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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Alcoholic Beverage Control Board
<b>Virginia Administrative Code (VAC) citation</b>	3 VAC 5-40 and 3 VAC 5-70
<b>Regulation title</b>	Requirements for Product Approval and Other Provisions
<b>Action title</b>	Direct Shipment Rules
<b>Document preparation date</b>	6/13/2003

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The 2003 General Assembly enacted House Bill 1652 and Senate Bill 1117, two identical pieces of legislation allowing direct shipments of beer and wine to consumers by holders of wine or beer shippers' licenses. The second enactment clause of each bill states, "That the Alcoholic Beverage Control Board shall promulgate regulations to implement the provisions of this act to be effective within 90 days of its enactment. The bills were signed by the Governor on April 9, 2003. The regulation is not otherwise

exempt from the provisions of the Administrative Process Act. The emergency regulation provides for the application process, record-keeping and reporting process for wine or beer shippers' licensees and common carriers approved to deliver shipments from such licensees. An associated secondary action revises current label approval rules to exempt products sold only by direct shipment from most such requirements.

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The emergency regulation and its permanent replacement will provide the process for those qualified for wine or beer shippers' licenses to apply for such licenses, and regulate the process of adding and deleting brands approved for shipment. There are record-keeping and reporting requirements, as well as an approval process and delivery rules for common carriers who would carry wine or beer shipments to Virginia consumers. The need for and goals of these regulations are to ensure (1) that alcoholic beverages are only shipped to those legally entitled to receive and consume them, and (2) that the appropriate Virginia taxes are paid on all alcoholic beverages imported into Virginia.

**Legal basis**

- 1) *Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*
- 2) *Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*

Section 4.1-103 of the Code of Virginia grants the Alcoholic Beverage Control Board general authority to promulgate regulations, to grant, suspend, and revoke licenses, and to do all acts necessary or advisable to carry out the purposes of Title 4.1. Section 4.1-111 authorizes the Board to promulgate reasonable regulations, not inconsistent with law, which it deems necessary to carry out the provisions of Title 4.1. Sections 4.1-112.1 and 4.1-204, as effective July 1, 2003, authorize the Board promulgate regulations governing the regulation of holders of wine shippers' licenses and beer shippers' licenses and the common carriers approved to deliver shipments of wine and beer from such licensees. The purpose of this regulation is to specify the process for applying for such licenses or carrier approval and establish record-keeping and reporting requirements for licensees and approved carriers. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law. The regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of*

*Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-40-20		All wines sold in the Commonwealth must be submitted for state label approval.	Wines sold by direct shipment need only submit a copy of federal label approval. The board feels that since these will be only occasional sales and these wines will not be in widespread distribution in the Commonwealth, the lesser standard will be enough to protect consumers.
3 VAC 5-40-50		All beers sold in the Commonwealth must be submitted for state label approval.	Beers sold by direct shipment need only submit a copy of federal label approval. The board feels that since these will be only occasional sales and these beers will not be in widespread distribution in the Commonwealth, the lesser standard will be enough to protect consumers.

The board has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians because an effective regulatory scheme is necessary to ensure that alcoholic beverages shipped to Virginia consumers are only delivered to those legally entitled to receive and consume them, and that all appropriate Virginia taxes are collected on such shipments.

The new section in chapter 70, 3 VAC 5-70-220, provides in subsection A that qualified applicants may apply for a wine or beer shippers' license using ABC's standard application form, with the following attachments required to comply with Section 4.1-112.1 of the Code:

- 1) a list of brands sought to be shipped by the applicant
- 2) consent of the brand owner, if the applicant is not also the brand owner
- 3) a photocopy of its current alcoholic beverage license
- 4) evidence of its registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax

Subsection B requires that any manufacturer which applies for a shippers' license or consents to another's application to ship its brands must notify all wholesalers that have been authorized to distribute its products in Virginia of such application.

Subsection C provides the process for the addition or deletion of brands authorized to be shipped under a wine or beer shippers' license.

Subsection D sets forth the process for a brand owner to withdraw consent to the shipping of its brands by a license holder.

Subsection E requires license holders to maintain records of each shipment made pursuant to the license for a period of two years.

Subsection F requires license holders to file a monthly report of all shipments made under the license during the previous month.

Subsection G provides the process for common carriers to seek approval to carry shipments of wine or beer made by holders of wine or beer shippers' licenses.

Subsection H sets forth the requirements for delivery of such shipments, including determination of legal age of the recipient and signature.

Subsection I requires all approved common carriers to maintain records of all shipments made by wine or beer shippers' licensees for a period of two years.

Subsection J provides for quarterly reporting by each approved common carrier of the dates and names and addresses of shippers and recipients for each shipment carried for a wine or beer shippers' licensee.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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In drafting the emergency regulation, the Board sought to require the minimum paperwork necessary to comply with the statute and protect the public safety and revenue. Less frequent reports by licensees were considered, but monthly reporting and tax remission was determined necessary to insure that the Board could quickly respond to public safety issues involving deliveries to those to whom alcoholic beverages could not lawfully be sold and to insure the proper collection of all taxes due.

### Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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The action should have no impact on the institution of the family.