

3VAC5-40-20. Wines; qualifying procedures; disqualifying factors; samples; exceptions.

A. All wines sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of wine offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; provided, however, that wine already offered for sale by another state with which this Commonwealth has an analysis and certification exchange agreement and wine sold through government stores shall be subject only to a registration fee in such amount as may be established by the board.

3. All wine sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification and analysis of the wine originally approved by the board.

5. The board may approve a wine without benefit of a certification or analysis for good cause shown. Good cause includes, but is not limited to, wine which is rare.

B. While not limited thereto, the board shall withhold approval of any wine:

1. Which is an imitation or substandard wine as defined under regulations of the appropriate federal agency;

2. If the alcoholic content exceeds 21% by volume;

3. Which is a wine cocktail containing any ingredient other than wine.

C. While not limited thereto, the board may withhold approval of any label:

1. Which implies or indicates that the product contains spirits;

2. Where the name of a state is used as a designation of the type of wine, but the contents do not conform to the wine standards of that state;

3. Which contains the word "cocktail" without being used in immediate conjunction with the word "wine" in letters of the same dimensions and characteristics, except labels for sherry wine;

4. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;

5. Which contains any subject matter or illustration of a lewd, obscene or indecent nature;

6. Which contains subject matter designed to induce minors to drink, or is suggestive of the intoxicating effect of wine;

7. Which contains any reference to a game of chance;

8. Which contains any design or statement which is likely to mislead the consumer.

D. A person holding a license as a winery, farm winery or a wine wholesaler shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

E. Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container. Any wine sold only by direct shipment to consumers by holders of wine shipper's licenses shall be approved upon compliance with subsection A3 of this section.

3VAC5-40-50. Beer; qualifying procedures; samples; exceptions; disqualifying label factors.

A. Beer sold in the Commonwealth shall be first approved by the board as to content, container and label.

1. A certification acceptable to the board or on a form prescribed by the board describing the merchandise may accompany each new brand and type of beer offered for sale in the Commonwealth. A certification fee and a registration fee in such amounts as may be established by the board shall be included with each new certification.

2. In lieu of the aforementioned certification, there shall be submitted a sample and registration and analysis fees in such amounts as may be established by the board; however, beer offered for sale in another state with which the Commonwealth has an analysis and certification exchange agreement shall be subject only to a registration fee in such amounts as may be established by the board.

3. All beer sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.

4. Subsequent sales under an approved label shall conform to the certification or analysis of the beer originally approved by the board.

B. A brewery licensee or a wholesale beer licensee shall upon request furnish the board without compensation a reasonable quantity of each brand of beer sold by him for chemical analysis; provided, however, that the board may require recertification of the merchandise involved in lieu of analysis of such a sample. A fee in such amount as may be established by the board shall be included with each recertification.

C. Any beer whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container. Any beer sold only by direct shipment to consumers by holders of beer shipper's licenses shall be approved upon compliance with subsection A3 of this section.

D. While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:

1. Implies or indicates that the product contains wine or spirits;
2. Implies the product contains above average alcohol for beer;
3. Is suggestive of intoxicating effects;
4. Would tend to induce minors to drink;
5. Would tend to induce persons to consume to excess;
6. Is obscene, lewd or indecent;
7. Implies or indicates that the product is government (federal, state or local) endorsed;
8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team;
9. Implies endorsement of the product by any prominent living person;

10. Makes any humorous or frivolous reference to any intoxicating drink.

3 VAC 5-70-220. Wine or Beer Shipper's Licenses; application process; common carriers; records and reports.

A. Any person or entity qualified for a wine shipper's license or beer shipper's license pursuant to Va. Code § 4.1-112.1 must apply for such license by submitting form 805-52, Application for License. In addition to the application, each applicant shall submit the following attachments:

1. A list of all brands of wine or beer sought to be shipped by the applicant, along with the Board-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3 VAC 5-40-20 or 3 VAC 5-40-50 that will be sold only through direct shipment to consumers.

2. Except as provided in subsection B of § 4.1-112.1 of the Code of Virginia, if the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter from the brand owner for each brand, addressed to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control, indicating the brand

owner's consent to the applicant shipping the brand to Virginia consumers.

3. The applicant shall attach a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer, issued by the appropriate authority for the location from which shipments will be made.
4. Evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the Supervisor, Tax Management Section, by the brewery, winery, or farm winery.

C. Any holder of a wine or beer shipper's license may add or delete brands to be shipped by letter to the Supervisor, Tax Management Section, designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine shipper's license or beer shipper's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine or beer shipper's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the Supervisor, Tax Management Section. Withdrawals shall become effective upon receipt of the copy by the Tax Management Section, as evidenced by the postmark on the return receipt.

E. Wine shipper's licensees and beer shipper's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped.
2. Volume of each container shipped.
3. Brand of each container shipped.
4. Names and addresses of recipients.
5. Price charged.

The records required by this paragraph shall be made available for inspection and copying by any member of the Board or its special agents upon request.

F. On or before the 15th day of each month, each wine shipper's licensee or beer shipper's licensee shall file with the Supervisor, Tax Management Section a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month.
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped.
 - b. Volume of each container shipped.
 - c. Brand of each container shipped.
 - d. Names and addresses of recipients.
 - e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine shipper's licenses or beer shipper's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine shipper's licenses or beer shipper's licenses by dated letter to the Supervisor, Tax Management

Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section. The Board may refuse, suspend or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the Board, or that a cause exists with respect to the carrier that would authorize the Board to refuse, suspend or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the Board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the Board.

H. When attempting to deliver wine or beer shipped by a wine shipper's or beer shipper's licensee, an approved common carrier shall require:

1. the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and

2. the recipient to sign an electronic or paper form or other acknowledgement of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine shipper's or beer shipper's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the Board unless the package bears the information required by this paragraph.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's licensees, including for each shipment:

1. Date of shipment and delivery
2. Number of items shipped and delivered.
3. Weight of items shipped and delivered.
4. Acknowledgement signed by recipient.
5. Names and addresses of shippers and recipients.

The records required by this paragraph shall be made available for inspection and copying by any member of the Board or its special agents upon request.

J. On or before the 15th day of each January, April, July, and October, each approved common carrier shall file with the Supervisor, Tax Management Section a report of activity for the previous calendar quarter. Such report shall include:

1. Whether any shipments were delivered during the quarter.
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery.
 - b. Names and address of shippers and recipients for each delivery.