

175CSR4

TITLE 175  
LEGISLATIVE RULE  
ALCOHOL BEVERAGE CONTROL COMMISSIONER

SERIES 4  
SALE OF WINE

**§175-4-1. General.**

1.1. Scope. -- This rule establishes the procedure for the supply, distribution and retail sale of wine in the State of West Virginia by retailers, grocery stores, direct shippers, wine specialty shops, private wine bed and breakfasts, private wine restaurants and private wine spas licensed to sell West Virginia wines.

1.2. Authority. -- W. Va. Code §§60-2-16, 60-8-1 et seq., 60-8-23 and 29A-3-1 et seq.

1.3. Filing Date. -- June 6, 2014.

1.4. Effective Date. -- July 6, 2014.

**§175-4-2. Definitions.**

Definition of terms used. -- As used in this rule, unless the context clearly requires otherwise, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1. "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.a. Any label, affixed to a container of alcoholic liquors or any individual covering, carton or other wrapper of the container, or

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

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

2.4. "Alcohol Beverage Control Commissioner" or "ABCC" or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his or her designee.

2.5. "Average Monthly Inventory" means the amount of food, food products and consumable supplies for the table which are maintained in the inventory of a licensed retailer. Average Monthly Inventory does not include stock or inventory of wine. Grocery stores which have no demonstrable history of inventory maintenance of such products on an average monthly basis, may not be licensed as a retailer until the applicant demonstrates such history for three (3) months prior to the date on which

licensure is granted. Applicants for licensure as a retailer whose business is primarily seasonal because of their association with or close dependence upon a lodge, resort or similar establishment may select any quarter during the twelve (12) months before application was made to demonstrate that the requisite inventory was maintained by the applicant for each month during such quarter. All other grocery stores applying for licensure as a retailer grocery store must demonstrate maintenance of the requisite inventory over the twelve (12) months period next preceding the year or part thereof for which licensure is sought.

2.6. "Average Monthly Sales" means the amount of food, food products and consumable supplies for the table sold by a licensed retailer "Average Monthly Sales" does not include sales of wine. A grocery store which has no demonstrable history of sales of such products on an average monthly basis may not be licensed as a retailer until the applicant can demonstrate such history for the three (3) months prior to the filing of the application. An applicant for licensure as a retailer whose business is primarily seasonal because of its association with or close dependence upon a lodge, resort or similar establishment may select any quarter during the twelve (12) months next preceding the month in which the application for licensure was filed to demonstrate the requisite sales level for each month during such quarter. All other grocery stores applying for licensure as a retailer must demonstrate the requisite sales over the twelve (12) month period next preceding the year or part thereof for which licensure is sought.

2.7. "Case" means any combination of packages with two or more wine bottles, enclosed in a box or fastened together by some other method, containing not more than nine liters of wine.

2.8. "Case lot" means a complete case of distilled spirits.

2.9. "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner or his or her designee.

2.10. "Department" means the West Virginia Department of Revenue.

2.11. "Direct shipper" means any winery, farm winery, supplier or retailer of wine that is licensed and in good standing in its domicile state who sells and ships wine up to a maximum of two (2) cases of wine per month directly to an adult West Virginia resident who is twenty-one years of age or over for such resident's personal use and consumption and not for resale. A "direct shipper" must obtain a direct shipper's license from the State of West Virginia and meet the requirements in West Virginia Code §60-8-1 *et seq.* and this rule.

2.12. "Distilled spirits" means ethyl alcohol, ethanol or spirits of 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, neutral spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than twenty-four percent (24%) of alcohol by volume is considered to be distilled spirits.

2.13. "Distributor" means any person whose principal place of business is within this state, and who:

2.13.a. makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or wine specialty shops;

2.13.b. sells or distributes nonfortified desert wine, port, sherry and madeira wines to wine specialty shops, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs or retailers under the authority of W. Va. Code §60-8-1 *et seq.* and actually maintains a warehouse in this state for the distribution of wine.

175CSR4

2.14. "Farm winery" means an establishment which:

2.14.a. Manufactures in any year no more than fifty thousand gallons of

2.14.a.1. Table wine and/or nonfortified dessert wine exclusively by natural fermentation from grapes, other fruits, honey or other agricultural products containing sugar;

2.14.a.2. Port, sherry and Madeira wine matured in wooden barrels or casks, the alcohol content of which does not exceed twenty-two percent by volume; or

2.14.a.3. Any combination of subdivisions 1 and 2 of this subsection;

2.14.b. Grows or produces at least twenty-five percent of the raw products used to make wine on the premises of the farm winery; and

2.14.c. Imports no more than twenty-five percent of the raw products used to make the wine from any source outside this state.

2.15. "Food or a meal" means food served and provided by a licensee which totals, excluding beverage purchases, taxes, gratuity or other fees, at least fifteen dollars.

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

2.17. "Food or Foodstuffs Normally Associated with Wine" means food and food products but does not include:

2.17.a. Any product containing alcohol, other than wine, permitted to be sold at retail pursuant to W. Va. Code §60-8, including, but not limited to, nonintoxicating beer;

2.17.b. Soft drinks;

2.17.c. Tobacco and tobacco products, and other products associated with the use of tobacco; and

2.17.d. Any other product exempt from consumer sales and service tax.

2.18. "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 not fortified but which have an alcohol content by volume of at least fourteen and one-tenths percent (14.1%) and not more than sixteen percent (16%).

2.19. "Grocery Store" means any retail establishment, commonly known as a grocery store, supermarket or delicatessen, where food, food products and supplies for the table are sold for

consumption off the premises with average monthly sales (excluding sales of wines) of not less than three thousand dollars and an average monthly inventory (excluding inventory of wine) of not less than three thousand dollars. The term "grocery store" includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises with average monthly sales (excluding sales of wine) of not less than three thousand dollars and an average monthly inventory (excluding inventory of wine) of not less than three thousand dollars.

2.20. "Immediate family" means and includes, but is not necessarily limited to:

2.20.a. The 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, private wine bed and breakfast, private wine restaurant, or private wine spa who is not a partnership or corporation;

2.20.b. The spouse, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, uncle, aunt or cousin of each partner of a licensed retailer, private wine bed and breakfast, private wine restaurant, or private wine spa which is a partnership;

2.20.c. The spouse, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, uncle, aunt or cousin of each such director, officer or employee of a licensed retailer, private wine bed and breakfast, private wine restaurant, or private wine spa which is a corporation, the corporation's director, officer or employee.

2.21. "Importer" means a person who brings or carries goods from a foreign country for the purpose of sale in this country.

2.22. "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.

2.23. "Licensed retailer" means a person including, but not limited to: grocery stores, certain private wine restaurants and certain private clubs licensed in accordance with W. Va. Code §60-8-3(i) and (k); farm wineries when licensed as a retailer, wine specialty shop, or multi-capacity licensee; or wine specialty shops, all licensed in accordance with W. Va. Code §§60-3, 60-3A or 60-8 by the Commissioner to sell wine at retail to the public for off-premises consumption.

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

2.25. "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor or wine, among others and including but not limited to, a producer, broker, processor, bottler, importer, distiller, rectifier, winemaker or brewer.

2.26. "Multi-capacity winery or farm winery license" means a license which authorizes a winery or farm winery to operate as a retailer, wine specialty shop, a supplier and a direct shipper without obtaining a separate license for each capacity the winery or farm winery operates.

2.27. "Municipal Tax" means, for purposes of this rule, the tax imposed by any municipality upon purchases of wine pursuant to the provisions of W. Va. Code §8-13-7. "Municipal Tax" includes taxes imposed upon all purchases of wine made or consummated outside the corporate limits of any municipality under the provisions of W. Va. Code §60-3-9d.

## 175CSR4

2.28. "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry, commonly referred to as beer, lager beer, ale, and all other mixtures or preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers, all with no caffeine infusion or any other additives masking or altering the alcohol effect, containing at least one half of one percent (.5%) alcohol by volume, but not more than nine and six-tenths percent (9.6%) of alcohol by weight, or twelve percent (12%) by volume, whichever is greater, which is designated by W. Va. Code §11-16-3 to be nonintoxicating. The word "liquor" as used in W. Va. Code §60-1-1 *et seq.* does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

2.29. "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor or wine.

2.30. "Person" means any individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.31. "Post-off" means any temporary discount (irrespective of its denomination by the supplier) a supplier gives to a distributor which relates to a specific brand, class and type of wine or size thereof and which bears no relationship to the amount or quantity of wine purchased by the distributor from the supplier.

2.32. "Private club" means a corporation or association licensed as a private club in accordance with West Virginia Code article §60-7-1 *et seq.* and §60-8-1 *et seq.*

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

2.33.a. Is a partnership, limited partnership, corporation, unincorporated association or other business entity;

2.33.b. Provides meals on its premises to members and their guests as part of its general business purpose;

2.33.c. Is licensed under the provisions of article eight, chapter 60 of the West Virginia Code to serve wine on the premises to its members and their guests in conjunction with the serving of food or meals; and

2.33.d. Admits only duly elected and approved dues-paying members and guests while in the company of a member and does not admit the general public.

2.34. "Private wine restaurant" means

2.34.a. a business the principal purpose of which is serving meals on its premises to members and their guests and which:

2.34.a.1. Is a partnership, limited partnership, corporation, unincorporated association or other business entity;

2.34.a.2. Is licensed under the provisions of article 8, chapter 60 of the West Virginia Code to serve wine on its premises to members and their guests in conjunction with the serving of food or meals; and

## 175CSR4

2.34.a.3. Admits only duly elected and approved dues paying members and guests in the company of a member, and does not admit the general public.

2.34.b. A private club that satisfies the requirements of paragraphs 1, 2 and 3, subdivision a. of this subsection shall be considered a private wine restaurant.

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

2.35.a. Is a partnership, limited partnership corporation, unincorporated association or other business entity;

2.35.b. Provides meals on its premises to its members and their guests as part of its general business purpose;

2.35.c. Is licensed under the provisions of article 8, chapter 60 of the West Virginia Code to serve up to two glasses of wine on the premises to members and their guests in conjunction with the serving of food or meals; and

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

2.36. "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement. "Public place" does not include any of the above-named places or any portion or portions thereof which qualify and are licensed under Chapter 60 of W. Va. Code to sell alcoholic liquors for consumption on the premises.

2.37. "Retail liquor store" means a store established and operated under the authority of W. Va. Code §60-3 or W. Va. Code §60-3A for the sale of alcoholic liquor in the original package for consumption off the premises.

2.38. "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by principal, proprietor, agent or employee.

2.39. "Selling" includes solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.40. "Soft drink" means any product subject to taxation pursuant to W. Va. Code §11-19.

2.41. "Spirits" means any alcoholic liquor obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials and gin.

2.42. "Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor or other supplier of wine which sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

2.43. "Varietal wine" means any wine labeled according to the grape variety from which such wine is made."

## 175CSR4

2.44. "Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce such wine are harvested during a particular year or wines produced from the grapes of a particular harvest in a particular region of production.

2.45. "Wine" means any alcoholic beverage, including table wine, obtained by the natural fermentation of the natural content of grapes, other fruits or honey or other agricultural products containing sugar to which no alcohol has been added. The term "wine" does not include fortified wine or nonintoxicating beer as defined in article sixteen, chapter eleven of the West Virginia Code. For purposes of this rule, "wine" includes wine coolers and similar beverages containing not less than one-half of one percent (.5%) nor more than seven percent (7%) alcohol by volume (See Section 2.3. for alcohol content percentage).

2.46. "Wine accessories" means any product or item directly associated with the use and consumption of wine, e.g.: (1) Glasses, (2) carafes, (3) decanters, (4) wine racks, (5) books, magazines and other publications devoted principally to foods and wines, (6) napkins, (7) items or products similar in nature and/or use to any of the foregoing.

2.47. "Winery" means an establishment where wine is manufactured or prepared.

2.48. "Wine sampling" means a special event conducted at a licensed wine specialty shop's location during regular hours of business at which no more than three complimentary samples of wine, consisting of no more than one ounce each may be served, to any one consumer in one day. Persons serving complimentary samples must be 21 years of age or over and an authorized representative and employee of the licensed wine specialty shop. Only a licensed representative of a winery, farm winery, licensed distributor or licensed wine supplier may attend and educate at a wine sampling, but such licensed representative may not serve samples. No licensee, employee or representative may furnish, give or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a licensed farm winery or a licensed distributor.

2.49. "Wine specialty shop" means a licensed retailer who deals principally in the sale of table wine, certain nonfortified dessert wines, wine accessories and food or foodstuffs normally associated with wine and who:

2.49.a. Maintains a representative number of wines for sale in his or her inventory of which not less than fifteen percent (15%) are vintage of or vintage-dated wine by actual bottle count; and

2.49.b. Any other provisions of the West Virginia Code or this rule to the contrary notwithstanding, may maintain an inventory of port, sherry and Madeira wines, having an alcoholic content of not more than twenty-two percent (22%) alcohol by volume, which have been matured in wooden barrels or casks.

2.50. "Wine tasting" means an activity in which members of a wine taster's club, which has at least fifty duly-elected and approved dues-paying members in good standing, meet on the premises of a licensed wine specialty shop not more than one time per week either at a time when the premises are closed to the general public or in a segregated facility on the premises to which the general public is not admitted for the purpose of tasting and comparing different wines. Persons serving at the wine tasting must be 21 years of age or over.

### §175-4-3. Suppliers.

3.1. Licensing of suppliers and sales representatives. -- All suppliers are required to be registered and licensed by the Commissioner prior to entering into any sales transactions with a licensed West Virginia distributor. Every supplier must have a representative licensed to solicit or consummate sales in this state. A supplier must complete an Application for Representative's License, Alcohol Beverage Control Commissioner Form No. ABC-181, which form must be completed and acknowledged by a notary public in the manner provided in the form. The licensing of one (1) sales representative shall not preclude the required registration and licensure of other persons acting as sales representative for the same supplier.

3.2. Monthly report of supplier.

3.2.a. Every supplier must file with the Commissioner a properly completed monthly report stating the amount of wine, in liters or liter equivalents, it sold and shipped to licensed West Virginia distributors during the previous month. The monthly report must be filed before the sixteenth (16th) day of the month following the month for which the report is filed and shall be made on Monthly Summary Report of Total Liters Sold, Shipped and Delivered to Distributors, West Virginia Alcohol Beverage Control Commissioner Form and Wine Shipped Into the State of West Virginia State Tax Form WV/WNE-01. A supplier is required to file only one (1) monthly report even though the supplier may have more than one (1) licensed sales representative in the state.

3.2.b. A monthly report shall contain the following information:

3.2.b.1. The name and address of the supplier;

3.2.b.2. The name and address of the supplier's licensed West Virginia representative. If the supplier has more than one licensed representative, the supplier is required to report only the name and address of the licensed representative primarily responsible for the State of West Virginia. If all of a supplier's representatives are of equal status, the supplier may report the name and address of only one (1) representative;

3.2.b.3. The calendar month for which the report is being made;

3.2.b.4. The name, address and ABCC license number of every licensed West Virginia distributor to whom the supplier sold or delivered wine;

3.2.b.5. The total number of liters the supplier sold and delivered to each West Virginia distributor; and

3.2.b.6. The name and business telephone number of the person who prepared the report on behalf of the supplier.

3.2.c. All monthly reports shall be acknowledged before a notary public in the manner provided upon such form and shall be considered tax returns under article 10, chapter 11 of the West Virginia Code

3.2.d. At the time of shipment, the supplier shall forward to the Commissioner one (1) copy of the invoice of each shipment the supplier made to a licensed West Virginia distributor during the reporting period. The invoice shall identify the licensed West Virginia distributor to whom the shipment was delivered, the items shipped by label identification, the quantity of wine delivered, stated in liters, and the alcohol content of each item sold, shipped and delivered to the distributor.

3.2.e. The supplier shall file each monthly report in duplicate with the Tax Commissioner and the ABCC Commissioner. The supplier shall collect and remit to the Tax Commissioner at the close of each

## 175CSR4

month all taxes, including sales taxes, municipal taxes and liter tax, due to the State of West Virginia, together with the supplier's monthly return reflecting the taxes paid for all sales and shipments to residents in West Virginia. The supplier shall provide the ABCC Commissioner with a copy or a receipt of payment of the taxes. A supplier who fails to file a monthly report by the twenty-first calendar day of the month after the reporting period is subject to the penalties provided in article 18, chapter 60 of the West Virginia Code.

3.3. Post-offs permitted; limitations and restrictions. -- Post-offs are permitted subject to the limitations and restrictions of this section.

3.3.a. No supplier shall offer to any distributor in this state any post-off which is conditioned upon either:

3.3.a.1. A requirement that the distributor pass through such post-off to any retailer, or

3.3.a.2. That the distributor participate in such post-off in such a way that the distributor is required to match, either in whole or in part such post-off. Every post-off shall be offered under equal terms and conditions to every distributor carrying the product of the supplier to which the post-off applies.

3.3.a.3. Nothing herein prohibits a distributor from participating in any post-off offered by a supplier or from passing the post-off on to any licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa so long as the same satisfies requirements of this rule and so long as such post-off is passed on to all persons, in whole or in part, equally.

3.4. Prohibited supplier sales. -- No supplier, except a farm winery, may sell or furnish wine to a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa except through a licensed distributor or the Commissioner.

3.5. Bond. A supplier's license may not be issued until the applicant has executed a surety bond in the penal sum of ten thousand dollars (\$10,000), payable to the State of West Virginia. The surety of the bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia. The bond shall be conditioned on the payment of all fees and taxes prescribed by the law and on the faithful performance of, and compliance with W. Va. §60-8-1 *et seq.*, and the rules promulgated thereto. The bond shall be executed on a Wine Supplier Bond form as prescribed by the commissioner.

3.6. Duration of license. The annual licensing period shall begin on July 1 of the year for which an application for licensure is made and shall end on June 30 of the following year.

3.7. Fees

3.7.a. The annual fee for a supplier's license is one hundred fifty dollars (\$150). If the application for licensure is made at any time from July 1 through December 31, the applicant shall remit with the application the full license fee. If an application for licensure for the expiring fiscal year is filed at any time from January 1 through June 30, the applicant shall remit with the application one half (1/2) of the annual fee, or seventy-five dollars (\$75);

3.7.b. The annual fee for licensure as a supplier's representative is one hundred dollars (\$100). If the application for licensure is made at any time from July 1 through December 31, the applicant shall remit with the application the full license fee. If an application for licensure for the expiring fiscal year is filed at any time from January 1 through June 30, the applicant shall remit with the application one half (1/2) of the annual fee, or fifty dollars (\$50);

## 175CSR4

3.7.c. The annual fee is payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order. The Commissioner will refund any license fee paid by an applicant who fails to qualify for licensure.

3.8. Wine brand registration and review. No supplier, distributor or direct shipper may sell or ship wine to or within West Virginia until a licensed supplier or a licensed direct shipper has registered the wine brand and the corresponding labels of that brand with and paid all registration fees to the Commissioner.

3.8.a. The licensed supplier or direct shipper shall submit an application for wine brand registration on Wine Brand Registration, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-D. The application shall contain the following:

3.8.a.1. The name, address and West Virginia supplier or direct shipper license number of the applicant;

3.8.a.2. The name of any licensed West Virginia distributor to which the applicant will sell the wine brand;

3.8.a.3. The name of a licensed West Virginia representative of the applicant. If the applicant has more than one (1) licensed representative, it may give only the name of the representative dealing primarily with the West Virginia distributor;

3.8.a.4. The brand name of the wine to be registered and the name of the winery or farm which manufactured the wine;

3.8.a.5. The class and/or type of wine to be registered;

3.8.a.6. The alcohol content of the wine by volume;

3.8.a.7. The date of the registration application;

3.8.a.8. The signature and title of the person who completed the registration application form; and

3.8.a.9. Any other information the Commissioner may specify on the wine brand registration form.

3.8.b. The applicant shall submit the brand registration form to the Commissioner along with:

3.8.b.1. Unattached labels of all wines to be registered under the brand and any other information describing each label;

3.8.b.2. The Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA);

3.8.b.3. The TTB number; and

3.8.b.4. A fee of one hundred dollars (\$100.00) for each brand to be registered to be paid by certified check, cashier's check, business check or money order payable to the Alcohol Beverage Control Commissioner.

## 175CSR4

3.8.c. The applicant for registration is required to file only one (1) registration application for each brand of wine, regardless of the number of labels or the various sizes of the wine to be sold.

3.8.d. Before registering any brand of wine, the Commissioner shall review the brand's labels, including, but not limited to, the alcohol content, corporate or product information, marketing and advertising to determine whether the wine is intended to be marketed to persons under twenty-one years of age.

3.8.e. The Commissioner will refund any registration fee submitted for a wine brand that is not registered for sale in West Virginia.

3.8.f. Brand registration remains effective for three (3) years. During that time, the supplier or direct shipper must submit each new label added to the wine brand for review by the Commissioner before the label may be sold in West Virginia.

3.8.g. A supplier or direct shipper who fails to submit all labels, to register a wine brand, to obtain certification or to pay the registration fee or any licensee who sells or ships unregistered wine in West Virginia is subject to the penalties provided in article 8, chapter 60 of the West Virginia Code.

3.8.h. At the end of the three-year registration period, a supplier or direct shipper may renew its brand registration for an additional three years by:

3.8.h.1. Submitting a new application for registration;

3.8.h.2. Submitting or resubmitting all labels for each brand to be sold in or shipped to West Virginia;

3.8.h.3. Paying a one hundred dollar (\$100) renewal fee for each brand to be registered.

3.8.i. The Commissioner may remove any wine brand or label that is not renewed at the end of the registration period.

### 3.9. Primary Source.

3.9.a. Prior to selling, shipping or delivering any wine to a licensed distributor, a supplier must file a letter of primary source authorization with the Commissioner granting the distributor the right to distribute their brand or brands of wine in West Virginia.

3.9.b. All distributor terminations require a notice of termination to be sent to the distributor with a copy filed with the Commissioner subject to the requirements of this rule.

### **§175-4-4. Wine Distributors.**

4.1. Licensure application; form. -- The application for licensure as a wine distributor shall be made on a form designated "Application for Wine Distributor License, Alcohol Beverage Control Commissioner Form No. ABCC-WS-1," which shall be provided by the Commissioner.

4.2. Licensure application; content. -- The application for licensure as a wine distributor shall contain and include the following:

4.2.a. The name and address of applicant and whether the applicant is an individual, corporation, partnership, association or other business entity;

175CSR4

- 4.2.b. The business trade name of the applicant;
- 4.2.c. The exact location of the principal place of business;
- 4.2.d. The number and exact location of all warehouses to be operated by the applicant for the purpose of distribution of wine;
- 4.2.e. The date upon which the applicant began the operation of the business;
- 4.2.f. Whether the applicant is the owner of all business premises for which the license is issued, and if not, whether the applicant is the actual and bona fide lessee of any or all such premises, including the lessor's name and address for each business premises so leased;
- 4.2.g. Whether the applicant intends to carry on the business for which he or she is to be licensed personally or under his or her immediate supervision or direction, and if not, the name, age and address of the person who will manage or conduct the affairs of the distributorship;
- 4.2.h. Whether the premises for which the license is sought conforms to all applicable health and fire laws and regulations and to existing zoning ordinances;
- 4.2.i. Whether the applicant, if an individual, or whether any partner, member, officer, director or stockholder of the applicant holds or owns any interest in any licensed retailer, and if so, the extent and nature of such ownership;
- 4.2.j. If the applicant is an individual, a statement whether such applicant is a citizen of the United States, a bona fide resident of the State of West Virginia and the length of such residency and whether such applicant has attained the age of eighteen (18) years;
- 4.2.k. If the applicant is a partnership, association or other business entity, whether each member, is a citizen of the United States, a bona fide resident of the State of West Virginia and the length of such residency and whether such member has attained the age of eighteen (18) years;
- 4.2.l. If the applicant is a corporation, a statement whether the person who is or will be conducting or managing the business of the applicant is a citizen of the United States, resident of the State of West Virginia and whether such person has attained the age of eighteen (18) years;
- 4.2.m. Whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant:
- 4.2.m.1. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;
- 4.2.m.2. Has been convicted of a violation of the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application; or
- 4.2.m.3. Had any license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;
- 4.2.n. Whether the applicant has entered into any exclusive franchise agreement with any manufacturer, producer, processor, distributor or supplier of wine which grants the applicant the exclusive right within the State of West Virginia or within any given territory thereof to distribute the product or products of the manufacturer, producer, processor, distributor or supplier;

## 175CSR4

4.2.o. If the applicant is a corporation, the names, addresses and corporate title of all officers, which statement shall include the name, address and age of all persons having twenty percent (20%) or more of stock or beneficial interest in the applicant;

4.2.p. Termination provision requirement. -- In addition to the application, the applicant must file with the Commissioner a copy of any written agreement between the applicant and any manufacturer, winery, farm winery or supplier for inclusion in the distributor's file at the Commissioner's office. Unless the parties have provided otherwise in the written agreement, either party may terminate the agreement upon serving written notice of termination by certified mail to the Commissioner and all parties to the agreement at least ninety days (90) prior to termination. Once appropriate notice of termination has been received, the distributor may use the termination period to deplete its affected wine inventory or to reach a written agreement with the manufacturer, winery, farm winery or supplier to return unused salable wine inventory or receive payment for unused salable wine inventory. During the termination period, the manufacturer, winery, farm winery or supplier may not appoint a new distributor to sell its products in this state. For purposes of this subsection, "salable" means inventory fit for human consumption.

4.3. Licensure application; signature and acknowledgment required. -- All applications shall be signed by the applicant and shall be made under oath and acknowledged or verified. In the case of a partnership, the application shall be signed by each of the partners. In the case of a limited partnership, the application shall be signed by each of the general partners and each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members of the governing board shall sign. In the case of a corporation, each officer and director shall sign.

4.4. Monthly report of distributor; form; content.

4.4.a. Every distributor must furnish a properly completed monthly report of the quantity of wine purchased and received from suppliers and sold to licensed retailers, private wine bed and breakfasts, private wine restaurants and private wine spas. This quantity shall be reported in liters or liter equivalents. The report must be filed before the sixteenth (16th) day of the month next succeeding the month for which the report is made and shall be made on Distributor's Summary of Wine Purchases, Sales & Inventory, or form WV/DIS-01 provided by the Commissioner.

4.4.b. A monthly report shall contain the following information:

- 4.4.b.1. The name, address, and telephone number of the distributor;
- 4.4.b.2. The month for which the report is being made;
- 4.4.b.3. The beginning and ending wine inventory for the month;
- 4.4.b.4. The name, address and license number of each supplier from which deliveries were received;
- 4.4.b.5. The total number of liters of wine purchased or received, and the total number of liters wine sold or transferred to licensed retailers, private wine bed and breakfasts, private wine restaurants and private wine spa;
- 4.4.2.6. The total amount of wines rendered unsalable by reasons of breakage, leakage, spoilage, shortages and use as samples as reported on the Tax Commissioner's Form WV/BLS-01, or as otherwise required by the Tax Commissioner;

## 175CSR4

4.4.2.7. Any transfers of wine in or out of the distributorship;

4.4.2.8. The identification, business telephone number and signature of the person preparing the report on behalf of the distributor attesting under the penalty of perjury under state law that the report is true and correct; and

4.4.2.9. Such other information as the Commissioner requires.

Each monthly report shall be acknowledged before a notary public in the manner provided upon the form and shall be considered tax returns under W. Va. Code §11-10-1 *et seq.*

4.5. Invoices required; content. -- Each distributor shall forward to the Commissioner with the monthly report one (1) copy of all invoices of all sales made to licensed retailers, private wine bed and breakfasts, private wine restaurants and private wine spas during the month for which the report is made. The invoice shall identify the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa to which the distributor made sold to, the items sold by label identification and the quantity, stated in liters, and the alcohol content of each item sold.

4.6. Each monthly report must be filed in duplicate with the Tax Commissioner and the Commissioner. Distributors must report, collect, and remit all taxes, sales taxes, municipal taxes and the liter tax due to the state to the Tax Commissioner at the close of each month with the Distributor's monthly return and include the taxes paid for all sales and shipments to residents in West Virginia. The Tax Commissioner shall provide the Commissioner with a copy or a receipt of payment of the taxes. Failure to timely file the monthly reports within five calendar days before the sixteenth day of the month will subject the distributor to penalties under W. Va. Code §60-8-18.

4.7. Bond. -- No license may be issued to any applicant for licensure as a distributor until the applicant has executed a surety bond in the penal sum of ten thousand dollars (\$10,000), payable to the State of West Virginia. The bond shall be executed by a corporate surety authorized to transact business in the State of West Virginia. The bond shall be conditioned on the payment of all fees and taxes prescribed by the law and on the faithful performance of, and compliance with, the provisions of W. Va. Code §60-8-1 *et seq.*, and the rules promulgated thereto. The bond required by this section shall be executed on Wine Distributor Bond, Alcohol Beverage Control Commissioner Form No, ABCC-WS-1-B.

4.8. Corporate charter, partnership agreement or association bylaws required. -- If the applicant for licensure as a wine distributor is a corporation, the applicant shall furnish the Commissioner a copy of its corporate charter, including any amendments thereto. If the applicant is a partnership, limited partnership or association, it shall provide a copy of the partnership agreement or the association's bylaws.

4.9. Fees. -- An applicant for licensure as a wine distributor shall remit with the application the annual distributor license fee is twenty-five hundred dollars (\$2,500) for the distributor's license and a like amount for each separate warehouse or facility from which the distributor sells, transfers or delivers wine. The annual licensing period begins on July 1 of the year for which the application is made and ends on June 30 of the following year.

4.9.a. If the application is for licensure for less than an entire fiscal year, the fee shall be proportionate to the remainder of such year according to the date of application, as follows:

4.9.a.1. If application is made at any time from July 1 through December 31, the distributor shall pay the full annual fee.

## 175CSR4

4.9.a.2. If the application is made at any time from January 1 through June 30, the distributor shall pay one half (1/2) of the annual fee.

4.9.b. The annual fee or proportional share thereof is payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order.

4.10. Investigations. -- Upon receipt of an application the annual fee, the bond and other documents required to be provided with an application, the Commissioner shall make a thorough investigation to determine whether the applicant and all locations and premises to be operated by the applicant pursuant to the license applied for qualify for licensure as a distributor and shall investigate all matters connected therewith, including, but not limited to, any matters which may affect the public welfare, health and morals.

4.11. Refusal of license. -- No license shall be issued to any applicant:

4.11.a. That submits an application for licensure that contains any false statement;

4.11.b. That is affirmatively shown to be not a suitable person in the community or communities in which it operates;

4.11.c. In which any partner, member, manager, officer, director or stockholder owning twenty percent (20%) or more stock or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

4.11.c.1. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

4.11.c.2. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

4.11.c.3. Had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application; or

4.11.c.4. Fails to comply with the liquor laws or the rules or regulations of either this state or of the United States.

4.12. License not transferable. -- A license issued to a distributor is valid only for the person, firm or corporation named thereon. The license shall extend to all warehouses utilized by the licensee, firm or corporation for the distribution of wine to licensed retailers, private wine bed and breakfasts, private wine restaurants and private wine spas. A distributor license is not transferable. If there is a change in beneficial ownership of the distributor to the extent of twenty percent (20%) or less, the Commissioner shall be notified in writing by the distributor or the person changing the beneficial ownership of the distributor within ten (10) days next succeeding such transfer. If there is a change in the beneficial ownership of the distributor in excess of twenty percent (20%), the license shall be voided by the Commissioner and the licensee must make application for a new license. If there is a transfer in the beneficial ownership of any interest in a licensed distributor, irrespective of the amount thereof, the new ownership of such beneficial interest must comply with all laws of the United States and any rules and regulations promulgated pursuant thereto and with the laws of the State of West Virginia, including, but not limited to, the provisions of chapter sixty of the code and rules and regulations promulgated pursuant thereto.

4.13. Warehousing; copies of license to be posted; records required to be maintained at each warehouse; interdistributor coming of stock prohibited.

## 175CSR4

4.13.a. Each licensed distributor must have, prior to licensure sufficient and adequate warehouse facilities for the storage and distribution of wine. Facilities shall be located in a building which:

4.13.a.1. Which has adequate floor space to stock projected wine inventory in a safe manner;

4.13.a.2. Is not used as a dwelling place or a garage; and

4.13.a.3. Has adequate egress and ingress for delivery trucks.

4.13.b. If a distributor maintains separate warehouse facilities, a copy of his license must be displayed at each warehouse location.

4.13.c. If a licensed distributor has more than one warehouse to which the license applies and from which wine is distributed, each warehouse shall be regarded as a separate entity and any record, invoice or other document required by law or this rule to be kept by such distributor shall be physically maintained at each warehouse with respect to all wine received at and/or distributed from the warehouse.

4.13.d. Except as to interdistributor transfers that may be authorized by the laws of this State or by this rule, no licensed distributor may utilize in any manner the warehouse facilities of another licensed distributor or commingle the wine stock of any one distributor in any way with the wine stock of any another licensed distributor.

4.14. Change of location. -- Any distributor who desires or intends to change the location of his or her principal place of business or of any warehouses, or to acquire and utilize an additional warehouse for the distribution of wine during the period for which his her distributor license is current, shall notify the Commissioner in writing at least thirty (30) days before the date of the relocation or acquisition. No relocation or acquisition is permitted until the Commissioner issues his or her written approval. Provided, that in the case of fire or flood, the commissioner may waive the thirty (30) day advance notice upon request of the affected distributor.

4.15. Wine brand registration and review required. -- No wine may be sold by a supplier to a licensed distributor or by a licensed distributor to a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa until the brand and the corresponding labels of such wine are reviewed and registered with the Commissioner and fees for such registration have been paid to the Commissioner.

4.16. Presales required; sales by route delivery men prohibited; invoices or purchase orders required.

4.16.a. No route delivery man or other person delivering wine from a distributor to a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa may sell or deliver to the licensee any wine which the licensee did not previously order. All sales of wine from a distributor to a retailer, private wine bed and breakfast, private wine restaurant or private wine spa shall be upon order made by such licensee prior to the delivery thereof. All such sales shall be paid for in their entirety upon delivery. No distributor may transport any wine for which there is no invoice or purchase order.

4.16.b. No delivery shall be increased in the amount of wine delivered beyond that which has been previously ordered nor shall there be any substitution of any particular wine for another which has not been previously ordered.

4.17. Credit sales prohibited.

#### 175CSR4

4.17.a. No distributor shall extend credit to a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, either in whole or in part, for any wine product received by the licensee. Every delivery of wine to a licensee shall be paid for in its entirety no later than the completion of such delivery. Credit sales include consignment sales. Each distributor must immediately, and in the regular course of business, deposit in a bank all checks given by a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, for the purchase of wine. No distributor may individually or through his or her agents or employees, enter into any agreement or understanding with any licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, to hold any checks beyond the time required by this rule.

4.17.b. The giving of a worthless check by the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, to a distributor or the distributor's acceptance of a worthless check from the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, is prima facie evidence of an extension of credit and is, in the discretion of the Commissioner, grounds for the revocation or suspension of the licensed retailer's, private wine bed and breakfast's, private wine restaurant's, private wine spa's or distributor's license.

4.18. Split case sales permitted; charges. -- A distributor may distribute wine to a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, in either full cases containing only one (1) size and type of wine or a "split case" which is a case of wine which contains not more than one (1) size and type of wine. The distributor may impose a surcharge for a split case which shall be applied equally to every licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa to whom the distributor sells wine.

4.19. Transportation of wine or other alcoholic liquors by distributors. -- A distributor, by virtue of his or her license, may transport within this State any wine permitted to be sold at retail under the provisions of W. Va. Code §60-8-1 *et seq.* which wine has either been consigned to him, or for which the person actually transporting such wine has either an invoice or purchase order in his possession. A distributor may not transport any other alcoholic liquor without a transportation permit issued by the Commissioner.

4.20. Platform deliveries permitted. -- Platform deliveries or truck pickups at the licensed premises of a distributor by a licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, are permitted so long as the person taking possession at the time of delivery is twenty-one (21) years of age or older.

4.21. Identification of distributor representatives and employees. -- Every promotional representative or other person soliciting (including, but not limited to, phone/internet/other media solicitation, in-person solicitation or other contact with retailers, suppliers or manufacturers) sales on behalf of a distributor must be licensed and must have an identification card provided by the distributor identifying the person as the distributor's representative and must exhibit the identification card on demand by any licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or representative of the Commissioner. Every person (including, but not limited to, drivers and other delivery persons) delivering wine for a distributor must have an identification card provided by the distributor identifying the person as the distributor's employee and must exhibit the identification card on demand by any licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or representative of the Commissioner.

4.22. Samples. -- With the approval of the Commissioner a distributors may give a sample to a licensed retailer, private wine bed and breakfast, private wine restaurant or a private wine spa, samples of any wine not then currently carried in the inventory of the licensee when such sample has been approved by the Commissioner and provided the licensee has an appropriate wine sampling or tasting license. No licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa may sell

samples. All samples provided shall be noted on the distributor's monthly report required to be filed under the provisions of W. Va. Code §60-8-4, and attached to the ABCC FORM WV/DIS-01, and on the Tax Commissioner's Form WVBL-01, or as otherwise required by the Tax Commissioner. Samples may be no greater in amount than 750 milliliters, must be labeled with the word "Sample" clearly printed thereon in at least one inch point type and shall indicate that the product is not for sale.

4.22.a. Only a licensed distributor or its licensed representatives may give samples to a licensed retailer, private wine bed and breakfasts, private wine restaurants or private wine spas. Suppliers, and employees and representatives of suppliers, may not give samples to licensed retailers, private wine bed and breakfasts, private wine restaurants or private wine spas, but may accompany any distributor, or the representative or employee of any distributor, at the time the sample is given or delivered to any retailer, licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa.

4.22.b. Any person, firm or corporation who holds more than one (1) licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa license, may receive one (1) sample of any wine bearing the same label for each licensed establishment: Provided, That a the sample must be delivered separately to each such licensed establishment.

4.23. A distributor may rotate and stock wine in a grocery store or wine specialty shop; provided, that products purchased from other distributors are not altered or disturbed.

4.24. Every distributor representative must be licensed by the Commissioner and submit information as required by the Commissioner prior to licensure. No person may conduct wine samplings or wine tastings on a distributor's premises.

4.25. With the approval of the supplier, a distributor may sell, transfer or deliver wine to another licensed distributor a particular brand or brands of wine of which the other distributor may be out temporarily out of stock for sale at wholesale.

#### **§175-4-5. Licensed Retailers.**

5.1. Licensure application; form. -- The application for licensure as a licensed retailer shall be made a form designated "Application for Retail Wine License," Alcohol Beverage Control Commissioner Form ABCC-WS-2.

5.2. Licensure application; content. -- The application for licensure as a licensed retailer shall contain and include the following:

5.2.a. The name and address of the applicant and shall state whether the applicant is an individual, corporation, partnership, association or other business entity;

5.2.b. The business trade name of the applicant;

5.2.c. The exact location of the business establishment;

5.2.d. Whether the application is for the sale of wine in a bona fide grocery store, a separate and segregated portion of any other retail store dedicated solely to the sale of food, or a wine specialty shop;

5.2.e. The date upon which the applicant began the operation of the business;

#### 175CSR4

5.2.f. Whether the applicant is the owner of the business premises for which the license is sought, and if not, whether the applicant is the actual and bona fide lessee of such premises including the lessor's name and address;

5.2.g. Whether the applicant intends to carry on the business for which he or she is to be licensed for personally or under his or her immediate supervision or direction, and if not, the name, age and address of the person who will manage or conduct the affairs of the retail business;

5.2.h. Whether the place of business for which the license is sought conforms to all applicable health and fire laws, rule or regulations and existing zoning ordinances;

5.2.i. Whether the applicant, if an individual, or whether any partner, member, officer, director or stockholder of the applicant holds or owns any interest in any licensed wine distributor, and if so, the extent and nature of such ownership;

5.2.j. If the applicant is an individual, whether the applicant is a citizen of the United States, and a bona fide resident of the State of West Virginia and the length of such residence and whether the applicant has attained the age of eighteen (18) years;

5.2.k. If the applicant is a partnership, association or other business entity, whether each member, is a citizen of the United States, a bona fide resident of the State of West Virginia and length of such residence and whether such member has attained the age of eighteen (18) years;

5.2.l. If the applicant is a corporation, whether the person who is or will be conducting or managing the business of such applicant is a citizen of the United States, resident of the State of West Virginia and whether the person has attained the age of eighteen (18) years;

5.2.m. Whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant:

5.2.m.1. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

5.2.m.2. Has been convicted of a violation of the liquor laws of any state or of the United States within two (2) years next preceding the filing date of the application; or

5.2.m.3. Has had any license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;

5.2.n. If the applicant is a corporation, the name, address and corporate title of each officer, and the name, address and age of any persons owning twenty percent (20%) or more of the stock or beneficial interest in the applicant;

5.2.o. Whether the business premises of the applicant are located within an incorporated municipality or within one (1) mile of the corporate limits of one (1) or more incorporated municipalities, and, if so, the name of each municipality;

5.2.p. Whether the applicant is licensed either as a private club under the provisions of W. Va. Code §60-7-1 *et seq.*, or as either a Class A nonintoxicating beer retailer or a Class B nonintoxicating beer retailer under the provisions of W. Va. Code §11-16-1 *et seq.*;

5.2.q. If the application is for a bona fide grocery store or for any other type of retail store with a separate and segregated portion of the store devoted to the sale of food, food products and supplies for the

table, the application shall indicate whether the average monthly sales of grocery items, exclusive of wines, exceed three thousand dollars (\$3,000) and whether the average monthly inventory, exclusive of wines, exceeds three thousand dollars (\$3,000);

5.2.r. Background checks. The Commissioner shall conduct background investigations for the purpose of determining whether an applicant for a licensed retailer's license has been charged with, indicted for or convicted of a crime that may have bearing upon the applicant's fitness to hold a 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 private club license pursuant Article 7, Chapter 60 of the W. Va. Code. The applicant will complete and submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form ABCA-Lic.RIWCR.2 to the Commissioner. Applicant will complete and submit a full set of fingerprints to facilitate a criminal background check and the ABCC 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 ABCC. The applicant will reimburse the ABCC for all fees or charges that are incurred as a result of the investigation; and

5.2.s. Such other information as the Commissioner may require.

5.3. Licensure application; signature and acknowledgement required. -- Each application shall be signed by the applicant, made under oath and acknowledged or verified. In the case of a general partnership the application shall be signed by each of the partners. In the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members of the governing board shall sign. In the case of a corporation, the application shall be signed by either its president or a vice president.

5.4. Corporate charter, partnership agreement or association bylaws required. -- If the applicant for licensure as a licensed retailer is a corporation, the applicant shall furnish with its application a copy of its corporate charter, including any amendments thereto. If the applicant is a partnership, limited partnership or association, such applicant shall provide a copy of the partnership agreement or a copy of the association's bylaws.

5.5. Fees. -- An applicant for licensure as a licensed retailer shall remit with the application the annual fee for such license. The annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

5.5.a. If the application is for licensure as a retailer or wine specialty shop is for less than an entire fiscal year, then such fee shall be proportionate to the remainder of such year according to the date of application, as follows:

5.5.a.1. If the application is made at any time from July 1 through December 31, the fee shall be the full annual fee, or one hundred fifty dollars (\$150) for a retailer license or two hundred fifty (\$250) dollars for a wine specialty shop license.

5.5.a.2. If the application is made at any time from January 1 through June 30, the fee shall be one half (1/2) of the annual fee, or seventy-five dollars (\$75) for a retailer license or one hundred twenty-five (\$125) dollars for a wine specialty shop license;

5.5.b. Fees shall be payable to the West Virginia Alcohol Beverage Control Commissioner by certified check, cashier's check or money order.

## 175CSR4

5.6. Investigations. -- Upon receipt of an application for licensure, the fee, the bond and other required documents, the Commissioner shall make a thorough investigation to determine whether the applicant, and all locations and premises to be operated by the applicant pursuant to the license applied for, qualify for licensure. The Commissioner shall investigate all matters, including but not limited to, such matters which may affect the public welfare, health and morals.

5.7. Refusal of license. -- No license may be issued to an applicant, who;

5.7.a. Submits an application for licensure that containing a false statement;

5.7.b. Is affirmatively shown to be not a suitable person in the community or communities in which it operates. The Commissioner may refuse to grant any license if he or she has reasonable cause to believe that the applicant, or if the applicant is a partnership or association, any partner or member thereof, or if the applicant is a corporation, any officer, director or manager thereof or shareholder owning twenty percent (20%) or more of its capital stock, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

5.7.b.1. Is not twenty-one (21) years of age or older;

5.7.b.2. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

5.7.b.3. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

5.7.b.4. Has had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application;

5.7.b.5. Is not a person of good moral character or repute;

5.7.b.6. Is not the legitimate owner of the business proposed to be licensed, or has not disclosed other persons have ownership interests in the business;

5.7.b.7. Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed;

5.7.b.8. Has maintained a noisy, loud, disorderly or unsanitary establishment;

5.7.b.9. Has demonstrated, either by his or her police record or by his or her record as a former licensee under W. Va. Code chapter 60, a lack of respect for law and order;

5.7.b.10. Is unable to speak, understand and read the English language in a reasonably satisfactory manner;

5.7.b.11. Is a person to whom alcoholic beverages may not be sold under the provisions of W. Va. Code chapter 60;

5.7.b.12. Has the general reputation of drinking alcoholic beverages to excess or is addicted to the use of narcotics;

5.7.b.13. Is physically unable to carry on the business or has been adjudicated an incompetent; or

5.7.b.14. Is an officer or employee of the Alcohol Beverage Control Commissioner.

5.7.c. Fails to meet the requirements of the liquor laws or the rules or regulations of either this state or of the United States.

5.8. License not transferable.

5.8.a. A retailer's license is valid only for the person, firm or corporation named thereon and only for the premises for which the license is sought and issued. The license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent (20%) or less thereof, the Commissioner shall be notified in writing by the retailer with respect thereto within ten (10) days next succeeding such transfer. If there is a change in the beneficial ownership in excess of twenty percent (20%), then this subsection serves as notice that such license shall be voided and the licensee must make application for a new license.

5.8.b. If there is a transfer in the beneficial ownership of any interest in a licensed retailer, irrespective of the amount thereof, the new owner of such beneficial interest must comply with any and all laws of the United States and any rules or regulations promulgated pursuant thereto and of the laws of the State of West Virginia, including, but not limited to, the provisions of chapter 60 of the Code and of the rules promulgated pursuant thereto.

5.9. Change of location. -- Any licensed retailer who desires or intends to change the location of the premises for which his license is issued during the period for which his or her license is current shall notify the Commissioner in writing at least thirty (30) days next preceding the date of relocation and obtain the written approval of the Commissioner before the relocation may occur. In the event of flood or fire, the Commissioner may waive the thirty (30) day requirement upon request of the affected licensed retailer.

5.10. Licensure of licensed retailer as private club or Class A nonintoxicating beer retailer.

5.10.a. No person licensed as a private club or as a Class A nonintoxicating beer retailer may be issued a licensed retailer license if the wine retail business for which the license is sought is to be conducted upon the same premises as either the private club or Class A nonintoxicating beer retailer establishment.

5.10.b. This rule may not be construed to prohibit the holder of a private club license or the holder of a Class A nonintoxicating beer license from holding or being a part owner in any licensed retailer whose business premises are totally separate, distinct and apart from the premises of the private club or Class A nonintoxicating beer retailer establishment.

5.11. Connection between licensed retailer and private club and Class A nonintoxicating beer retailer prohibited. A licensed retailer applicant whose premises is located within the same building or structure as a licensed private club or a Class A nonintoxicating beer retailer, may not have an internal interconnection or door between the premises of the licensed retailer and the other licensed premises.

5.12. Transportation of wine by retailer. -- A licensed retailer may not transport any wine or other alcoholic liquor unless he or she has been issued a transportation permit so to do by the Commissioner for that purpose.

5.13. Transfers of wine between retailers prohibited. -- A licensed retailer who operates more than one (1) licensed retail establishment may transfer wine from one (1) licensed retail establishment to

#### 175CSR4

another licensed retail establishment. However, a licensed retailer may not transfer, sell or convey wine to another licensed retailer. A licensed retailer may purchase wine only from a distributor which is licensed in accordance with W. Va. Code §60-8-1 et seq., or a farm winery licensed in accordance with W. Va. Code §60-8-1 et seq.

5.14. Wine specialty shop. -- A wine specialty shops shall, in addition to maintaining a representative inventory of wines which include varietal wines, generic wines and wines labeled according to the region or place of production, maintain an inventory of not less than fifteen percent (15%) by actual bottle count of wines which are vintage or vintage dated, which shall be determined by actual bottle count of the total wine inventory. A wine specialty shop may maintain an inventory of port, sherry and Madeira wines which have an alcoholic content of not more than twenty-two percent (22%) alcohol by volume and have been matured in wooden barrels or casks. In addition, a wine specialty shop shall at all times have in its inventory available for sale food or foodstuffs which are normally associated with wines and have a representative inventory of wine accessories. A wine specialty shop may purchase only from a licensed distributor in this state or a licensed farm winery.

5.15. Wine specialty shops and wineries and farm wineries that have obtained a wine specialty shop license may conduct wine samplings and wine tastings when complying with the requirements of such events.

5.16. Packaging of wine sold after purchase required. -- All wine sold by any licensed retailer, private wine restaurant or private club licensed to sell at retail shall be placed in a paper bag or container sufficient to hold the wine purchased prior to delivery of such wine to the customer. No licensee shall permit or allow wine to be carried from the licensed premises by any customer unless it has been placed in a paper bag or container.

5.17. Blood alcohol chart. -- Each licensed retailer shall post in an open and prominent place within the licensed premises a blood alcohol chart in the form prescribed by W. Va. Code §60-6-24.

5.18. Fetal alcohol syndrome chart. -- Each licensed retailer shall post in an open and prominent place within the licensed premises a fetal alcohol syndrome chart in the form prescribed by W. Va. Code §60-6-24.

#### **§175-4-6. Private Wine Restaurant.**

6.1. Licensure application; form. -- The application for licensure as a private wine restaurant shall be made upon forms designated "Application for Private Wine Restaurant," Alcohol Beverage Control Commissioner Form ABCC-WS-5.

6.2. Licensure application; content. -- The application shall contain and include the following:

6.2.a. The name and address of the applicant restaurant and whether the applicant is an individual, corporation, partnership, association or other business entity;

6.2.b. The name, address, date of birth and length of West Virginia residency of the manager or steward;

6.2.c. The complete description, including photographs and a diagram of every room, of the proposed private wine restaurant;

6.2.d. The name and address of the property owner, and if the property is leased, the expiration date of the lease;

## 175CSR4

6.2.e. Verification that monthly sales of food, exclusive of wine and nonintoxicating beer, exceed twenty-five hundred dollars (\$2,500), and if the restaurant is not yet in operation, verification that such monthly sales will exceed twenty-five hundred dollars (\$2,500);

6.2.f. Verification that the place of business conforms to health and fire laws, rules or regulations and zoning ordinances;

6.2.g. Whether the premises is located within municipal boundaries, within one (1) mile of municipal boundaries, or within one (1) mile of the boundaries of two (2) or more municipalities and if so, the names of the municipalities;

6.2.h. Whether the premises is currently licensed as a Class A Nonintoxicating Beer Retailer;

6.2.i. If the applicant is an individual, whether the or she has attained the age of eighteen (18) years;

6.2.j. If the applicant is a partnership, association or other business entity, as to each member, whether such member has attained the age of eighteen (18) years;

6.2.k. If the applicant is a corporation, whether the person or persons who are or will be conducting or managing the business of the corporation have attained the age of eighteen (18) years;

6.2.l. Whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant has:

6.2.l.1. Been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

6.2.l.2. Been convicted of a violation of the liquor laws of any state or of the United States within two (2) years next preceding the filing date of the application; or

6.2.l.3. Had a license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;

6.2.m. If the applicant is a firm, partnership or association, the names, addresses, residence and length thereof and percentage of ownership of all persons having an ownership interest of twenty percent (20%) or more in the applicant; and

6.2.n. If the applicant is a corporation, the names, addresses and corporate title of all officers, and the name, address and age of each person having twenty percent (20%) or more of the stock or beneficial interest in the applicant.

6.3. Background checks. The Commissioner shall conduct background investigations for the purpose of determining whether an applicant for a private wine restaurant's license has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a private club 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 private wine restaurant license pursuant article 7, chapter 60 of the W. Va. Code. The applicant will submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form ABCA-Lic.RIWCR.2 for this purpose. The applicant will also submit a full set of fingerprints to facilitate a criminal background check and the ABCC will request the state police to submit the fingerprints and identifying information to the Federal Bureau of Investigation for a national

#### 175CSR4

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. The applicant will reimburse the ABCC for all fees or charges that are incurred by the ABCC for the background investigation; and any other information as the Commissioner may require.

6.4. Licensure application; signature and acknowledgement required. -- Each application shall be signed by the applicant, made under oath and acknowledged or verified.

6.4.a. In the case of a partnership, the application shall be signed by each of the partners.

6.4.b. In the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership.

6.4.c. In the case of a voluntary association, each member of the governing board shall sign the application.

6.4.d. In the case of a corporation, the president or vice president of the corporation shall sign the application.

6.5. Corporate charter, partnership agreement or association bylaws required. -- A corporation applying for licensure as a private wine restaurant shall furnish with its application a copy of its corporate charter, including any amendments thereto. A partnership, limited partnership or association applying for a license shall provide a copy of the partnership agreement or a copy of the association's bylaws.

6.6. Fees.

6.6.a. The annual fee for a private wine restaurant license is two hundred fifty dollars (\$250).

6.6.a.1. If the application is filed at any time from July 1 through December 31, the applicant shall pay the full annual fee, or two hundred fifty dollars (\$250).

6.6.a.2. If the application is filed at any time from January 1 through June 30, the applicant shall pay one half (1/2) of the annual fee, or one hundred twenty-five dollars (\$125).

6.6.b. The annual fee for a private wine restaurant license, that maintains on its premises an appropriate supply of wine to conduct its operations and that selects the option of selling sealed, never consumed bottles of wine for off premises consumption to customers who have purchased food or a meal provided that no more than one bottle per each person twenty-one years of age or older, as verified (checking proper identification) by the private wine restaurant or qualifying private club, is one hundred dollars (\$100), regardless of when the application is filed.

6.6.c. The annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

6.6.d. The fees imposed by this subsection shall accompany the application and are payable to the Commissioner by certified check, cashier's check or money order.

6.7. Investigations. -- Upon receipt of an application for licensure as a private wine restaurant and of the fee, bond and other documents required to be provided with such application, the Commissioner shall make a thorough investigation to determine, among other things, whether the applicant and any location and premise to be operated by the applicant qualify for licensure and whether granting a license will adversely affect the public welfare, health and morals.

175CSR4

6.8. Refusal of license. -- No license may be issued to any applicant who;

6.8.a. Submits an application for licensure containing any false statement;

6.8.b. Is affirmatively shown to be not a suitable person in the community or communities in which it operates or will operate. The Commissioner may refuse to grant any license if he or she has reasonable cause to believe that the applicant, any partner, member, corporate officer, director or manager on the application, shareholder on the application owning twenty percent (20%) or more of its capital stock or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

6.8.b.1. Is not twenty-one (21) years of age or older;

6.8.b.2. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

6.8.b.3. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

6.8.b.4. Has had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application;

6.8.b.5. Is not a person of good moral character or repute;

6.8.b.6. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

6.8.b.7. Does not possess or has not demonstrated sufficient financial responsibility to adequately meet the requirements of the business proposed to be licensed;

6.8.b.8. Has maintained a noisy, loud, disorderly or unsanitary establishment;

6.8.b.9. Has demonstrated, either by his or her police record or by his or her record as a former licensee under W. Va. Code Chapter 60, a lack of respect for law and order;

6.8.b.10. Is unable to speak, understand and read the English language in a reasonably satisfactory manner;

6.8.b.11. Is a person to whom alcoholic beverages may not be sold under the provisions of W. Va. Code Chapter 60;

6.8.b.12. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of alcohol or narcotics;

6.8.b.13. Is physically unable to carry on the business or has been adjudicated an incompetent; or

6.8.b.14. Is an officer or employee of the Alcohol Beverage Control Commissioner.

6.8.c. Fails to satisfy the requirements of the liquor laws or the rules or regulations of either this state, other states or of the United States.

## 6.9. License not transferable.

6.9.a. A license issued to a private wine restaurant is valid only for the person, firm or corporation named thereon and only for the premises for which the license was sought and issued. The license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent (20%) or less thereof, the licensee shall notify the Commissioner in writing of any change in beneficial ownership within ten (10) days next succeeding such transfer. If there is a change in the beneficial ownership in excess of twenty percent (20%), then such license shall be voided and the licensee must make application for a new license.

6.9.b. If there is any transfer in the beneficial ownership of any interest in a private wine restaurant the new owner of the beneficial interest must satisfy all of the requirements of the laws of the United States and any rules or regulations promulgated pursuant thereto, and of the laws, rules or regulations of the State of West Virginia.

6.10. Change of location. -- A licensed private wine restaurant which desires or intends to change the location of the premises for which the license was issued prior to the renewal of the license shall notify the Commissioner in writing at least thirty (30) days before the date of proposed relocation. The relocation may occur only upon the written approval of the Commissioner. In the event of flood or fire, the Commissioner may waive the thirty (30) day notice upon request of the affected licensee.

## 6.11. Licensure of private wine restaurant as private club or Class A nonintoxicating beer retailer.

6.11.a. No person licensed as a private club may be issued a private wine restaurant license if the business is to be conducted upon the same premises as the private club. However, a private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer. This rule does not prohibit the holder of a private club license from holding or being a part owner in any private wine restaurant whose business premises are totally separate, distinct and apart from the premises of the private club to the extent as provided in the following subsection.

6.11.b. Connection between private wine restaurant and private club prohibited. -- In the event a licensed retailer, private wine bed and breakfast, private wine restaurant, or private wine spa applicant is located within the same building or structure as a licensed private club, there may be no internal interconnection or door between the premises of the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa and the premises of the licensed private club.

6.12. Transportation of wine by private wine restaurant. -- A private wine restaurant may not transport any wine unless the licensee has been issued a transportation permit by the Commissioner.

6.13. Transfers of wine between retailers prohibited. -- A person who operates more than one (1) private wine restaurant, private wine bed and breakfast, or private wine spa may transfer wine from one (1) such licensee to another private wine restaurant, private wine bed and breakfast or private wine spa. However, a private wine restaurant may not transfer, sell or convey wine to a licensed retailer or to a private wine restaurant, private wine bed and breakfast, or private wine spa licensed to another person. A private wine restaurant may purchase wine only from a distributor licensed pursuant to W. Va. Code §60-8-1 *et seq.*, or a farm winery licensed pursuant to W. Va. Code §60-8-1 *et seq.*

## 6.14. Charts.

6.14.a. Blood alcohol chart. -- Each private wine restaurant shall post in an open and prominent place within the licensed premises a blood alcohol chart in the form prescribed by W. Va. Code §60-6-24.

#### 175CSR4

6.14.b. Fetal alcohol syndrome chart. -- Each private wine restaurant shall post in an open and prominent place within the licensed premises a fetal alcohol syndrome chart in the form prescribed by W. Va. Code §60-6-24.

6.15. Recork and reseal requirements. -- Each licensed private wine restaurant may sell and serve wine for consumption on the premises of the licensee and recork and reseal partially consumed wine when such sale accompanies the serving of food or a meal to its members and their guests, if the licensee:

6.15.a. Has verified, by checking proper identification, that the member or guest purchasing the wine is over twenty-one years of age so as to consume the wine and recork or reseal the partially consumed wine bottle and carry it off premises;

6.15.b. Uses a one-time tamper resistant cork, seal, or bag approved by the Commissioner (with the Commissioner maintaining a list of approved tamper resistant corks, seals, or bags at his offices) to secure the partially consumed wine before the wine is taken off the licensee's premises, and affixes the receipt to the sealed bottle or sealed bag to prevent the partially consumed wine from opening while in transit;

6.15.c. Recorks, seals or bags no more than two separate bottles of partially consumed wine in conjunction with serving of food or a meal to its members and their guests for consumption off premises; and

6.15.d. Has provided the purchaser with food or a meal which the total price was, excluding beverage purchases, taxes, gratuity or other fees, at least fifteen dollars.

#### **§175-4-7. Private Wine Bed and Breakfast.**

7.1. Licensure application; form. -- The application for licensure as a private wine bed and breakfast shall be upon forms designated "Application for Private Wine Bed and Breakfast," See Commissioner's Forms on file at his offices.

7.2. Licensure application; content. -- The application shall include the following:

7.2.a. The name and address of the applicant restaurant and whether the applicant is an individual, corporation, partnership, association or other business entity;

7.2.b. The name, address, date of birth and length of West Virginia residency of the manager or steward;

7.2.c. The complete description, including photographs and a diagram of every room, of the proposed private wine bed and breakfast;

7.2.d. The name and address of the property owner, and if the property is leased, the expiration date of the lease;

7.2.e. Verification that the applicant's sole purpose is to provide, in a residential or country setting, a hotel, motel, inn or other such establishment properly zoned as to its municipality or local ordinances, that further provides lodging and meals to its customers in the course of their stay at the establishment, and further that the applicant is capable of providing and serving food or meals as defined in this subsection;

## 175CSR4

7.2.f. Verification that the place of business conforms to health and fire laws, rules or regulations and zoning ordinances;

7.2.g. Whether the premises is located within municipal boundaries, within one (1) mile of municipal boundaries, or within one (1) mile of the boundaries of two (2) or more municipalities and if so, the names of the municipalities;

7.2.h. Whether the applicant currently holds any other licenses for the premises, copies of which are to be submitted with the application;

7.2.i. If the applicant is an individual, whether he or she has attained the age of eighteen (18) years;

7.2.j. If the applicant is a partnership, association or other business entity, as to each member, whether such member has attained the age of eighteen (18) years;

7.2.k. If the applicant is a corporation, whether the person or persons who are or will be conducting or managing the business of the corporation have attained the age of eighteen (18) years;

7.2.l. Whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant has:

7.2.l.1. Been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

7.2.l.2. Been convicted of a violation of the liquor laws of any state or of the United States within two (2) years next preceding the filing date of the application; or

7.2.l.3. Had any license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;

7.2.m. If the applicant is a firm, partnership or association, the names, addresses, residence and length thereof and percentage of ownership of all persons having an ownership interest of twenty percent (20%) or more in the applicant; and

7.2.n. If the applicant is a corporation, the names, addresses and corporate title of all officers, and the name, address and age of each person having twenty percent (20%) or more of the stock or beneficial interest in the applicant.

7.3. The Commissioner shall conduct background investigations for the purpose of determining whether an applicant for a private wine bed and breakfast's license has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a private club 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 private club license pursuant article 7, chapter 60 of the W. Va. Code. The applicant will submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form ABCA-Lic.RIWCR.2 for this purpose. The applicant will also submit a full set of fingerprints to facilitate a criminal background check and the ABCC 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. The applicant will reimburse the ABCC for all fees or charges that are incurred by the ABCC for the background investigation; and such other information as the Commissioner may require.

## 175CSR4

7.4. Licensure application; signature and acknowledgement required. Each application shall be signed by the applicant, made under oath and acknowledged or verified.

7.4.a. In the case of a partnership, the application shall be signed by each of the partners.

7.4.b. In the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership.

7.4.c. In the case of a voluntary association, each member of the governing board shall sign the application.

7.4.d. In the case of a corporation, the president or a vice president shall sign the application.

7.5. Corporate charter, partnership agreement or association bylaws required. – A corporation applying for licensure as a private wine bed and breakfast shall furnish with its application a copy of its corporate charter, including any amendments thereto. A partnership, limited partnership or association applying for a license shall provide a copy of the partnership agreement or a copy of the association's bylaws.

7.6. Fees.

7.6.a. The annual fee for a private wine bed and breakfast license is one hundred fifty dollars (\$150).

7.6.a.1. If the application is filed at any time from July 1 through December 31, the fee shall pay the full annual fee, or one hundred fifty dollars (\$150).

7.6.a.2. If the application is filed at any time from January 1 through June 30, the fee shall be one half (1/2) of the annual fee, or seventy-five dollars (\$75).

7.6.b. The annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

7.6.c. The fees imposed by this subsection shall accompany the application and are payable to the Commissioner by certified check, cashier's check or money order.

7.6.d. A successful applicant shall only sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests as defined in this section.

7.7. Investigations. -- Upon receipt of an application for licensure as a private wine bed and breakfast and of the fee, bond and other documents required to be provided with such application, the Commissioner shall make a thorough investigation to determine, among other things, whether the applicant, and any location and premise to be operated by the applicant qualify for licensure and whether granting a license will adversely affect the public welfare, health and morals.

7.8. Refusal of license. -- No license may be issued to any applicant who;

7.8.a. Submits an application for licensure containing any false statement;

## 175CSR4

7.8.b. Is affirmatively shown to be not a suitable person in the community or communities in which it operates or will operate. The Commissioner may refuse to grant any license if he or she has reasonable cause to believe that the applicant, any partner, member, or any corporate officer, director or manager on the application or shareholder owning twenty percent (20%) or more of its capital stock, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

7.8.b.1. Is not twenty-one (21) years of age or older;

7.8.b.2. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

7.8.b.3. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

7.8.b.4. Has had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application;

7.8.b.5. Is not a person of good moral character or repute;

7.8.b.6. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

7.8.b.7. Does not possess or has not demonstrated sufficient financial responsibility to adequately meet the requirements of the business proposed to be licensed;

7.8.b.8. Has maintained a noisy, loud, disorderly or unsanitary establishment;

7.8.b.9. Has demonstrated, either by his or her police record or by his or her record as a former licensee under W. Va. Code Chapter 60, a lack of respect for law and order;

7.8.b.10. Is unable to speak, understand and read the English language in a reasonably satisfactory manner;

7.8.b.11. Is a person to whom alcoholic beverages may not be sold under the provisions of W. Va. Code Chapter 60;

7.8.b.12. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of alcohol or narcotics;

7.8.b.13. Is physically unable to carry on the business or has been adjudicated an incompetent; or

7.8.b.14. Is an officer or employee of the Alcohol Beverage Control Commissioner.

7.8.c. Fails to satisfy the requirements of the liquor laws, rules or the regulations of either this state, other states or of the United States.

7.9. License not transferable.

7.9.a. A license issued to a private wine bed and breakfast is valid only for the person, firm or corporation named thereon and only for the premises for which the license was sought and issued. The license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent

(20%) or less thereof, the licensee shall notify the Commissioner in writing any change in the beneficial ownership within ten (10) days next succeeding such transfer. If there is a change in the beneficial ownership in excess of twenty percent (20%), then such license shall be voided and the licensee must make application for a new license.

7.9.b. If there is any transfer in the beneficial ownership of any interest in a private wine bed and breakfast, the new owner of the beneficial interest must satisfy all of the requirements of the laws of the United States and of the laws, rule or regulations of the State of West Virginia.

7.10. Change of location. -- If any private wine bed and breakfast desires or intends to change the location of the premises for which the license is issued during the period for which the license is current, such private wine bed and breakfast shall notify the Commissioner in writing at least thirty (30) days next preceding the date of such relocation and the relocation may occur only upon the written approval of the Commissioner: Provided, That in the event of flood or fire, the Commissioner may waive the thirty (30) day notice upon request of the affected private wine bed and breakfast.

7.11. Licensure of private wine bed and breakfast as private club.

7.11.a. No person licensed as a private club may be issued a private wine bed and breakfast license if the business is to be conducted upon the same premises as the private club. This rule does not prohibit the holder of a private club license from holding or being a part owner in any private wine bed and breakfast whose business premises are totally separate, distinct and apart from the premises of the private club, as provided in the following subsection.

7.11.b. Connection between private wine bed and breakfast and private club prohibited. -- In the event a licensed retailer, private wine bed and breakfast, private wine restaurant, or private wine spa applicant is located within the same building or structure as a licensed private club, there may be no internal interconnection or door between the premises of the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa and the premises of the licensed private club.

7.12. Transportation of wine by private wine bed and breakfast. -- A private wine bed and breakfast may not transport any wine unless the licensee has been issued a transportation permit by the Commissioner.

7.13. Transfers of wine between retailers prohibited. -- A person who operates more than one (1) private wine restaurant, private wine bed and breakfast, or private wine spa may transfer wine from one (1) such licensee to another private wine restaurant, private wine bed and breakfast or private wine spa. However, a private wine bed and breakfast may not transfer, sell or convey wine to a licensed retailer or to a private wine restaurant, private wine bed and breakfast, or private wine spa licensed to another person. A private wine bed and breakfast may purchase wine only from a distributor licensed pursuant to W. Va. Code §60-8-1 *et seq.*, or a farm winery licensed pursuant to W. Va. Code §60-8-1 *et seq.*

7.14. Charts.

7.14.a. Blood alcohol chart. -- Each private wine bed and breakfast shall post in an open and prominent place within the licensed premises a blood alcohol chart in the form prescribed by W. Va. Code §60-6-24.

7.14.b. Fetal alcohol syndrome chart. -- Each private wine bed breakfast shall post in an open and prominent place within the licensed premises a fetal alcohol syndrome chart in the form prescribed by W. Va. Code §60-6-24.

## 175CSR4

7.15. Recork and reseal requirements. -- Each licensed private wine bed and breakfast may sell and serve wine, for consumption on the premises of the licensee and recork and reseal partially consumed wine when such sale accompanies the serving of food or a meal to its members and their guests, if the licensee:

7.15.a. Has verified, by checking proper identification, that the member or guest purchasing the wine is over twenty-one years of age so as to consume the wine and recork or reseal the partially consumed wine bottle and carry it off premises;

7.15.b. Uses a one-time tamper resistant cork, seal or bag approved by the Commissioner (with the Commissioner maintaining a list of approved tamper resistant corks, seals, or bags at his offices) to secure the partially consumed wine before the wine is taken off the private wine bed and breakfast's premises, and affixes a receipt to the sealed bottle or sealed bag so as to prevent the partially consumed wine from opening while in transit;

7.15.c. Recorks, seals or bags up to two separate bottles of partially consumed wine in conjunction with serving of food or a meal to its members and their guests for the purpose of consumption off premises;

7.15.d. Has provided the purchaser with food or a meal which the total price was, excluding beverage purchases, taxes, gratuity or other fees, at least fifteen dollars, and further that the private bed and breakfast has a suitable kitchen and dining facilities as specified in 175 CSR 2 §4.11.

### **§175-4-8. Private Wine Spa.**

8.1. Licensure application; form. -- The application for licensure as a private wine spa shall be upon forms designated "Application for Private Wine Spa," See Commissioner's Forms on file at his offices.

8.2. Licensure application; content. -- The application shall contain and include the following:

8.2.a. The name and address of the applicant restaurant and whether the applicant is an individual, corporation, partnership, association or other business entity;

8.2.b. The name, address, date of birth and length of West Virginia residency of the manager or steward;

8.2.c. The complete description, including photographs and a diagram of every room, of the proposed private wine spa;

8.2.d. The name and address of the property owner, and if the property is leased, the expiration date of the lease;

8.2.e. Verification that the applicant's sole purpose is to provide commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services and relaxation, and may be also a licensed massage parlor or a salon with licensed beauticians or stylists, and further that the applicant is capable of providing and serving food or meals as defined in this subsection;

8.2.f. Verification that the place of business conforms to health and fire laws, rules or regulations and zoning ordinances;

8.2.g. Whether the premises is located within municipal boundaries, within one (1) mile of municipal boundaries, or within one (1) mile of the boundaries of two (2) or more municipalities and if so, the names of the municipalities;

## 175CSR4

8.2.h. Whether the applicant, the applicant's employees or the premises currently holds any other licenses and copies of such licenses are submitted with the application;

8.2.i. If the applicant is an individual, whether he or she has attained the age of eighteen (18) years;

8.2.j. If the applicant is a partnership, association or other business entity, as to each member, whether such member has attained the age of eighteen (18) years;

8.2.k. If the applicant is a corporation, whether the person or persons who are or will be conducting or managing the business of the corporation have attained the age of eighteen (18) years;

8.2.l. Whether the applicant or any partner, member, manager, officer, director or person owning twenty percent (20%) or more of the stock or beneficial interest in the applicant has:

8.2.l.1. Been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

8.2.l.2. Been convicted of a violation of the liquor laws of any state or of the United States within two (2) years next preceding the filing date of the application ; or

8.2.l.3. Had a license revoked under the liquor laws of any state or of the United States within five (5) years next preceding the filing date of the application;

8.2.m. If the applicant is a firm, partnership or association, the names, addresses, residence and length thereof and percentage of ownership of all persons having an ownership interest of twenty percent (20%) or more in the applicant; and

8.2.n. If the applicant is a corporation, the names, addresses and corporate title of all officers, and the name, address and age of all persons having twenty percent (20%) or more of the stock or beneficial interest in the applicant;

8.3. The Commissioner shall conduct background investigations for the purpose of determining whether an applicant for a private wine bed and breakfast's license has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a private club 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 private club license pursuant article 7, chapter 60 of the W. Va. Code. The applicant will submit West Virginia Alcohol Beverage Control Administration Release of Information and Waiver of Confidentiality of Records Form ABCA-Lic.RIWCR.2 for this purpose. The applicant will also submit a full set of fingerprints to facilitate a criminal background check and the ABCC 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. The applicant will reimburse the ABCC for all fees or charges that are incurred by the ABCC for the background investigation; and any other information as the Commissioner may require.

8.4. Licensure application; signature and acknowledgement required. – Each application shall be signed by the applicant, made under oath and acknowledged or verified.

8.4.a. In the case of a partnership the application shall be signed by each of the partners.

## 175CSR4

8.4.b. In the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of the limited partnership.

8.4.c. In the case of a voluntary association, each member of the governing board shall sign the application.

8.4.d. In the case of a corporation, the president or vice president shall sign the application.

8.5. Corporate charter, partnership agreement or association bylaws required. – A corporation applying for licensure as a private wine spa shall furnish with its application a copy of its corporate charter, including any amendments thereto. A partnership, limited partnership or association applying for a license shall provide a copy of the partnership agreement or a copy of the association's bylaws.

8.6. Fees.

8.6.a. The annual fee for a private wine spa license is one hundred fifty dollars (\$150) .

8.6.a.1. If the application is filed at any time from July 1 through December 31, the applicant shall pay the full annual fee, or one hundred fifty dollars (\$150).

8.6.a.2. If the application is filed at any time from January 1 through June 30, such fee shall be one half (1/2) of the annual fee, or seventy-five dollars (\$75).

8.6.b. The fees imposed by this subsection shall accompany the application and are payable to the Commissioner by certified check, cashier's check or money order.

8.6.c. The annual licensing period shall begin on July 1 of the year for which the application is made and shall end on June 30 of the following year.

8.6.d. A successful applicant may only sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests as defined in this subsection.

8.7. Investigations. -- Upon receipt of an application for licensure as a private wine spa and of the fee, bond and other documents required to be provided with such application, the Commissioner shall make a thorough investigation to determine, among other things, whether the applicant, and any location and premises to be operated by the applicant qualify for licensure and whether granting a license will adversely affect the public welfare, health and morals.

8.8. Refusal of license. -- No license may be issued to any applicant who;

8.8.a. Submits an application for licensure containing any false statement;

8.8.b. Is affirmatively shown to be not a suitable person in the community or communities in which it operates or will operate. The Commissioner may refuse to grant any license if he or she has reasonable cause to believe that the applicant, corporate officer, director or manager on the application or the shareholder on the application owning twenty percent (20%) or more of its capital stock, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

8.8.b.1. Is not twenty-one (21) years of age or older;

## 175CSR4

8.8.b.2. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

8.8.b.3. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

8.8.b.4. Has had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application;

8.8.b.5. Is not a person of good moral character or repute;

8.8.b.6. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

8.8.b.7. Does not possess or has not demonstrated sufficient financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.8.7.2.8. Has maintained a noisy, loud, disorderly or unsanitary establishment;

8.8.b.9. Has demonstrated, either by his or her police record or by his or her record as a former licensee under W. Va. Code Chapter 60, a lack of respect for law and order;

8.8.b.10. Is unable to speak, understand and read the English language in a reasonably satisfactory manner;

8.8.b.11. Is a person to whom alcoholic beverages may not be sold under the provisions of W. Va. Code Chapter 60;

8.8.b.12. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of alcohol or narcotics;

8.8.b.13. Is physically unable to carry on the business or has been adjudicated an incompetent; or

8.8.b.14. Is an officer or employee of the Alcohol Beverage Control Commissioner.

8.8.c. Fails to satisfy the requirements of the liquor laws or the rules or regulations of either this state, other states or of the United States.

8.9. License not transferable.

8.9.a. A license issued to a private wine spa is valid only for the person, firm or corporation named thereon and only for the premises for which the license was sought and issued. The license is not transferable. If there is a change in beneficial ownership to the extent of twenty percent (20%) or less thereof, the licensee shall notify the Commissioner in writing within ten (10) days next succeeding such transfer. If there is a change in the beneficial ownership in excess of twenty percent (20%), then such license shall be voided and the licensee must make application for a new license.

8.9.b. If there is any transfer in the beneficial ownership of any interest in a private wine spa the new owner of the beneficial interest must satisfy all of the requirements of laws of the United States and any rules or regulations promulgated pursuant thereto, and of the laws, rules or regulations of the State of West Virginia.

8.10. Change of location. -- If any private wine spa desires or intends to change the location of the premises for which the license is issued during the period for which the license is current, such private wine spa shall notify the Commissioner in writing at least thirty (30) days next preceding the date of such relocation and the relocation may occur only upon the written approval of the Commissioner: Provided, That in the event of flood or fire, the Commissioner may waive the thirty (30) day notice upon request of the affected private wine spa.

8.11. Licensure of private wine spa as private club.

8.11.a. No person licensed as a private club may be issued a private wine spa license if the business is to be conducted upon the same premises as such private club. This rule does not prohibit the holder of an private club license from holding or being a part owner in any private wine spa whose business premises are totally separate, distinct and apart from the premises of the private club, to the extent as provided in the following subsection.

8.11.b. Connection between private wine spa and private club prohibited. -- In the event a licensed retailer, private wine bed and breakfast, private wine restaurant, or private wine spa applicant is located within the same building or structure as an Alcohol Beverage Control Commissioner licensed private club, there shall be no internal interconnection or door between the premises of the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa and the premises of the licensed private club.

8.12. Transportation of wine by private wine spa. -- A private wine spa may not transport any wine unless the licensee has been issued a transportation permit by the Commissioner.

8.13. Transfers of wine between retailers prohibited. -- A person who operates more than one (1) private wine restaurant, private wine bed and breakfast, or private wine spa may transfer wine from one (1) such licensee to another private wine restaurant, private wine bed and breakfast or private wine spa. However, a private wine spa may not transfer, sell or convey wine to a licensed retailer or to a private wine restaurant, private wine bed and breakfast, or private wine spa licensed to another person. A private wine spa may purchase wine only from a distributor licensed pursuant to W. Va. Code §60-8-1 *et seq.*, or a farm winery licensed pursuant to W. Va. Code §60-8-1 *et seq.*

8.14.

8.15. Charts.

8.15.a. Blood alcohol chart. -- Each private wine spa shall post in an open and prominent place within the licensed premises a blood alcohol chart in the form prescribed by W. Va. Code §60-6-24.

8.15.b. Fetal alcohol syndrome chart. -- Each private wine spa shall post in an open and prominent place within the licensed premises a fetal alcohol syndrome chart in the form prescribed by W. Va. Code §60-6-24.

8.16. Recork and reseal requirements. -- Each licensed private wine spa may sell and serve wine for consumption on the premises of the licensee and recork and reseal partially consumed wine when such sale accompanies the serving of food or a meal to its members and their guests, if the licensee:

8.16.a. Has verified, by checking proper identification, that member or guest purchasing the wine is over twenty-one years of age so as consume the wine and recork or reseal the partially consumed wine bottle and carry it off premises;

8.16.b. Uses a one-time tamper resistant cork, seal, or bag approved by the Commissioner (with the Commissioner maintaining a list of approved tamper resistant corks, seals or bags at his offices) to secure the partially consumed wine prior to the wine going off the private wine spa's premises, and affixes the receipt to the sealed bottle or sealed bag so as to prevent the partially consumed wine from opening while in transit;

8.16.c. Recorks, seals or bags no more than two separate bottles of partially consumed wine in conjunction with serving of food or a meal to its members and their guests for the purpose of consumption of said wine off premises; and

8.16.d. Has provided the purchaser with food or a meal which the total price was, excluding beverage purchases, taxes, gratuity or other fees, at least fifteen dollars.

**§175-4-9. Direct Shipment of Wine.**

9.1. Direct Shipper requirements. Before sending any shipment of wine to an adult resident of West Virginia for his or her personal use and consumption and not for resale, the direct shipper must meet the direct shipper licensing requirements as specified in W. Va. Code §§60-8-1 *et seq.* The direct shipper shall provide:

9.1.a. File a license application with the Commissioner accompanied by the appropriate background check information, using forms provided by the Commissioner and available at his offices. A criminal background check will not be required of applicants licensed in its state of domicile who can provide a certificate of good standing from its state of domicile;

9.1.b. Pay to the Commissioner the license fee specified in this section;

9.1.c. Obtain a business registration number from the Tax Commissioner;

9.1.d. Register with the office of the Secretary of State, if a corporation or LLC;

9.1.e. Provide the Commissioner a true copy of its current alcoholic beverage license proving the capacity in which the direct shipper is licensed in its domicile state;

9.1.f. Satisfy all other licensing requirements of the W. Va. Code, this rule and provide any other information that the Commissioner may reasonably require; and

9.1.g. Obtain from the Commissioner a direct shipper's license.

9.2. After licensure the direct shipper shall:

9.2.a. Submit to the Commissioner a list of all brands of wine and all associated labels of said wine brands to be shipped to West Virginia residents; and

9.2.b. If the wine brands are not registered with the Commissioner, then the direct shipper shall submit the wine brands and corresponding labels for review and registration with the Commissioner and pay all fees to the Commissioner in accordance with this rule;

9.2.c. Ensure that all containers of wine shipped directly to a resident in this state are clearly and conspicuously labeled with the words:

175CSR4

“CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY” and “NO DELIVERY TO ANY PERSON INTOXICATED OR PHYSI-CALLY INCAPACITATED DUE TO THE CONSUMP-TION OF NONINTOXI-CATING BEER, AND WINE OR ALCOHOLIC LIQUORS OR THE USE OF DRUGS”;

9.2.d. Require every direct shipper or the common carrier to verify, by checking proper identification, that the recipient of a wine shipment in West Virginia is at least twenty-one years of age or older and if the carrier is not able to obtain a signature of a verified adult resident at least twenty-one years of age or older, the carrier may not complete the delivery of the wine shipment;

9.2.e. Obtain and keep a record of all written or electronic signatures upon delivery of wine to an adult West Virginia resident;

9.2.f. File monthly returns with the Commissioner and the Tax Commissioner showing the total of wines, by type, sold and shipped into West Virginia for the preceding month;

9.2.g. Pay to the Tax Commissioner, with the monthly return all sales taxes, municipal taxes and the liter tax due on wine sales and shipments to adult West Virginia residents in the preceding month. The amount of such taxes paid shall be calculated as the sales were made in West Virginia at the location where delivery is made, in the form prescribed by the Commissioner and available at his offices;

9.2.h. Permit the Tax Commissioner or Commissioner or their designees to perform an audit of the direct shipper’s records upon request;

9.2.i. Be deemed to have consented to the jurisdiction of the commissioner or any other state agency, the Kanawha County circuit court located in Charleston, West Virginia, concerning enforcement of this article and any other related laws, rules;

9.2.j. Provide proof or records to the commissioner, upon request, that all direct shipments of wine were purchased and delivered to an adult resident of West Virginia over the age of twenty-one years of age;

9.2.k. Be subject to enforcement proceedings to suspend or revoke a direct shipper’s license for violations of State laws, code, rules or regulations, however the Commissioner may accept payment of a penalty or an offer in compromise in lieu of suspension, at the Commissioner’s discretion;

9.2.l. Ship all wine into West Virginia by licensed direct shippers and the direct shipper must be a licensed and bonded shipping carrier or utilize a licensed and bonded shipping carrier, and further the direct shipper and any such carrier must maintain records of each shipment for up to three years;

9.2.m. Be subject to the penalties available to the Commissioner under West Virginia Code §60-8-18 for failure of a direct shipper or such licensee’s carrier to abide by the provisions of this chapter and the Commissioner’s rules;

9.2.n. Blood alcohol chart. -- Shall place within each shipment a copy of the West Virginia blood alcohol chart in the form prescribed by W. Va. Code §60-6-24 and available at the Commissioner’s offices;

9.2.o. Fetal alcohol syndrome chart. -- Shall place within each shipment a copy of the West Virginia fetal alcohol syndrome chart in the form prescribed by W. Va. Code §60-6-24 and available at the Commissioner’s office; and

## 175CSR4

9.2.p. Any other information that the Commissioner may reasonably require.

9.3. A licensed direct shipper may not:

9.3.a. Ship more than two cases of wine per month to any adult West Virginia resident who twenty-one years of age or over. Note that a case is defined as any combination of packages containing not more than nine liters of wine;

9.3.b. Ship to any address in an area identified by the Commissioner as a “dry” or local option area. The Commissioner shall maintain a list of dry market area zip codes available at his offices;

9.3.c. Ship to any licensed suppliers, distributors, retailers, private wine bed and breakfasts, private wine restaurants, private wine spas or wine specialty shops;

9.3.d. Ship wine from overseas or internationally unless it is first shipped to a licensed supplier or distributor;

9.4. Direct shipper application and fee.

9.4.a. Licensure application; form. -- The application form for licensure as a direct shipper is available and on file at the Commissioner’s offices.

9.4.b. License application; content. -- The application for licensure shall elicit the following information:

9.4.b.1. The name of the applicant, including his or her trade name, if any, his or her address and the length of his or her residence at that address;

9.4.b.2. The address of the place of business for which the license is desired, or other description that definitely locates the place of business;

9.4.b.3. Proof that the place of business conforms to all health and fire laws, rules and regulations applicable to such place;

9.4.b.4. The name of the owner of the premises upon which the business is to be conducted and, if the owner is not the applicant, proof that the applicant is the bona fide lessee of the business;

9.4.b.5. If the applicant is a retailer, whether the applicant is the proprietor or owner of a bona fide grocery store, retailer, private wine bed and breakfast, private wine restaurant, private wine spa or wine specialty shop;

9.4.b.6. Whether the applicant intends to carry on the business authorized by the license for himself or herself or under his or her immediate supervision or direction;

9.4.b.7. Proof that the applicant is a citizen of the United States;

9.4.b.8. Whether the applicant is an actual bona fide resident of his or her domicile state;

9.4.b.9. That the applicant is at least eighteen years of age;

9.4.b.10. Whether the applicant has been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application;

## 175CSR4

9.4.b.11. Whether the applicant has within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States; and

9.4.b.12. Whether the applicant has not during the five years next preceding the date of the application had any license revoked under this chapter or under the liquor laws of any other state;

9.4.c. An applicant is a firm, association or partnership, shall provide information required in subsections 9.4.b.7., 9.4.b.8., 9.4.b.9., 9.4.b.10., and 9.4.b.11., for each of the members thereof, and each of said members must satisfy all the requirements in the subsections;

9.4.d. An applicant who is a corporation, organized or authorized to do business in this state shall provide the information required in subsections 9.4.b.7., 9.4.b.8., 9.4.b.9., 9.4.b.10., 9.4.b.11., and 9.4.b.12., for each of the officers and directors thereof to any stockholder owning twenty percent or more of the stock of such corporation and for the persons who conduct and manage the licensed premises for the corporation;

9.4.e. The application shall be verified by the owner or if the applicant is a firm, partnership or corporation by each member of the firm, each partner, if a partnership, each member of the governing board, if an association, or each corporate officer and director. However, the application of a corporation applying for a retailer's license need be verified only by its president or vice president; and

9.4.f. Each of said individuals must meet all the requirements provided in those subdivisions except that the requirements as to citizenship and residence shall not apply to the officers, directors and stockholders of a corporation applying for a retailer's license.

9.4.g. The foregoing statements required in a completed application shall constitute mandatory prerequisites for the issuance of a license;

9.5. License fee. The direct shipper annual license fee is:

9.5.a. One hundred fifty-dollars (\$150) for a license to ship and sell only wine. If the application is filed at any time from July 1 through December 31, such fee shall be the full annual fee, but if the application is filed at any time from January 1 through June 30, the fee for the remainder of the license year is one half (1/2) of the annual fee, or seventy-five dollars (\$75) for the direct shipper's license;

9.5.b. Two hundred fifty-dollars (\$250) for a license to ship and sell wine and nonfortified dessert wine, port, sherry or Madeira wines. If the application is filed at any time from July 1 through December 31, the fee shall be the full annual fee, but if the application is filed at any time from January 1 through June 30, the fee for the remainder of the license year is one half (1/2) of the annual fee, or one hundred twenty-five dollars (\$125) for the direct shipper's license; or

9.5.c. Three hundred-dollars (\$300) for a license to sell wine and nonfortified dessert wine, port, sherry or Madeira wines by a multi-capacity winery or farm winery license which includes all direct shipping licenses.

9.6. A direct shipper may renew its license annually by submitting a renewal application to the Commissioner, paying the direct shipper license fee, providing the Commissioner with a true copy of a current alcoholic beverage license from the direct shipper's domicile state, and by providing any other information requested by the Commissioner.

9.7. Licensure application; signature and acknowledgement required. – Every application shall be signed by the applicant, made under oath and acknowledged or verified.

#### 175CSR4

9.7.a. In the case of a partnership the application shall be signed by each of the partners.

9.7.b. In the case of a limited partnership, the application shall be signed by each of the general partners and by each limited partner who owns twenty percent (20%) or more of the capital or profits of such limited partnership.

9.7.c. In the case of a voluntary association, each member of the governing board shall sign the application.

9.7.d. In the case of a corporation, the application the president or vice president shall sign the application.

9.8. Corporate charter, partnership agreement or association bylaws required. – A corporation applying for licensure as a direct shipper shall furnish with its application a copy of its corporate charter, including any amendments thereto. A partnership, limited partnership or association, applying for licensure as a direct shipper shall provide a copy of the partnership agreement or of the association's bylaws.

9.9. Investigations. -- Upon receipt of a direct shipper license application and the license fee, bond and other documents required to be provided with the application, the Commissioner shall make a thorough investigation to determine, among other things, whether the applicant and any locations and premises to be operated by the applicant qualify for licensure and shall investigate all matters connected therewith, including, but not limited to, whether granting the license will adversely affect the public welfare, health and morals.

9.10. Refusal of license. -- No license may be issued to any applicant who;

9.10.a. Submits an application for licensure that containing any false statement;

9.10.b. Is affirmatively shown to be not a suitable person in the community or communities in which it operates or will operate. The Commissioner may refuse to grant any license if he or she has reasonable cause to believe that the applicant, any partner or member thereof, or corporate applicant, officer, director or manager for the applicant or any shareholder owning twenty percent (20%) or more of its capital stock, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

9.10.b.1. Is not twenty-one (21) years of age or older;

9.10.b.2. Has been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the filing date of the application;

9.10.b.3. Has been convicted of violating the liquor laws of any state or the United States within two (2) years next preceding the filing date of the application;

9.10.b.4. Has had any license revoked under the liquor laws of any state or the United States within five (5) years next preceding the filing date of the application;

9.10.b.5. Is not a person of good moral character or repute;

9.6.b.6. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;

#### 175CSR4

9.10.2.7. Does not possess or has not demonstrated sufficient financial responsibility to adequately satisfy the requirements of the business proposed to be licensed;

9.10.b.8. Has maintained a noisy, loud, disorderly or unsanitary establishment;

9.6.b.9. Has demonstrated, either by his or her police record or by his or her record as a former licensee under W. Va. Code Chapter 60, a lack of respect for law and order;

9.10.b.10. May not be sold alcoholic beverages pursuant to W. Va. Code, Chapter 60;

9.10.b.11. Has the general reputation of drinking alcoholic beverages to excess, or is addicted to the use of alcohol or narcotics;

9.10.b.12. Is physically unable to carry on the business or has been adjudicated an incompetent; or

9.10.b.13. Is an officer or employee of the Commissioner;

9.10.c. Fails to satisfy the requirements of this rule, the liquor laws, rules or the regulations of this state, the applicant's domicile state and the United States.

9.11. License not transferable.

9.11.a. A license issued to a direct shipper is valid only for the person, firm or corporation named thereon and only for the premises for which the license was sought and issued. The license is not transferable. To the extent there is a change in beneficial ownership of twenty percent (20%) or less thereof, the Commissioner shall be notified in writing within ten (10) days before the transfer. If there is a change in the beneficial ownership in excess of twenty percent (20%), then the license shall be voided and the licensee must make application for a new license.

9.11.b. If there is any transfer in the beneficial ownership of any interest in a direct shipper, the new owner of the beneficial interest must satisfy all of the requirements of any and all laws of the United States and any rules and regulations promulgated pursuant thereto, and of the laws of the state, including, but not limited to, the provisions of W. Va. Code Chapter 60, and of the rules promulgated pursuant thereof.

9.12. Change of location. -- Any direct shipper who desires or intends to change the location of the premises for which the license was issued prior to the renewal of the license shall notify the Commissioner in writing at least thirty (30) days next preceding the date of the relocation. In the event of flood or fire, the Commissioner may waive the thirty (30) day notice upon request of the affected licensee.

9.13. Connection between direct shipper prohibited. -- If a licensed retailer, private club, private wine bed and breakfast, private wine restaurant, or private wine spa applicant is located within the same building or structure as a licensed direct shipper, there shall be no internal interconnection or door between the premises of the licensed retailer, private club, private wine bed and breakfast, private wine restaurant or private wine spa and the premises of the direct shipper. No person may be simultaneously employed by a direct shipper, distributor, private wine bed and breakfast, private wine restaurant, private wine spa or private club.

9.14. Transportation of wine by direct shipper. -- A direct shipper may not transport any wine unless the licensee has been issued a transportation permit by the Commissioner or utilizes a West

#### 175CSR4

Virginia licensed and bonded transporter or common carrier who has obtained a transportation permit as specified in this subsection.

##### 9.15. Direct shipper records, inspection.

9.15.a. Every direct shipper shall maintain records of all sales, shipments and deliveries, including invoices, records, receipts, bills of lading, taxes paid to the State of West Virginia and other pertinent papers required by the Commissioner.

9.15.b. The licensed direct shipper shall preserve all records for at least two years.

9.15.c. The Tax Commissioner or the Commissioner, or both, may inspect the books, accounts and records of any licensee and examine, under oath, any officer, agent or employee of any licensee or any person engaged in the business of selling, shipping or delivering wine to a distributor.

9.15.d. The Tax Commissioner or the Commissioner, or both, may require the production, within this state at the time and place the Tax Commissioner or the Commissioner, or both, of any books, accounts, papers or records kept within or without the State, or verified copies in lieu thereof, for examination by the Tax Commissioner, the Commissioner or their duly designated agents.

##### 9.16. Monthly report of direct shipper; form; content.

9.16.a. Direct shippers shall file to the Tax Commissioner and the Commissioner a properly completed monthly report for all purchases and shipments of wine, nonfortified dessert wine, port, sherry or Madeira wines sent to West Virginia adult residents for personal use and consumption, and not for resale. The report shall be filed before the sixteenth (16th) day of the month next succeeding the month for which the report is made on the Direct Shipper's Report of Wine Sales & Taxes on Shipments into West Virginia, ABCC Form WS-3-S, provided by the Commissioner.

9.16.b. The monthly report shall contain the following information:

9.16.b.1. The name and address of the direct shipper;

9.16.b.2. The month for which the report is being made;

9.16.b.3. The names and addresses of all West Virginia adult to whom the direct shipper shipped, wine, nonfortified dessert wine, port, sherry or Madeira wines. The names and addresses of the common carrier used to ship the wine, nonfortified dessert wine, port, sherry or Madeira wines;

9.16.b.4. The total number of liters sold and shipped by such direct shipper;

9.16.b.5. The identity and business phone number of the person preparing the report on behalf of the direct shipper;

9.16.b.6. The total amount of the invoice for the wine, nonfortified dessert wine, port, sherry or Madeira wines shipped.; and

9.16.b.7. Such other information as the Commissioner or Tax Commissioner requires.

9.16.c. All monthly reports shall be considered tax returns pursuant to W. Va. Code §11-10-1 *et seq.*

#### 175CSR4

9.16.d. Each monthly report must be filed in duplicate with the Tax commissioner and the ABCC Commissioner. Failure to timely file the monthly reports within five calendar days after the sixteenth day of the month will subject the direct shipper to penalties under W. Va. Code §60-8-18.

9.16.e. Every licensed direct shippers must collect and remit to the Tax Commissioner all taxes, sales taxes, municipal taxes and the liter tax due to West Virginia at the close of each month with the direct shipper's monthly report reflecting the taxes paid for all sales and shipments to West Virginia adult residents.

9.17. Invoices required; content. -- One (1) copy of each invoice for every sale and shipment made to adult West Virginia residents for personal use and consumption, and not for resale. The invoice shall identify the resident to whom sales and shipments of wine, nonfortified dessert wine, port, sherry or Madeira wines were made, the resident's address, the total invoice cost, the items sold by label identification, the quantity stated in liters and the alcohol content of each item sold.

9.18. Direct shipping and transportation.

9.18.a. A direct shipper may not ship more than two (2) cases of wine, nonfortified dessert wine, port, sherry or Madeira wines to an adult West Virginia resident consumer, who is twenty-one years of age or over, for such resident's personal use and consumption and not for resale, per month.

9.18.b. All transportation of wine, nonfortified dessert wine, port, sherry or Madeira wines by or on behalf of a direct shipper must be by a bonded and licensed common carrier. A direct shipper may also be a bonded and licensed common carrier.

9.18.c. A direct shipper or bonded and licensed common carrier must obtain a transportation permit from the Commissioner in order to transport wine into or within West Virginia.

9.18.d. Upon delivery a direct shipper or bonded and licensed common carrier must obtain the written or electronic signature of the adult West Virginia resident who is twenty-one years of age or over, who ordered the wine, nonfortified dessert wine, port, sherry or Madeira wines. The common carrier shall verify the age of the person who ordered by checking the proper identification.

9.18.e. A direct shipper or bonded and licensed common carrier may not leave direct shipments of wine, nonfortified dessert wine, port, sherry or Madeira wines at the West Virginia address for the person who ordered without the direct shipper or common carrier having first checking the person's identification and verifying the person's signature who ordered the wine, nonfortified dessert wine, port, sherry or Madeira wines and that the person who ordered is twenty- one years of age or over.

9.18.f. Failure of a direct shipper or its common carrier to satisfy the requirements of this rule and the W. Va. code subjects the direct shipper and common carrier to penalties under W. Va. Code §60-8-18.

9.19. Unlawful direct shipping.

9.19.a. No person may ship wine, nonfortified dessert wine, port, sherry or Madeira wines directly to consumers in West Virginia without a direct shipper's license or any other permit or license from the Commissioner.

9.19.b. No person may ship wine, nonfortified dessert wine, port, sherry or Madeira wines directly to licensed retailers, private clubs, private wine bed and breakfasts, private wine restaurants, and private wine spas in West Virginia.

9.19.c. Any person who knowingly makes, participates in, transports, imports or receives such an unlicensed and unauthorized direct shipment of wine, nonfortified dessert wine, port, sherry or Madeira wines is guilty of a felony and shall upon conviction thereof, be fined in an amount not to exceed ten thousand dollars per violation or shall be imprisoned in jail for a period not to exceed seventy-two hours.

9.19.d. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a direct shipment of wine, nonfortified dessert wine, port, sherry or Madeira wines constitutes an act that is an unfair trade practice.

**§175-4-10. Farm wineries.**

A farm winery is subject to the requirements under the W. Va. Code and the rules promulgated thereto, including but not limited to this rule and 175 CSR 3. A farm winery must be licensed in every capacity that it operates, have qualified for and paid for each license and satisfy the requirements and expectations for each license held by the farm winery. A farm winery may obtain a multi-capacity winery or farm winery license to operate in several capacities for one fee. See 175 CSR 3 for more farm winery requirements.

**§175-4-11. Wine Liter Tax and Municipal Tax on Wine Sales; Reports Required.**

11.1. Distributor's purchase order.

11.1.a. All sales of wine nonfortified dessert wine, port, sherry or Madeira wines, except retail sales of wine, nonfortified dessert wine, port, sherry or Madeira wines, must be by purchase order. All forms shall include the following information for each item purchased from the supplier: Brand name, unit size, number of cases and bottles, total quantity in extended liters (the unit size multiplied by the number of bottles will give the extended liters), case price and the total cost of each item purchased. All purchase orders are shall be dated and numbered to identify the purchaser and distributor and are to be signed by the distributor or his agent or employee.

11.1.a.1. The Commissioner shall furnish with each distributor's license a copy of "Purchase Order," Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-H, to use for purchase orders. This form need not be followed in exact detail or outline so long as the purchase order form used contains the information required herein; i.e., receiving documents and computer generated receipts may be used if the necessary information is provided.

11.1.a.2. The supplier or distributor shall maintain a copy of all purchase order for a period of four (4) years for use by the Commissioner for review and audit.

11.1.b. Distributor's wine invoice.

11.1.b.1. Each delivery of wine, nonfortified dessert wine, port, sherry or Madeira wines from a distributor shall be accompanied by an invoice including the following information: The date of invoice; the date of delivery; the trade name and address of the licensed retailer; private wine bed and breakfast; private wine restaurant; private wine spa; private club; the licensee's license number; the number of cases and bottles ordered and the size of each stated in liters; the identity of the product ordered; stated by brand and type; the total number of liters of each; the unit price of each brand and type ordered and the total sales price for each; the total number of liters included upon the invoice; and the total purchase price thereof. The invoice shall also contain a statement to be executed by the licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa, indicating the date of receipt of the wine, nonfortified dessert wine, port, sherry or Madeira wines so purchased and that such distributor was paid in full for all items so received, and name of the person, firm or corporation from

whom the shipment was received or by whom it was delivered. All invoices shall state the mode or method of payment.

11.1.b.2. The Commissioner shall furnish with each distributor a copy of "Distributor's Wine Invoice," Alcohol Beverage Control Commissioner Form No. ABCC-WS-1-1, for distributor's wine invoices. This form need not be followed in exact detail or outline so long as the form contains the information required hereinabove.

11.1.b.3. The distributor and the licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club shall retain a copy of all the distributor's wine invoices for a period of four (4) years for use by the Commissioner for review and audit.

11.1.c. Taxpayer. -- The taxpayer shall, for the purpose of determining the proper party to claim a refund of wine liter tax, be only the person who pays the wine liter tax to the Tax Commissioner. For purposes of claiming a refund for a casualty loss, the term "taxpayer" may include a distributor, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club. For the purposes of claiming a credit against such tax, the term "taxpayer" shall include only the supplier or direct shipper claiming the same.

11.1.d. Refund of liter tax by reason of casualty loss. -- A distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club, who has paid the liter tax on wine declared by the Commissioner to be unfit for sale, as a result of fire or other casualty may apply for a refund of the liter tax paid, if the amount of the tax paid on loss exceeds fifty dollars (\$50.00). Neither theft nor breakage occurring on the premises of the distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club, is a casualty within the meaning of this rule.

11.1.d.1. Any distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club seeking a refund under this subsection shall contact the Commissioner within five (5) calendar days of the occurrence or casualty resulting in such loss. Upon verification of the loss and the reasons, the Commissioner shall take such steps necessary to effect payment in full to the distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club having the claim. No refund or claim may be granted or considered by the Commissioner for liter taxes in an aggregate of less than fifty dollars (\$50.00).

11.1.d.2. The Commissioner is the source of last resort for a refund under the subsection. No claim for a refund will be honored until any available insurance or other source from which a claim for casualty loss is recoverable has been exhausted. For the purpose of any refund, each casualty shall be regarded separately from any other casualty. No claim for refund may include more than one casualty.

11.1.e. Municipal tax on sales of wine to be collected and remitted to the State Tax Department.

11.1.e.1. All taxes required to be levied and collected on sales of wine made by distributors, suppliers, direct shippers, licensed retailers, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs and farm wineries pursuant to the provisions of either W. Va. Code §8-13-7, or W. Va. Code §60-3-9d, or both, shall be remitted to and collected by the Department Revenue. All such taxes shall be deposited to the State Treasury, which shall be responsible for the distribution to the appropriate county or municipality. All assessments, petitions for reassessment and hearings required on petitions for reassessment shall be administered and conducted by the Department of Revenue. Any rulings to be made thereon shall be made by the Department. All statutes, rules and regulations and procedures adopted by the Department of Revenue with respect to assessments, reassessments, petitions for reassessment, hearings thereon, administrative appeals and all matters relating thereto insofar as the

same may relate to the imposition and collection of the municipal tax on sales of wine are adopted and incorporated herein by reference to the same extent as if the same were set forth here in extensio and shall apply to the imposition and collection of such tax.

11.1.e.2. This section does not apply to the collection, allocation or distribution of taxes on retail sales made by the Commissioner.

**§175-4-12. Advertising.**

12.1. General prohibition. -- All advertising of wine 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 hereby prohibited. Federal law, as interpreted by the ABCC, provides the following guidelines relative to acceptable and prohibited advertising of wine.

12.2. Permissible media. -- Printed advertising of wine in West Virginia is limited to billboards, newspapers, magazines and similar publications, internet or other electronic media and radio and television.

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

12.4. Mandatory statements.

12.4.a. Responsible advertiser. -- An advertisement of wine shall state the name and address of the producer, manufacturer, bottler, importer, direct shipper or wholesaler responsible for its publication. The advertisement need not state the street name and number.

12.4.b. Class, type and distinctive designation. -- The advertisement 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.

12.4.c. Alcoholic content. -- The advertisement shall state the alcoholic content of the wine advertised in the manner and form in which it appears on the wine labels.

12.5. Lettering. Conspicuousness of mandatory statements. -- Statements required 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:

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

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

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

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

12.6. Prohibited statements -- Generally.

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

12.6.a.1. Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards, when no medals or awards have been given or where the medals or awards were not given on a competitive or comparative basis are prohibited;

12.6.a.2. Any statement that is disparaging of a competitor's product;

12.6.a.3. Any statement, design, device or representation which is obscene, lewd or indecent;

12.6.a.4. Any statement, design, device or representation of, or relating to, analyses, standards or tests, irrespective of falsity 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;"

12.6.a.5. Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, which is likely to mislead the consumer. Nothing in this section shall prohibit 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; and

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

12.6.b. Statements inconsistent with labeling. -- Advertisement may not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

12.6.c. Curative and therapeutic effects. -- Advertisement may not contain any statement, design or device representing that the use of any wine has curative or therapeutic effects if the 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."

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

12.6.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 the Armed Forces of the United States. 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, or 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.

12.7. Restrictions.

12.7.a. An advertisement may not contain any statement of a bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. The statement of a 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 to the statement may be made, nor shall any use be made of the statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in accordance with United States government or any state government specifications or standards.

12.7.b. Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is "Unfortified" or has been "Fortified," or 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) is prohibited.

**§175-4-13. Trade Practices and Conduct of Business Generally.**

13.1. Improper Inducements. -- A manufacturer may not induce, directly or indirectly, any distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club to purchase any wines from the manufacturer to the exclusion, in whole or in part, of products sold or offered for sale by another manufacturer, by:

13.1.a. Acquiring or holding any interest in any license of a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa, private club or in any premises owned, occupied or used in any manner by the licensee or his or her immediate family;

13.1.b. Acquiring any interest in the real or personal property which is owned, occupied, or in any manner used by the distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family in the conduct of any business;

13.1.c. Furnishing, giving, renting, lending, or selling to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value: However, a manufacturer may furnish items of nominal value for in-store display or sales purposes and to be used only within the confines of the commercial establishment.

13.1.d. Paying or crediting a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family for any advertising, display, or distribution services;

13.1.e. Guaranteeing any loan for the repayment of any financial obligation of a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family; or

## 175CSR4

13.1.f. Requiring the distributor, licensed retailer or private wine restaurant to take and dispose of a certain quota of any wine.

13.2. Interest in the retail license. -- A manufacturer may not acquire or hold any interest in any license required to be obtained by a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family or in any other premises owned, occupied or in any manner used by the distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family.

13.2.a. This prohibition applies to the officers, partners, employees, other representatives of the manufacturer, and their immediate families.

13.2.b. This prohibition applies to any such interest acquired by a separate corporation in which the manufacturer or its officers, partners, employees or other representatives, or their immediate families, holding any ownership interests or are otherwise affiliated.

13.3. Interest in real or personal property of a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club.

13.3.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 a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family.

13.3.b. This prohibition applies to any interest acquired by corporate officials, partners and employees or other representatives of the manufacturer, or their immediate families and 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 families of any such individuals, hold any ownership interest or are otherwise affiliated.

13.3.c. A manufacturer may not acquire a mortgage or similar type of document on the real or personal property of a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or on the real or personal property of their immediate family members.

13.3.d. A manufacturer may not rent display space or shelf space at any commercial establishment operated by a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family.

13.4. Furnishing things of value.

13.4.a. A manufacturer may not furnish, give, rent, or lend to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family any equipment, fixtures, exterior signs, supplies, money, services or other things of value. A manufacturer may sell to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club goods other than wine which are to be resold to the general public, or to members of the private wine restaurant, so long as the distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club must pay the normal sale price for those goods.

13.4.b. This prohibition 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 distributor, direct shipper,

licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club may be considered as providing a thing of value without the payment of an appropriate purchase price.

13.4.c. The sale of any equipment, supplies or fixtures to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club by a manufacturer must take place at the then current market value. The manufacturer may not offer any special price advantage to purchasing from one manufacturer as opposed to another manufacturer.

13.4.d. A manufacturer may not provide any assistance (financial, legal, administrative or influential) to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club in acquiring any license required by the Commissioner.

13.4.e. A manufacturer may not furnish any exterior advertising signs to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club, but may provide interior signs. The manufacturer may advertise by billboards which display alcoholic liquors, wine or nonintoxicating beer, but the manufacturer may not identify any distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club within such advertisement.

13.4.f. A manufacturer may not furnish to a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club at less than the normal sale price anything of value which the licensee may merchandise in his or her business. These things of value including nonalcoholic mixers, pouring racks, and similar items.

13.5. Paying for advertising, display or distribution service. A manufacturer may not provide a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club or his or her immediate family of either, with free advertisement, exterior display or distribution services, or any similar types of services in any business activities.

13.6. Quota sales. A manufacturer may not require a distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club may not be required to purchase any alcoholic liquors in order to purchase nonalcoholic liquors or other products from that manufacturer.

13.7. Other. A manufacturer may not touch the product or displays of another manufacturer.

**§175-4-14. Unlawful Acts.**

14.1. It shall be unlawful:

14.1.a. Unless otherwise specifically provided by the provisions W.Va. Code §60-8-1 et seq., for a licensee under W.Va. Code §60-8-1 et seq., to acquire, transport, possess for sale or sell wine other than in the original package;

14.1.b. For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age, or to a mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: Provided, That the provisions of W.Va. Code §60-3A-25a shall apply to sales of wine;

14.1.d. For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person. Further nothing shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment.

## 175CSR4

With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license.;

14.1.e. for a retailer, farm winery (except as provided in W. Va. Code 60-8-34 and 175 CSR 3), wine specialty shop retailer, private wine bed and breakfast, private wine restaurant or private wine spa licensee, his or her servants, agents or employees to sell wine 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 weekdays and Saturdays.

14.1.f. for a retailer to sell un-sealed packages per W.Va. Code §60-8-21;

14.1.g. for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery;

14.1.h. for a retailer to permit any person to break the seal on any package or bottle of wine, consume alcoholic liquor, wine or beer, or loiter while on the retailer's licensed premises.

14.1.i. for any licensee to fail to meet the requirement for initial or renewal of licensure as specified in W. Va. Code §60-8-1 et seq. and in this rule;

14.1.j. for any winery, farm winery, supplier or distributor to fail to license its representatives;

14.1.k. for any license to sell wine through a drive through (including, but not limited to a window, pass through or garage) on its licensed premises or in any manner not approved by the Commissioner;

14.1.l. for a direct shipper to fail to meet any requirements specified in W. Va. Code §60-8-6, W. Va. Code §60-8-6a and this rule;

14.1.m. for a direct shipper to ship liquor or nonintoxicating beer; or

14.1.n. for a person or licensee to violate any reasonable rule of the commissioner;

14.2. It shall be unlawful for a supplier:

14.2.a. to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of W. Va. Code §60-8-6(a);

14.2.b. to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. The "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor;

14.2.c. to possess, sell or deliver any wine that it has not registered per section 3.8 of this rule and pay the appropriate fees;

## 175CSR4

14.2.d. to appoint only one distributor for the state of West Virginia, as this is an illegal exclusive agreement per W. Va. Code §60-8-30;

14.2.e. to not pay the wine liter tax as required by W.Va. Code §60-8-4;

14.2.f. to fail to maintain its bond as specified in W.Va. Code §60-8-29; or

14.2.g. to violate any rule of the commissioner.

14.3. It shall be unlawful for a distributor:

14.3.a. to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of W. Va. Code §60-8-6(a);

14.3.b. to discriminate in price, sales agreements, terms or services offered to retailers, licensees or to any licensee under article seven of this chapter and further it is unlawful for a supplier to discriminate against a distributor in price, sales agreements, terms or services. "Discriminate", as used in this section, means the granting of more favorable prices, agreements, terms or services to one person than to another;

14.3.c. his or her agents, servants or employees to transport or deliver wine to any retail licensee or to any licensee under W. Va. Code §60-7-1 et seq. on Sunday or any general election day;

14.3.d. to sell wines authorized by W. Va. Code §60-8-1 et seq., to licensees under W. Va. Code §60-7-1 et seq. and retailers and licensees under W. Va. Code §60-8-1 et seq., at a price which is greater than the price at which such wines are sold and distributed to retailers under this article;

14.3.e. to sell unregistered wine in West Virginia and the distributor has a duty to verify with the Commissioner that wine sold by them has been registered in West Virginia;

14.3.f. to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. The "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: Provided, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this state wherein one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor has been authorized by a licensed supplier to distribute;

14.3.g. to sell or offer to sell, or a retailer to purchase or receive, any wine except on a cash basis and no right of action exists to collect any claims for credit extended contrary to the to the code and this rule: however nothing prohibits, a credit on any subsequent sale, for crediting the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipments or orders and other such reasons customary in the trade;

14.3.h. to fail to maintain its bond as specified in W.Va. Code §60-8-29; or

14.3.i. to violate any rule of the commissioner.

14.4. The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of W. Va. Code §60-8-1 et seq., any rule

#### 175CSR4

of the commissioner or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth below:

14.4.a. If the commissioner finds that the licensee has violated any provision of W. Va. Code §60-8-1 et seq., any rule of the commissioner or any order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the Commissioner may:

14.4.a.1. Revoke the licensee's license;

14.4.a.2. Suspend the licensee's license;

14.4.a.3. Place the licensee on probationary status for a period not to exceed 12 months; and/or,

14.4.a.4. Impose a monetary penalty not to exceed \$1,000.00 for each violation where revocation is not imposed.

14.4.b. If the commissioner finds that a licensee has willfully violated any provision of W. Va. Code §60-8-1 et seq., any rule of the commissioner or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

14.4.c. If a supplier or distributor fails or refuses to keep in effect the bond required by W. Va. Code §60-8-29, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by W. Va. Code §60-8-20 is furnished to the commissioner, at which time the commissioner shall vacate the suspension.

14.4.d. If the commissioner finds that public safety is adversely affected by the licensee's alleged violations, the commissioner may immediately suspend the licensee's license in the interest of public safety in order to conduct an investigation and determine whether to hold a hearing on the licensee's alleged violations; such a suspension is not subject to any stay.

#### **§175-4-15. Refusal, Suspension or Revocation of License.**

15.1. Refusal, suspension or revocation of license; applicant or licensee not a suitable person. -- W. Va. Code §60-8 requires that the Commissioner refuse a license to any applicant if he finds that "such applicant is not a suitable person." The Commissioner may refuse to issue a license to any applicant or may revoke or suspend the license of any licensee whom he or she affirmatively finds not to be of good reputation in the community where the license was sought or granted. In considering whether a person is "not a suitable person," the Commissioner may take into account other factors, including those factors described in Section 4.11, 5.7, 6.8, 7.8, 8.8 or 9.10 of this rule in addition to the reputation of such person in the community where licensure was sought or granted. This rule includes a person who manages or conducts the affairs of the applicant or licensee.

15.2. Refusal, suspension or revocation of license; premises not a suitable place. -- If the Commissioner finds that the licensed premises or the premises for which licensure is sought is not a "Suitable Place," fails to meet the requirements of any law, rule or regulations of this state or of the United States, is in violation of any zoning ordinance for which no variance has been granted or that illegal activities are occurring or are allowed to occur at the premises, the Commissioner may refuse the application for licensure, suspend or revoke any the licensee's license, or may grant a reasonable time within which to correct any violation or condition.

#### 175CSR4

15.3. Refusal, suspension or revocation of license; disqualification of beneficial owner or of persons managing or conducting affairs of applicant or licensee. -- When, by the provisions of any law, rule or regulation, a person is prohibited from owning any interest in a distributor, a licensed retailer or a private wine restaurant, the prohibition extends and includes any beneficial interest in the licensed distributor, licensed retailer, licensed private wine restaurant or any other licensee. The Commissioner may refuse to license or suspend or revoke a license at any time he or she finds that a person so prohibited is, in fact, a true and actual owner or part owner in a distributor, licensed retailer, private wine restaurant or any other licensee. Limitations as to ownership also apply to persons who actually, in whole or part, manage or conduct the affairs for which licensure was sought or granted. The true, beneficial and actual ownership, management or the conducting of the affairs of a licensed person, firm or corporation held, controlled, managed or conducted by persons not permitted so to do pursuant to either federal or state law, rule or regulation, is grounds for immediate revocation of the license.

15.4. Dual ownership prohibited. -- No person, including the spouse, unemancipated child or a child residing in the parent's home may be licensed or own an interest, including any beneficial interest, simultaneously as a distributor and as a licensed retailer, as a direct shipper, private wine bed and breakfast, private wine restaurant, private wine spa and a distributor, or as a licensed retailer and as a private wine bed and breakfast, private wine restaurant, private wine spa or private club.

15.5. Alcohol Beverage Control Commissioner employees prohibited from ownership in a private wine bed and breakfast, private wine restaurant, private wine spa, private club licensed retailer, direct shipper, supplier or distributor. The Alcohol Beverage Control Commissioner, any employee of the Alcohol Beverage Control Commissioner may not have, hold or own any interest of whatsoever nature or kind, beneficial or otherwise, in any licensed retailer, direct shipper, supplier, distributor, private wine bed and breakfast, private wine restaurant, or private wine spa, spouse or unemancipated child or any child residing in his or her own residence regardless of age.

15.6. Management or conduct of affairs of licensee by certain persons prohibited. -- No person may be licensed as either a distributor, supplier, direct shipper or retailer if he or she allows or permits another person to conduct or manage in any way or in any capacity, in whole or in part, the affairs of the applicant when either of such the other person has: (a) been convicted of a felony or other crime involving moral turpitude within three (3) years next preceding the date upon which the application is filed, (b) been convicted in a court of record of violating the liquor laws of any state or the United States within two (2) years next preceding the date upon which the application is filed, or (c) had any license revoked pursuant to W. Va. Code chapter 60 or under the liquor laws of any other state within five (5) years next preceding the date upon which the application is filed. The Commissioner shall determine whether the applicant or the other person is in compliance with this subsection based upon the substantial duties of the person in question and not upon the title or other extraneous factors relating thereto.

15.6.a. This rule applies only to the extent that the person, firm or corporation seeking or attaining licensure has employed or engaged another in:

15.6.a.1. The sale or distribution of wine,

15.6.a.2. The acquisition of wine, or

15.6.a.3. Managing in any substantial way or conducting the affairs of the applicant or license renewal.

15.6.b. This rule applies to all license renewals and a violation of its provisions during any period of which licensure has been granted shall be grounds for immediate revocation.

15.7. Refusal, suspension or revocation of license. -- The Commissioner may refuse to license or may suspend or revoke the license of any supplier, distributor, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant, private wine spa or private club whom he or she finds not to be in compliance with the provisions of any law, rule or regulation of the United States or of this state relating to the sale or distribution of wine.

**§175-4-16. Hearing and Appeal Procedure.**

16.1. Order refusing license, suspending or revoking same. -- If the Commissioner refuses to issue a license or sanctions, suspends or revokes a license, he or she shall make and enter an order to that effect and mail, by certified mail, return receipt requested, a copy of the order to the licensee, or serve the same as provided for the service of legal process in accordance with the West Virginia Rules of Civil Procedure.

16.2. Petition for hearing. -- Any applicant or licensee adversely affected by such order, has the right to a hearing thereon before the Commissioner or a person designated by him or her as a hearing examiner. A petition in writing for such a hearing must be served upon the Commissioner within ten (10) days following the receipt of the order by the applicant or licensee.

16.3. Petition requirements. -- The petition for a hearing must be in writing with an original and one (1) copy and must fully state the issues. No telegram, telephone call, facsimile, letter or similar communication will be regarded as a petition. The petition must contain the following:

16.3.a. A jurisdictional statement;

16.3.b. A clear and concise assignment of each error which the petitioner alleges to have been committed by the Commissioner in the determination of a violation, with each assignment of error being shown in separately numbered paragraphs;

16.3.c. A clear and concise statement of fact upon which the petitioner relies as sustaining its assignment of error;

16.3.d. A prayer setting forth the relief sought;

16.3.e. The signature of the petitioner or its officers signing such petition; and

16.3.f. A verification by the petitioner.

16.4. Hearings - cost deposit. -- A person demanding a hearing shall give security for the cost of the hearing in the amount of three hundred dollars (\$300) by certified check, cashier's check or money order payable to the Commissioner. The bond shall accompany the petition demanding a hearing and the deposit will be returned if the person demanding the hearing prevails.

16.5. Subpoenas and subpoenas duces tecum. -- In all hearings held under W. Va. Code §60-8-1 *et seq.*, and this rule, the evidence of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum, issued at the request of the Commissioner or the licensee, by either the Commissioner or his or her duly appointed hearing examiner.

16.5.a. Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date, either by personal service made by any person twenty-one (21) years of age or older or by registered or certified mail. A return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail.

16.5.b. All subpoenas and subpoenas duces tecum will be issued in the name of the Alcohol Beverage Control Commissioner, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the insistence of the Commissioner are the responsibility of the Commissioner. Any person who serves any subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Fees for the attendance and travel of witnesses shall be the same as for witnesses appearing before the circuit courts of this state.

16.5.c. The Commissioner shall pay all fees for the issuance of a subpoena or subpoena duces tecum her or she issued.

16.5.d. A party requesting subpoenas or subpoena duces tecum shall pay all fees for their issuance out of the hearing deposit.

16.5.e. All requests by the licensee or the Commissioner for subpoenas and subpoenas duces tecum shall be in writing and contain a statement acknowledging that the requesting party agrees to pay such fees for their issuance.

16.5.f. Any person receiving a subpoena or subpoena duces tecum issued pursuant to this subsection shall honor it as though it was issued by a circuit court of the state, and shall appear as witness and/or produce such books, records or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum lawfully served pursuant to this subsection, the circuit court of the county in which the hearing is being held or the judge thereof in vacation, upon application by the Commissioner, shall compel obedience by attachment proceeds for contempt.

16.6. Stay of suspension or revocation order. -- The service of a petition for hearing upon the Commissioner suspends the execution of any license revocation or suspension of the distributor, supplier, direct shipper, licensed retailer, private wine bed and breakfast, private wine restaurant or private wine spa who demanded a hearing, unless the Commissioner determines that such suspension or revocation is in the interest of public safety.

16.7. Hearing date. -- The Commissioner shall set a date for any hearing demanded and notify the person demanding the hearing of the hearing date and time. The hearing shall be held within thirty (30) days after receipt of the demand.

16.8. Place of hearing. -- Hearings will be held in Charleston, West Virginia, unless the Commissioner determines otherwise.

16.9. Continuances. -- Hearings will not be delayed by a motion for continuance, unless it is made no later than ten (10) days before the date set for the hearing and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commissioner deems adequate.

16.10. Waiver of hearing. -- In any case involving violation of the alcohol beverage control laws or rules The Commissioner may deem he or she appropriate, afford the licensee or agent an opportunity to waive the formal hearing which has been timely requested. If the licensed retailer or agent so elects to waive a formal hearing, he or she may then state in writing any matter in explanation or mitigation of the violations which he or she desires the Hearing Examiner and the Commissioner to consider in making a

decision. The retailer or agent shall thereafter be bound by his or her election and may not request a formal hearing.

16.11. Appearance and practice before the Hearing Examiner.

16.11.a.

16.11.a.1. Petitioner.

16.11.a.2. The petitioner shall be present at the hearing unless excused by the Hearing Examiner because of extraordinary circumstances:

16.11.a.3. The petitioner may appear either in person or by counsel to present oral testimony or other evidence;

16.11.a.4. If the petitioner fails to appear and has not been excused, the Hearing Examiner may treat such action as a withdrawal of the petition or request.

16.11.b. Respondent:

16.11.b.1. The respondent may appear at the hearing with or without counsel;

16.11.b.2. Failure of the petitioner to appear does not prevent presentation of the case before the Hearing Examiner or the entering of a final order.

16.11.c. Interested parties. Any person not initially joined in the proceeding may timely petition the Hearing Examiner for intervention.

16.12. Standards of ethical conduct. -- All persons appearing before the Hearing Examiner in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of West Virginia. If any person does not conform to these standards, the Hearing Examiner may decline to permit the person to continue to appear in a representative capacity in the proceeding.

16.13. Hearing. -- The Commissioner may designate a Hearing Examiner to conduct the hearing.

16.13.a. The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representative's agent's authority must be presented to the satisfaction of the Commissioner.

16.13.b. The petitioner, his duly authorized representative or agent, may with the approval of the Commissioner, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Such waivers and agreements are to be in writing or upon the record.

16.14. Argument and briefs. -- Petitioners will be given an opportunity for argument within the time limits fixed by the Commissioner following submission of evidence. The Commissioner will accept briefs in lieu of argument. Briefs must be filed within twenty (20) days after the hearing, unless otherwise agreed by the parties.

16.15. Discovery. -- Subsequent to the issuance and service of the Notice of Hearing upon a respondent, the parties may employ pre-hearing discovery measures. The Hearing Examiner is to utilize an informal set of guidelines using the West Virginia Rules of Civil Procedure as a model.

16.16. Evidence admissible at hearing. -- The Commissioner may admit any relevant evidence, but shall observe the rules of privilege recognized by law relating to communications and topics. Findings shall be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, regardless of whether the evidence would be admissible before a jury. The Commissioner may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect. General principals of West Virginia Rules of Evidence shall be observed.

16.17. Record of proceedings. -- There shall be a record made at all hearings held pursuant to this rule.

16.18. Commissioner's decision. -- After the conclusion of the hearing, within ten (10) days of receipt of the transcript thereof or after receipt of briefs submitted in lieu of argument, the person designated by the Commissioner as hearing examiner shall prepare a recommended decision supported by findings of fact and conclusions of law affirming, modifying or vacating the earlier order of the Commissioner. Thereafter, the Commissioner, within ten (10) days of receipt of the recommended decision. If the Commissioner accepts or rejects the recommended decision, and if he or she accepts such decision, he or she shall sign and acknowledge the same as his or her own after having reviewed the transcript and all exhibits attached and affixed thereto. If Commissioner rejects the recommended decision, he or she shall within ten (10) days of receipt of such recommended decision, prepare a decision setting forth his own findings of fact and conclusions of law. In either event, the order signed by the Commissioner shall be final unless vacated or modified upon judicial review. A copy of said order shall be served upon each party to the hearing and his or her attorney of record, if any, in person or by registered or certified mail.

16.19. Motion for reconsideration.

16.19.a. A motion for reconsideration of a final order made by the Commissioner must be made within seven (7) days after being served with the decision. The motion shall identify the matter the party desires to have reconsidered, shall fully state the reasons for reconsideration and shall be served on all parties.

16.19.b. When a motion for reconsideration has been filed, the order of the Commissioner shall not be deemed final for purposes of appeal until the Commissioner has served his or her ruling on the motion.

16.19.c. A motion for reconsideration of a proposed order issued by the Examiner may be appealed through a motion within seven (7) days after the date of service to be proposed initial order. A copy of the exceptions shall be served on all parties. The Commissioner shall issue an order within thirty (30) days after hearing date either affirming or reversing the Hearing Examiner's decision.

16.20. Appeal to circuit court. -- An appeal is governed by W.Va. Code §60-8-18, and in all other respects W. Va. Code §29A-5-1 *et seq.* and W.Va. Code §60-8-1 *et seq.*, by the applicant or licensee to the Circuit Court of Kanawha County, West Virginia, or in accordance with the provisions of W. Va. Code §60-8-18. The appeal must be filed within thirty (30) days after the applicant or licensee received notice of the final order of the Commissioner. The record published under subsection 16.17 shall be the record for purposes of an appeal. The party requesting a transcript of the record is responsible for the expense incurred in the preparation.

16.21. Filing and service of documents and orders.

**175CSR4**

16.21.a. All documents required to be filed in an appeal under this rule shall be filed with the Commissioner either by personal delivery to his office or by mail to the Commissioner's mailing address.

16.21.b. Filing is effective upon delivery or upon mailing as determined by postmark.

16.21.c. Copies of all documents filed in an appeal under these rules shall be served upon all other parties.

16.21.d. Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested. Whenever a party is represented by an attorney who has signed any document filed on his or her behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

16.21.e. In the case of personal delivery, service is effective on delivery. In the case of mailing, service is effective upon mailing.

16.21.f. All documents required to be served shall be accompanied by proof of service in the form of a certificate of service. The certificate of service shall include a statement of how service was accomplished. Among those documents required to be served are: Notice of Hearing, Notice of Appeal, the final order and any motions made. Also included are any documents the Commissioner adopts as being necessary for procedural purposes.

16.22. Supreme Court of Appeals. -- An appeal may be taken by the applicant or licensee or by the Commissioner from the final judgment of the circuit court to which the applicant or licensee has appealed, the same to be taken in the manner and within the time provided by law for civil appeals generally.