

**TITLE 175
LEGISLATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL COMMISSIONER**

**SERIES 6
BAILMENT POLICIES AND PROCEDURES**

§175-6-1. General.

1.1. Scope. -- These modified proposed legislative regulations explain and clarify the bailment procedures and policies to be utilized by the ABCC in the operation of the ABCC warehouse and the provision of alcoholic liquor to licensed retail stores.

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

1.3. Filing Date. -- June 23, 2008.

1.4. Effective Date. -- September 25, 2008.

§175-6-2. Definitions.

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

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

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

2.3. "Alcohol Beverage Control Commissioner" or "ABCC" or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his delegate.

2.4. "Bailment" means the warehousing method whereby alcoholic liquors owned by the supplier are stored in the ABCC warehouse for subsequent shipment to retail liquor stores.

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

2.6. "Code" means the designation for a specific brand and container size of alcoholic liquor.

2.7. "Department" shall mean the West Virginia Department of Tax and Revenue.

2.8. "Distilled spirits" means ethyl alcohol, ethanol or spirits, 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. In addition to the foregoing, any alcoholic beverage containing more than twenty-four percent (24%) of alcohol by volume shall be deemed to be distilled spirits.

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

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

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

2.12. "Importer" means a person who brings in or carries-in goods from a foreign county for the purpose of sale of such goods in this county.

2.13. "Layer" or "layer quantity" means one layer of product cases on a pallet-type portable platform of wood or other material.

2.14. "Licensed retailer" means the person licensed in accordance with W. Va. Code §60-3A to operate a retail liquor store.

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

2.16. "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a producer, processor, bottler, importer, broker, wholesaler, distributor, supplier, distiller, rectifier, winemaker or brewer.

2.17. "Mixed case" or "split case" means a single full case of alcoholic liquors which is comprised of different brand names, different spirits, different proofs, etc.

2.18. "Pallet" or "pallet quantity" means the cases of product which for purposes of shipment and storage are situated on portable platforms of wood or other material, such platforms being forty-eight inches (48") deep by forty inches (40") wide and capable of being moved by materials handling equipment such as a fork-lift; the layers of product cases on the platforms must be eight in number.

2.19. "Neutral spirits" means ethyl alcohol of 190 proof or higher used especially for blending other alcoholic liquors.

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

2.21. "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.

2.22. "Product" means alcoholic liquors whether located in the ABCC warehouse or in retail liquor stores.

2.23. "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: Provided, That the term "public place"

shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of W. Va. Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

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

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

2.26. "Selling" shall include solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.27. "Supplier" means a person who sells or offers to sell, or solicits or negotiates the sale, of alcoholic liquors in West Virginia and the term may include manufacturers, distributors, distillers and importers.

2.28. "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake or other product offered for sale or sold as wine.

2.29. "Winery" means an establishment where wine is manufactured or in any way prepared.

§175-6-3. Conversion to Bailment.

3.1. During the time the ABCC converts to a bailment warehousing method, the inventory will consist of product owned by the ABCC and product owned by suppliers.

3.1.1. When conversion commences on July 3, 1990, and at all times subsequent thereto, ABCC inventory will be used first; when the ABCC inventory is insufficient, inventory provided by suppliers will be used.

3.1.2. The ABCC inventory records will at all times maintain a separate identity from all suppliers' inventory.

3.1.3. As the ABCC inventory is depleted, supplier inventory will be increased to the pre-approved level.

3.2. Each supplier is required to furnish the ABCC with the name, address, and phone number of the principal individual who will represent such supplier in all dealings with the ABCC that pertain to bailment.

3.3. Each supplier is required to provide the ABCC with certified copies of such supplier's applicable Bureau of Alcohol, Tobacco and Firearms permit and the Internal Revenue Service Special Tax Permit (form 11).

3.4. Each supplier is required to complete annually the "Bailment Authorization Form" provided by ABCC. This form grants ABCC the authority to effect the removal of the supplier's product from bailment on a shipment-by-shipment or continuing basis.

3.5. Each supplier is required to execute the "HOLD HARMLESS AGREEMENT" provided by ABCC.

This agreement states that the supplier will hold ABCC harmless for any losses incurred to the supplier's inventory due to fire, water, or other damage by the elements while the supplier's inventory is stored at the ABCC warehouse. ABCC will not cover costs or carry insurance for such losses.

3.6. All merchandise received from a given supplier will be converted to bailment at the time of receipt at the ABCC warehouse.

3.7. Price changes may occur no more often than four (4) times per twelve (12) month period. New price quotation forms must be submitted at least sixty (60) days in advance of the price increase effective date in order that the Wholesale Spirits Catalog may be amended. Effective dates of the spirits catalog are February 1, May 1, August 1, and November 1. Failure to provide the required advance notice of price changes may result in delisting certain of the suppliers products. Additionally, the price change may not be instituted until the spirits catalog is next published.

3.8. ABCC will provide suppliers with a one (1) year sales history report. This report will list sales, by month, of each of the supplier's products that have been sold by ABCC.

3.9. ABCC will provide suppliers with an initial maximum inventory level for each code. Requests for changes in inventory levels must be made to authorized ABCC personnel who must agree to such changed levels before merchandise which will exceed the maximum inventory level is ordered for placement into bailment storage in the warehouse.

3.10. ABCC will provide suppliers with a current inventory status report. This report will indicate current ABCC inventory and licensed retailer on-order quantities for each item. This report will assist suppliers in determining bailment inventory orders.

§175-6-4. Delivering Merchandise.

4.1. Suppliers will be responsible for determining the quantities of merchandise to be delivered to the ABCC warehouse for bailment storage. ABCC requires that suppliers deliver product in multiples of pallet quantities only. Effective January 1, 1991, product will not be unloaded if it is not shipped and unloaded on pallets.

4.2. Suppliers are required to notify ABCC warehouse personnel at least forty-eight (48) hours in advance of shipment of quantities, by code, of product being delivered to the ABCC Warehouse. The supplier will be provided with an unloading reference number at the time ABCC is notified of shipment.

4.3. The shipment will not be accepted if the quantities to be delivered will place the warehouse inventory of the product being delivered over the maximum level. The supplier will be notified of such nonacceptance within 24 hours of original notification.

4.4. The supplier will be responsible for obtaining the freight carrier. The supplier must provide the carrier with the ABCC unloading reference number.

4.5. The carrier is required to call the ABCC Warehouse to obtain an unloading appointment time. The carrier must indicate the supplier and the ABCC unloading reference number when scheduling the appointment. Carriers should call at least one (1) working day in advance to arrange the unloading time. Trucks arriving without appointments and reference numbers will not be unloaded.

4.5.1. In general, deliveries will not be unloaded from 4:00 p.m. to 7:00 a.m. Monday through

Friday, nor at all on Saturdays, Sundays or legal State holidays including primary and general election days.

§175-6-5. Unloading and Storage.

5.1. ABCC Warehouse personnel will unload all products. Carrier drivers are required to witness the unloading.

5.2. ABCC Warehouse personnel will complete a warehouse unloading report form. This report will indicate by code the number of cases unloaded. Shortages and damage will be noted. The driver and ABCC warehouse representative will sign the unloading report form and the Bill of Lading or Delivery Receipt.

5.3. ABCC will provide the supplier with a copy of the warehouse unloading report form and the Bill of Lading or Delivery Receipt. The supplier and the carrier must resolve any shipping discrepancies from the report.

5.4. ABCC will use the warehouse unloading report form to enter information into the computer inventory files. ABCC will be responsible for the accuracy and maintenance of the computer inventory files.

5.5. Only full cases of salable product will be placed into storage for the supplier. Salable is defined as product that can be sold at full retail price. Cases that are short bottles, damaged, or have broken bottles will be unloaded into a vendor holding area. The supplier will be notified and disposition instructions requested. The supplier may send a representative to the warehouse to physically process the reported damage or request that ABCC personnel provide the extra service. ABCC will charge the supplier for extra case handling services.

5.6. Partial Cases of Salable Product:

5.6.1. The supplier may request that partial cases of salable product be transferred to vendor storage for eventual purchase by retail liquor stores.

5.6.2. As an alternative, the supplier must furnish disposition instructions within thirty (30) days subsequent to when such instructions were requested by the ABCC. If the supplier fails to furnish instructions, ABCC may sell the product and retain the proceeds to cover handling costs. ABCC personnel will adjust the computer bailment inventory records. This procedure does NOT constitute a purchase of bailment inventory by ABCC.

5.7. Salvageable Product:

5.7.1. Salvageable product will be retained in the supplier holding area for a period of thirty (30) days. Salvageable product is defined as product that is slightly damaged and cannot be sold at full retail price. If suppliers fail to furnish disposition instructions within the thirty (30) days, ABCC may sell such products and retain the proceeds to cover handling costs. ABCC personnel will adjust the computer bailment inventory records. This procedure does NOT constitute a purchase of bailment inventory by ABCC.

5.8. Unsalable Merchandise:

5.8.1. Unsalable product will be retained in the supplier holding area for a period of thirty (30) days. Unsalable product is defined as product that is not fit for human consumption. If the supplier fails to furnish ABCC with disposition instructions within the thirty (30) day time frame, ABCC may destroy the product and invoice the supplier for handling charges to cover the costs incurred. ABCC personnel will adjust the

computer bailment inventory records. This procedure does NOT constitute a purchase of bailment inventory by ABCC.

5.9. General Comments: Merchandise in the ABCC warehouse is the property of the supplier. ABCC will assume responsibility for any non-concealed breakage or shortages that are incurred while bailment inventory is stored in the warehouse; however, ABCC will not cover any losses arising from fire, water, or other damage by the elements.

§175-6-6. Use of Bailment Inventory.

6.1. ABCC maintains a computerized inventory system that keeps a perpetual listing of the inventory in the various warehouse locations. This computerized system is designed to use the ABCC inventory to fill retail liquor store orders before product is requested from the supplier's bailment stock.

6.2. When the ABCC inventory no longer contains a requested code, the computer will issue daily an automatic withdrawal order for each code that is needed from the supplier's inventory. This withdrawal order is printed by code, supplier and in full case quantities. The withdrawal order is generated one (1) working day in advance of shipment of the product to the retail liquor store. ABCC will take possession of the product when it is picked from bailment stock in preparation for shipment.

6.3. At the end of the daily activity on the 15th and last day of each month, the computer will generate for the time period covered a bailment purchase order/receiving report. This report is a compilation of the items transferred to ABCC possession through the use of the automatic withdrawal requests and the manual warehouse transfer transactions. It also provides a recap of all credit memos and other chargebacks that have been processed during this time. Detailed reconciliation of product transfer during each day of the report period will be a part of this report. See Section 15 of these regulations for additional information.

6.4. For most suppliers, the report described in Section 6.3 will be transmitted by an electronic mail transfer to the supplier's business location. This electronic transfer of information will support an electronic fund transfer by the West Virginia State Treasurer to the supplier's preauthorized bank account. Except for certain fiscal constraints in June of each year, fund transfer will occur within three to five working days of the close of the semi-monthly report period.

§175-6-7. Defective Merchandise and Concealed Damage or Shortage.

7.1. Defective alcoholic liquors.

7.1.1. ABCC owned alcoholic liquors.

7.1.1.1. Alcoholic liquors owned by ABCC will be returned to the supplier if found to be defective or unsalable.

a. Defective alcoholic liquors located in retail liquor stores will processed in accordance with the procedure provided in 175 C.S.R. 1, §4.9.

b. Defective alcoholic liquors located in the ABCC warehouse will be disposed of in accordance with instructions provided by the supplier. Such disposition instructions must be provided by the supplier within thirty (30) days after the supplier is notified of the defective alcoholic liquors. ABCC may destroy the defective alcoholic liquors and invoice the supplier for handling charges if the supplier fails to provide disposition instructions.

7.1.2. Bailment alcoholic liquors.

7.1.2.1. Defective alcoholic liquors available through the bailment method of warehousing must be removed from the ABCC warehouse.

7.1.2.2. Defective alcoholic liquors located in retail liquor store and which were obtained from supplier bailment stock must be processed in accordance with the procedures provided in 175 C.S.R. 1, §4.9.

a. ABCC personnel are authorized to direct the return of defective alcoholic liquors from retail liquor stores to the ABCC warehouse and to invoice suppliers for the handling cost.

b. Because retail liquor stores will be credited by the ABCC for defective alcoholic liquors which are returned, suppliers are required to grant a credit of equal amount to the ABCC. Under no circumstances will the ABCC be deemed to purchase any defective alcoholic liquors provided out of bailment stock.

7.2. Concealed damage or shortage.

7.2.1. ABCC owned alcoholic liquors.

7.2.1.1. ABCC will be provided appropriate credit by suppliers for alcoholic liquors which are damaged or shorted and located in the ABCC warehouse.

7.2.1.2. Alcoholic liquors which are damaged or shorted and located in retail liquor stores will be processed in accordance with the procedures provided in 175 C.S.R. 1, §4.9. Appropriate credit will be provided to the respective retail liquor stores and disposition instructions will be requested from suppliers. The ABCC may destroy damaged alcoholic liquors and invoice the supplier for handling charges if disposition instructions are not provided within thirty (30) days after the supplier is notified of damaged alcoholic liquors.

7.2.2. Bailment alcoholic liquors.

7.2.2.1. Damaged or shorted alcoholic liquors which are located in the ABCC warehouse and available through the bailment method of warehousing must be removed from the warehouse.

7.2.2.2. Alcoholic liquors which are damaged or shorted and located in retail liquor stores will be processed in accordance with the procedures provided in 175 C.S.R. 1, §4.9.

a. ABCC personnel are authorized to direct the return of damaged alcoholic liquors to the warehouse and invoice the supplier for all handling charges, regardless of whether the supplier provides disposition instructions within thirty (30) days of being notified of the damaged alcoholic liquors.

b. Appropriate credit will be provided by the supplier to the retail liquor store.

7.3. The ABCC will under no circumstances be deemed to purchase any defective alcoholic liquors from that which is provided for distribution by bailment.

§175-6-8. Withdrawal of Bailment Inventory by the Supplier.

8.1. The supplier may withdraw alcoholic liquors from bailment storage for the following reasons:

8.1.1. The supplier may return product to his warehouse for redistribution to other areas. The supplier cannot redistribute the product to other states or wholesale or retail customers directly from the ABCC Warehouse.

8.1.2. The supplier may return product to his warehouse if the maximum inventory level at the ABCC Warehouse has been exceeded.

8.1.3. The supplier may return product to his warehouse if the product is defective or unsalable.

8.1.4. The supplier must return product to his warehouse if the product has been delisted by ABCC and will no longer be available in the State of West Virginia except through ABCC by special order.

8.2. The ABCC must approve of the removal of any product before it can be removed from the warehouse. Such approval must be provided at least 24 hours in advance of the desired removal. Such removal must only occur during the warehouse delivery hours specified by Section 4.5.1.

8.3. The supplier must provide a motor carrier to be used when removing product from the warehouse. The carrier must make arrangements with the ABCC for a loading time.

8.4. ABCC will load the product onto the truck. The carrier driver will observe the loading. Both the ABCC and the driver must sign the Bill of Lading and a copy of the document will be provided to the supplier. ABCC will adjust the computer bailment inventory records.

8.5. ABCC will charge the supplier a case handling fee to cover the costs resulting from this activity. The charge will be specified by Section 11.1.

§175-6-9. Maximum Inventory Levels.

9.1. The preapproved level will be a sixty-day (60) supply based on a one-year (1) average consumption for each code.

9.2. ABCC will set a maximum level of inventory of each item in storage.

9.3. The maximum inventory levels will be reviewed quarterly and recomputed on a forecasted sales basis. The supplier will be provided with a copy of the quarterly maximum bailment inventory level report listing the codes carried and the computed levels. The maximum inventory level for each code will be used by the ABCC to approve or deny subsequent supplier shipments.

§175-6-10. Special Orders.

10.1. ABCC often receives requests for an item that is not listed in the Wholesale Spirits Catalog.

10.1.1. ABCC will attempt to satisfy these requests through the Special Order procedure provided in 175 C.S.R. 1, §4.3.

10.1.2. Special Order products may be ordered only on a case lot basis.

10.2. Suppliers must notify the ABCC in writing in order to not participate in Special Orders. ABCC will inform retail liquor stores of the supplier's position.

10.3. Suppliers must receive permission from the ABCC to maintain a supply of a Special Order item in storage at the ABCC Warehouse. Maximum levels of inventory for the special order product must be determined.

§175-6-11. Handling Charges.

11.1. Suppliers doing business with ABCC under the bailment inventory system will be charged for routine warehousing services, such charges will be deducted from the amount due the suppliers for withdrawals of their stock from bailment inventory. If a supplier, whose license status is active, does not have sufficient withdrawals of their stock from bailment inventory to allow the charges to be deducted, then such amount shall be carried forward until such time as withdrawals are made in amounts sufficient to allow the charges to be deducted from the amount due the supplier. Should the supplier's license status become inactive, an invoice will be issued by the ABCC to the supplier for the amount of the charges due the ABCC. The amount of such charges will be imposed by administrative notices filed in the State Register.

11.2. ABCC may also impose handling fees when extra services are performed. Examples of extra services and charges are as follows: (See Table 1 at the end of this rule.)

11.3. ABCC will complete a special warehouse case handling report when extra services are performed. This form will identify the supplier, type of services rendered, and the charges. ABCC will invoice the supplier based upon the services and charges indicated in the special warehouse case handling report.

§175-6-12. Reserved for Future Use.

§175-6-13. Physical Count of Inventory.

13.1. The ABCC is responsible for maintaining the accuracy of the perpetual computer inventory records. All transactions affecting the files are checked and verified for accuracy daily.

13.2. The ABCC will conduct a physical count of all products in the warehouse on a twice per year basis as of June 30 and December 31. Differences between the physical count and the perpetual records will be resolved by adjusting the perpetual records. Suppliers will be advised of any discrepancies found to affect the product they have in storage.

13.3. Supplier's representatives may perform a physical count of the supplier's inventory. Suppliers are required to make appointments at least 24 (twenty-four) hours in advance of the count time. Representatives may be asked by ABCC to display appropriate credentials prior to commencement of counting activities.

§175-6-14. Listing and Delisting of Inventory Products.

14.1. Listing and delisting of products will be governed through administrative notices issued by the ABCC.

14.2. Where product with an alcohol content in excess of one-half of one percent (.5%) and a distilled spirit base is available for inclusion in the bailment inventory but the product does not fit within the definition of alcoholic liquor, distilled spirit or wine, the ABCC may authorize such product to be included in the bailment inventory and sold by licensed retailers.

§175-6-15. Reports.

15.1. ABCC will produce and make available to the person named as agent on the respective supplier's Bailment Authorization Form different computer-generated reports to assist in managing the bailment inventory.

15.1.1. The agent must choose which of the following reports is to be received.

15.1.1.1. BAIL 100 provides the daily bailment withdrawal information by showing the total cases withdrawn by code and by supplier. The delivered case cost is extended by the total number of cases withdrawn from the bailment inventory to determine the total dollar amount for each code withdrawn.

15.1.1.2. BAIL 110 provides weekly withdrawal information by summarizing the daily reports.

15.1.1.3. BAIL 115 provides the billing report as of the fifteenth (15th) and last day of the month. This report, which is a semi-monthly bailment activity recap, contains for each code the summarized withdrawal-data, the month-to-date receipts, and the current on-hand inventory.

15.1.2. In addition to the foregoing reports, ABCC will provide the BAIL 120 report which will provide the monthly recap of all bailment activity. This report contains information from both semi-monthly BAIL 115 reports.

15.2. The following reports will be available as needed to all of the supplier's agents as designated on the Bailment Authorization Form.

15.2.1. BAIL W100 (Bailment Stock Requirements By Supplier) serves as the guideline for determining warehouse replenishment needs.

15.2.1.1. The report provides the sales by bottle for a four (4) month period, the two (2) month average, and the number of cases represented by the two (2) month average.

15.2.1.2. The number of cases needed for resupply may be calculated by comparing the current on-hand inventory levels for active product and fortified wines.

15.2.1.3. A negative quantity in "cases needed" indicates the code is in an overstock condition.

15.2.1.4. This report contains only active product and fortified wines.

15.2.2. BAIL W150, Warehouse Inventory Levels/Product List By Supplier, provides the current on-hand inventory levels for active product and fortified wines.

15.3. Additional copies of the reports may be obtained at a cost of five dollars (\$5.00) for each additional copy. The designated agent shall notify the ABCC of such additional report requirements and shall designate the name and address of such person.

TABLE 1

SERVICE	CHARGE*
Recouping damaged cases	\$2.00 per case
Supplying cartons for damaged cases	Cost of materials
Relabeling or recoding cases	\$1.00 per case
Restacking or hand unloading pallets	\$15.00 per pallet
Loading cases for return to supplier	\$10.00 per pallet + \$.80 per case minimum charge of \$50
Return of cases from stores to ABCC Warehouse	\$2.30 per case
Destruction of cases	\$2.30 per case
Repacking cases	\$1.00 per case
Out of stock (inventory level as required by WVABCA)	28% of vendor's Delivered Case Cost for each backordered case

* Note: Charges are subject to change with ninety (90) days notice by ABCC, such notice to be filed in the State Register. (See 175CSR6 §11, specifically §§8.5, 11.1 and 11.2)

Filed: June 23, 2008.

Published: June 27, 2008.

Effective from: September 25, 2008.