

3 VAC 5-60-20. Wines; purchase orders generally; wholesale wine licensees.

A. Purchases of wine between the board, licensees or persons outside the Commonwealth shall be executed only on order forms prescribed by the board and provided at cost if supplied by the department.

B. Wholesale wine licensees shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine licensee at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the licensee reflecting accurately the date received and any changes. In lieu of forwarding copies of purchase orders to the board, a wholesale licensee may submit a report to the board weekly, in a format approved by the board, of all purchase orders for the previous week. The report covering the last week of any calendar month must be submitted to the board on or before the 5th day of the succeeding month.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale. In lieu of forwarding copies of invoices to the board, a wholesale licensee may submit a report to the board weekly, in a format approved by the board, of all invoices for the previous week.

The report covering the last week of any calendar month must be submitted to the board on or before the 5th day of the succeeding month.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale. In lieu of forwarding copies of invoices to the board, a wholesale licensee may submit a report to the board weekly, in a format approved by the board, of all invoices for the previous week. The report covering the last week of any calendar month must be submitted to the board on or before the 5th day of the succeeding month.

4. Peddling. Wine shall not be peddled to retail licensees.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine licensees shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to §§4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine licensee shall on forms prescribed by the board on a quarterly basis indicate the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds,

replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

3 VAC 5-60-40. Indemnifying bond required of wholesale wine licenses.

No wholesale wine license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth in the penalty of ~~\$1,000~~ \$2,500, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth as surety, conditioned upon the faithful compliance with requirements of Title 4.1 of the Code of Virginia and the regulations of the board.

A wholesale wine licensee may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

3 VAC 5-60-80. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits.

A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to §4.1-230 E of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of

authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value (~~one item per retailer and one item per employee, per visit~~ in quantities equal to the number of employees of the retail establishment present at the time the items are delivered) ~~which may not be displayed on the licensed premises~~; and provide film or video presentations of spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, 50 milliliter sample container of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee and any 50 milliliter sample containers left with the licensee shall not be sold by the licensee;

3. Promote their authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;

c. To distribution of informational brochures, pamphlets and the like, relating to spirits;

d. To distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value; and

e. To film or video presentations of spirits which are essentially educational;

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;
2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;
3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;
4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;
5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;
6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;
7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend or revoke a permit if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending or revoking such permit, 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.

3 VAC 5-60-100. Employees of manufacturers and wholesalers.

If a person licensed as a manufacturer, importer, or wholesaler of alcoholic beverages wishes to employ a person who has committed an act that would justify the board in suspending or revoking a license under § 4.1-225(1)(i) of the Code of Virginia, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and

follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.