed retailer, or any employee thereof, or enter a retail ~~liquor store~~ outlet for the purpose of:

5.7.b.1. Selling or offering to sell;

5.7.b.2. Soliciting, negotiating or promoting the sale of alcoholic liquor or distilled spirits; or

5.7.b.3. Conducting a survey, study or similar activity pertaining to the sale, distribution or availability of alcoholic liquors or distilled spirits.

§175-1-6. Advertising.

6.1. General prohibition. -- All advertising of West Virginia product or alcoholic liquor which encourages intemperance, makes the consumption of alcoholic liquor appear to be glamorous, is lewd or obscene, induces minors to purchase, or tends to deceive or misrepresent, is prohibited. Federal law which provides guidelines relative to acceptable and prohibited advertising of alcoholic liquors must be followed.

6.2. Permissible media. -- Printed advertising of West Virginia product or alcoholic liquor ~~in West Virginia~~ shall be limited to billboards, newspapers, magazines and similar publications. Radio and television may not be utilized to advertise alcoholic liquors.

6.3. Application. -- No person engaged in business as a producer, processor, broker, manufacturer, bottler, importer, wholesaler or retailer of alcoholic liquors or wine, directly or indirectly or through an affiliate, may publish or disseminate or cause to be published or disseminated in any billboard, newspaper, magazine or similar publication any advertisement of alcoholic liquors or wine, unless the advertisement is in conformity with this rule. This prohibition does not apply to the publisher of a newspaper, magazine or similar publication or the standardized outdoor advertising company which owns a billboard, unless such publisher or outdoor advertising company is engaged in business as a producer, manufacturer, bottler, importer, wholesaler or retailer of alcoholic liquors or wine, directly or indirectly or through an affiliate.

6.4. Mandatory statements.

6.4.a. Responsible advertiser. -- An advertisement for alcoholic liquors shall state the name and address of the producer, manufacturer, bottler, importer or wholesaler responsible for its publication.

6.4.b. Class, type and distinctive designation. -- An advertisement for alcoholic liquors shall contain a conspicuous statement of the class and type or other designation of the product corresponding with the complete designation which appears on the brand label of the product.

6.4.c. Alcoholic content. -- An advertisement shall state the alcoholic content of the product advertised in the manner and form the information appears on the label.

6.4.d. Percentage of neutral spirits and name of commodity. -- An advertisement of distilled spirits (other than cordials, liqueurs and specialties) produced by blending or rectification, if neutral spirits shall state the percentage of neutral spirits used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which the information appears on the labels of the product advertised. An advertisement of neutral spirits or of gin produced by a process of continuous distillation, shall state the name of the commodity from which the neutral spirits or gin have been distilled substantially in the manner and form in which the information appears on the label.

6.4.e. "Line" or "Brand" advertisements.

-- An advertisement that does not mention a specific product but merely refers to a class of distilled spirits such as "Whiskey" or refers to several classes of distilled spirits (such as "Whiskey," "Brandy," "Rum," "Gin," "Liquor," etc.) marketed under a single brand, the only information required by subsection is the name and address of the responsible advertiser.

6.5. Lettering. Statements required by this rule to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible. In particular:

6.5.a. Required information shall be stated against a contrasting background and in type or lettering that is at least the equivalent of eight (8) point type.

6.5.b. Required information shall be stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

6.5.c. Where an advertisement relates to more than one product, the required information shall appear in a manner as to clearly indicate the particular products to which it is applicable.

6.5.d. Required information may not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6. Prohibited statements. -- Generally.

6.6.a. Restrictions. -- An advertisement may not contain:

6.6.a.1. Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards that were not given on a competitive or comparative basis is prohibited;

6.6.a.2. Any statement that is disparaging of a competitor's product. For example, an advertisement may not contain statements such as "Contains no neutral spirits or alcohol" or "This rum will not turn dark in the bottle;"

6.6.a.3. Any statement, design, device or representation that is obscene, lewd or indecent;

6.6.a.4. Any statement, design, device or representation of, or relating to, analyses, standards or tests, regardless of truth, which is likely to mislead the consumer; For example, an advertisement may not contain a statement such as "Analyzed by the laboratory and found to be pure and free from deleterious ingredients," or "Tested and approved. Signed by the Research Institute;"

6.6.a.5. Any statement, design, device or representation of, or relating to, any guaranty, regardless of truth, that is likely to mislead the consumer. However, nothing in this section prohibits the use of any enforceable guaranty in substantially the following form:

> "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."
>
> (Blank to be filled in with the name of person making guaranty.)

6.6.a.6. Any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government unless the such statement is required or specifically authorized by the laws or regulations of such government; if a municipality, county, state or federal permit number is stated, the permit number may not be accompanied by any additional statement relating thereto.

6.6.b. Statements inconsistent with labeling. -- An advertisement may not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling;

6.6.c. Curative and therapeutic effects. -- An advertisement may not contain any statement, design or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular or

tends to create a misleading impression. For example, advertisements may not contain statements such as "_____ is good for you" or "Conducive to well-being;"

6.6.d. Place of origin. -- An advertisement may not represent that the distilled spirits were manufactured in, or imported from, a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer.

6.6.e. Flags, seals, coats of arms, crests and other insignia. -- No advertisement may contain any statement, design, device or pictorial representation of, or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American Flag, any state flag or any emblem, seal, insignia or decoration associated with any such flag or entity. No advertisement may contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for under the supervision of, or in accordance with the specifications of the government, organization, family or individual with whom such flag, seal, coat of arms, crest or insignia is associated.

6.7. Prohibited statements -- distilled spirits.

6.7.a. Restrictions - An advertisement for distilled spirits may not contain:

6.7.a.1. The words "Bond," "Bonded," "Bottled In Bond," "Aged In Bond" or phrases containing these or synonymous terms, unless the words or phrases appear upon the label of the distilled spirits advertised and are stated in the advertisement in the manner and form as they appear upon the label; and

6.7.a.2. Statements of age. -- An advertisement for distilled spirits may not contain any statement, design or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any statement, design or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label or an advertisement for rum that is four (4) years or more old may contain general inconspicuous age, maturity or other similar representations, e.g., "Aged In Wood," "Mellowed In Fine Oak Casks."

6.8. Prohibited statements. -- An advertisement for wine may not contain:

6.8.a. Any statement of bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. A statement of bonded wine cellar and bonded winery number may be made in the following form: "Bonded Wine cellar No. _____," "Bonded Winery No. _____," "B.W.C. No. _____," " B.W. No._____ ." No additional reference may be made nor may any use be made of such a statement that may convey the impression that the wine has been made or matured under United States government or state government supervision or in accordance with United States government or state government specifications or standards;

6.8.b. Any statement, design, device or representation which relates to alcoholic content or tends to create the impression that a wine is "Unfortified", has been "Fortified," has intoxicating qualities, or contains distilled spirits (except for a reference to distilled spirits in a statement of composition where such statement is required by this rule to appear as a part of the designation of the product).

§175-1-7. Transportation.

7.1. Transportation permits. Any person, including any common carrier hired by a direct shipper or a direct shipper as defined in W. Va. Code §60-8-1 *et seq.* and 175 CSR 4, who transports, for hire, any alcoholic liquors to be sold commercially in quantities in excess of one (1) gallon within, into or through the State of West

Virginia, shall first give a surety bond, approved by the Attorney General as to form and execution, and by the Commissioner as to sufficiency, payable to the State of West Virginia in the penalty of one thousand dollars ($1,000.00) on condition that the person will exercise the privileges granted by the permit in conformity with the provisions of the Liquor Control Act and the rules of the Commissioner. A bonded person who defaults on condition of the surety forfeits to the state school fund the sum of one hundred dollars ($100.00) for each breach, recoverable by the ABCC upon motion with ten (10) days notice in any court having jurisdiction of the parties. Each person transporting alcoholic liquors, in addition to the bond aforesaid, shall pay the Commissioner an annual fee of ten dollars ($10.00) for the first permit and one dollar ($1.00) for each duplicate permit issued. In the case of motor carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall accompany the alcoholic liquors at all times during transportation. In the case of air carriers and rail carriers for hire, a permit issued by the Commissioner under seal showing that the required bond has been given and the fee paid shall be filed in the principal office of such carrier in this state. Any person holding a transportation permit who transports any alcoholic liquors in violation of the rules and the code is subject to all penalties available in the rules and the code for each violation. Further, any person holding a transportation permit who transports product for an unlicensed direct shipper and who fails to verify that the direct shipper is licensed in West Virginia prior to shipment is subject to all penalties available in the rules and the code for each violation.

7.2. Any wine distributor or wine retailer, licensed pursuant to W. Va. Code §60-8-3, any private club licensed pursuant to W. Va. Code §60-7-5, any representative licensed under W. Va. Code §60-4-22, and any ~~retail licensee~~ licensed retailer licensed under W. Va. Code §60-3A-12, may by virtue of his or her license, transport within West Virginia any alcoholic beverages that are deemed to be transported in connection with the purpose for which such license was granted without a transportation permit issued by the Commissioner. All shipments by a direct shipper must be made in accordance with the direct shipping requirements in W. Va. Code §60-8-1 *et seq.* and 175 CSR 4.

7.3. A licensed retailer who operates more than one (1) retail ~~liquor store~~ outlet within a market zone may transfer alcoholic liquors only from one (1) retail ~~liquor store~~ outlet to another within the same market zone without obtaining written approval from the Commissioner. Two or more such transfers require prior written authorization by the Commissioner.

7.4. A licensed retailer who operates retail ~~liquor store~~ outlets in more than one (1) market zone may not transfer alcoholic liquors from one market zone to another without first obtaining written approval from the ABCC.

7.5. A licensed retailer, upon picking up alcoholic liquors at the ABCC warehouse, may transport them to the retail ~~liquor store~~ outlet for which the alcoholic liquors were purchased. The receipt provided by the ABCC warehouse is the written approval provided by the ABCC.

7.6. All permits provided for in this rule shall be issued for the period of the calendar year, and the fee therefor shall not be prorated.

7.7. A person may transport in this state up to ten (10) gallons of alcoholic liquors not for resale. Any amount of alcohol to be transported that is in excess of ten (10) gallons requires prior written authorization of the Commissioner.