

Virginia Alcoholic Beverage Control Authority

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September 29, 2020

Pursuant to Executive Order Fifty One (51) and Executive Order Fifty Three (53), Declaration of a State of Emergency due to Novel Coronavirus (COVID-19), and acting under the Authority, this document will contain the responses of the VA ABC Bureau of Law Enforcement regarding procedural and regulatory matters for Virginia ABC licensed businesses affected by the Novel Coronavirus (COVID-19) outbreak.

The information and decisions contained herein will remain in effect so long as Executive Order 51 and Executive Order 53 remains applicable or by extension granted by the Authority for good cause shown.

All matters contained herein will be continuously updated and changes denoted within this document by date and revision as applicable.

Questions regarding this document or the information contained within should be addressed to the Bureau of Law Enforcement at 804-213-4565 or [enforcement@abc.virginia.gov](mailto:enforcement@abc.virginia.gov)

Travis G. Hill

Chief Executive Officer



**Topic 1:** (03/13/20) ABC response to the return of product by wholesalers from retailers affected by COVID -19

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-30-10.

**Background:** Currently under Virginia Regulation a manufacturer, importer, bottler, broker, or wholesaler, or its representative, may not sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

- a. Products defective at the time of delivery may be replaced;
- b. Products erroneously delivered may be replaced or money refunded;
- c. Products of which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the board;
- d. Resalable draft beer may be returned and money refunded;
- e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;
- f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or
- g. Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which wholesalers may pick up wine and beer products from licensees in which their immediate operations have been affected by the Novel Coronavirus (COVID-19). Also, a refund of



money associated with that specific pick-up may be given to that licensee by such wholesaler. Any such pick up and refund shall be documented by the wholesaler on the proper invoice. (Ex: Wholesaler pickup of 100 cases of ABC Beer from retailer due to COVID-19 cancellation of XYZ concert, \$200 refunded CK#9999 to retailer.)



**Topic 2:** (03/13/20) ABC response to the requirement for signature by purchaser at the time of delivery on invoices covering such sale.

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-30-30.

**Background:** Currently under Virginia Regulation sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which wholesalers may make deliveries to retail licensees and forgo the requirement to get a retailer's signature when making a delivery.

However, in lieu of collecting the actual physical signature of the purchaser, the wholesaler making the delivery will denote on the invoice the legible full name of the individual that is receiving the delivery as well as their applicable title within the business.



**Topic 3:** (03/16/20) ABC response to the requirement for signature by recipient at the time of delivery when a licensee is making a delivery through the use of a delivery permit.

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-70-225.

**Background:** Currently under Virginia Regulation when attempting to deliver wine or beer pursuant to a delivery permit, an owner, agent, officer, director, shareholder, or employee of the permittee 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 acknowledgment of receipt that allows the maintenance of the records required by this section.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which an owner, agent, officer, director, shareholder, or employee of the permittee of a delivery permit may make deliveries to consumers in the Commonwealth and forgo the requirement to get the recipient's signature when making a delivery. Provided that whoever is making the delivery denotes on electronic or paper form the legible full name of the individual that is receiving the delivery as well as the method of verification for documenting that the recipient was at least 21 years of age as the delivery permittee has the sole responsibility of verifying that the recipient is at least 21 years of age pursuant to [3VAC5-50-20](#).

The owner, agent, officer, director, shareholder, or employee of the permittee shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications. All permittees delivering 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 delivered in 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 delivery permit number of the delivering permittee.



**Topic 4:**        **(03/16/20) ABC response to the Virginia law regarding the delivery of wine & beer to a customer seated in a vehicle.**

**Purpose:**        The Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to Code of Virginia §4.1-209.

**Background:**    Currently under Virginia Law, persons granted a wine and beer license pursuant to 4.1-209 may deliver such wine or beer in closed containers for off-premises consumption to such person's vehicle if located in a designated parking area of the retailer's premises where such person has electronically ordered wine or beer in advance of the delivery or (ii) if the licensee holds a delivery permit issued pursuant to § 4.1-212.1, to such other locations as may be permitted by Board regulation.

**Held:**            The Authority is offering the following interpretation regarding the above mentioned Code section. Licensees who have a wine and beer on or off premises license designation through 4.1-209 may deliver wine and beer pursuant to an electronic order by a customer to that customer seated in a vehicle that is parked in a designated parking area of the retailer's premise. Or if a licensee holds a delivery permit, they may deliver to other such locations.



**Topic 5:** (03/16/20) ABC response to the Virginia Regulation prohibiting drive through establishments and delivering to a customer in a vehicle. (MANUFACTURER LICENSEES)

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-50-150.

**Background:** Currently under 3VAC5-50-150, no person holding a license which authorizes the licensee to sell wine or beer at retail for consumption off the premises shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

This regulation prohibits a manufacturer licensed to sell at retail off premises (Brewery, winery with retail off premises, farm winery, etc.) from fulfilling an order to a customer in their parking lot who is seated in a vehicle.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which licensees who are manufacturers licensed to sell wine and beer at retail may make deliveries to customers on their licensed premises (immediately owned or leased parking lot) to customers seated in a vehicle. The licensee is reminded that all other laws and regulations in regard to sales are applicable.

Manufacturers of beer and wine who are licensed to sell at retail off premises may proceed with the above in regard to their immediate licensed premises. If the manufacturer does not have an immediate parking lot or designated area that is part of the licensed premises (street parking, shared parking, etc.), that manufacturer may apply for a delivery permit pursuant to 4.1-212.1 and make deliveries to customers at other locations. Provided the licensee follows all other laws and regulations in regard to sales that are applicable.



Topic 6: **(03/16/20) ABC response to expedited process for issuance of delivery permits.**  
**REVISED REFER TO TOPIC 10 FOR CURRENT GUIDANCE.**





**Topic 7:** **(03/17/20) ABC response to designated ABC distillery stores delivering to customers seated in vehicle**

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion related to operational agreements with ABC designated distillery stores.

**Background:** Currently under the distillery store agreement that is in place with a licensed distillery and the Virginia ABC Authority all sales of distilled spirits shall take place within the designated store premises or upon issuance of a remote privilege issued by the Bureau of Law Enforcement. This agreement does not contemplate the ability to deliver to a customer seated in their vehicle at the location of the distillery store who has placed an electronic order of distilled spirits.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the agreement to allow deliveries to customers on the distiller's premises (immediately owned/leased parking lot) to customers seated in a vehicle pursuant to an electronic order. The distillery store is reminded that all other laws and regulations in regard to sales are applicable.



**Topic 8:** (03/18/20) ABC response to Distilleries producing hand sanitizer \* Updated to include pharmacies and pharmacists (03/24/20)

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following interpretation on the producing of hand sanitizer product by licensed Distilleries.

**Background:** Currently under the Code of Virginia, a licensed Distiller may produce alcoholic beverages other than wine and beer on their premises and sell to those that can legally receive it out of state, to the VA ABC Board or at their designated ABC Distillery Store.

§ 4.1-200; Exemptions for licensure allows the manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

§ 4.1-100 defines alcohol as "Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the following interpretation in regard to Distilleries producing, selling or giving away hand sanitizer, producing grain alcohol, selling of industrial alcohol.

Hand Sanitizer:

Distilleries that want to produce hand sanitizer that contain ingredients (not just straight ethanol or grain alcohol) that make the product rendered unfit for consumption or completely denatured, may give away or sell hand sanitizer to communities, hospitals, patrons, etc. provided the product:

- 1) Meets appropriate federal guidelines regarding manufacturing of such products;
- 2) Meets appropriate VDACS and VDH guidelines where applicable;
- 3) If bottled, contain a statement that the product is not intended for consumption;

Grain Alcohol:

If the distillery wants to sell grain alcohol to customers then they must bottle, sell under appropriate guidelines for grain alcohol products (designated in MIPS, customer has a permit\*\*, etc.) Pursuant to § 4.1-119 E. No Class 1 neutral grain spirit or alcohol, as



defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 151 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

**\*\*Virginia ABC Authority will waive the grain alcohol permit requirement for any Virginia licensed pharmacy or pharmacist while Executive Order 51 remains applicable.**

Industrial Alcohol:

**\*Virginia ABC Authority will waive the following industrial permit requirement for any hospital while Executive Order 51 remains applicable.**

**\*\*Virginia ABC Authority will waive the following industrial permit requirement for any Virginia licensed pharmacy or pharmacist while Executive Order 51 remains applicable.**

If the distillery wants to produce industrial alcohol for hospitals\*, manufacturing\*\*, etc. then the buyer must follow the applicable permitting process for industrial alcohol pursuant to 3VAC5-70-60 in which The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § [4.1-200](#) of the Code of Virginia; or
4. For use in a hospital or home for the aged (alcohol only).

Should you have any questions on the above processes or need to further discuss, please contact your assigned Compliance agent or call 804-213-4632 or [compliance@abc.virginia.gov](mailto:compliance@abc.virginia.gov).



**Topic 9:      (03/19/2020) General Permit for off premises sale of wine and beer and waiver of delivery permit**

**Purpose:** Pursuant to Executive Order Fifty-One (51) dated, March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following Opinion regarding off premises sale of wine and beer.

**Background:** Currently an on premises license for the sale of wine and beer does not authorize the sale or offer to sell wine and beer for off premises consumption.

**Held:** Pursuant to the statutory authority granted to the Virginia Alcoholic Beverage Control Authority expressed in §4.1-103 of the Code of Virginia and the manifest intention of the Virginia General Assembly in the overwhelming passage of Senate Bill 389 and House Bill 390, the Virginia Alcoholic Beverage Control Authority adopts a General Permit to allow on premises licenses permission to also sell wine and beer for off premises consumption.

This General Permit authorizes the off premises sale of wine and beer under the following guidelines:

1. The General Permit shall be of a duration consistent with Executive Order Fifty-One (51) as is currently in effect and may be subsequently amended.
2. Sales are only authorized to individuals who are otherwise legally qualified to purchase wine and beer.
3. Off premises sales may only be sold for off-premises consumption in any container upon which the original closure has not been broken, except for a growler. A "growler" is defined as a re-sealable container made of glass, ceramic, metal., or other materials approved by the board as well as re-sealable containers approved by the board.
4. The General Permit authorizes delivery of such products without the necessity of the licensee obtaining a delivery permit from the Virginia Alcoholic Beverage Control Authority. All such deliveries of beer, wine, or farm wine



shall be performed by either (i) the owner or any agent, officer, director, shareholder or employee of the permittee or (ii) an independent contractor of the permittee, provided that (a) the permittee has entered into a written agreement with the independent contractor establishing that the permittee shall be vicariously liable for any administrative violations of this section or § 4.1-304 committed by the independent contractor relating to any deliveries of beer, wine, or farm wine made on behalf of the permittee and (b) only one individual takes possession of the beer, wine, or farm wine during the course of the delivery.

5. Deliveries may be made to consumers in the Commonwealth forgoing the requirement to get the recipient's signature when making a delivery. Provided that whoever is making the delivery denotes on electronic or paper form the legible full name of the individual that is receiving the delivery as well as the method of verification for documenting that the recipient was at least 21 years of age as the delivery permittee has the sole responsibility of verifying that the recipient is at least 21 years of age pursuant to [3VAC5-50-20](#).
6. Delivery shall be refused when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications.
7. All permittees delivering 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 delivered in 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 delivery permit or license number of the delivering permittee.
8. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold, except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient.



**Topic 10: (03/19/2020) Waiver of delivery permit for off premises licensees**

**Purpose:** Pursuant to Executive Order Fifty-One (51) dated, March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following Opinion regarding the requirement for delivery permits for off premises sale of wine and beer licensees.

**Background:** Currently an off premises licensee must obtain a delivery permit in order to make deliveries to customers who are of legal age to purchase and receive.

**Held:** Pursuant to the statutory authority granted to the Virginia Alcoholic Beverage Control Authority expressed in §4.1-103 of the Code of Virginia and the manifest intention of the Virginia General Assembly in the overwhelming passage of Senate Bill 389 and House Bill 390, the Virginia Alcoholic Beverage Control Authority adopts a General Permit to allow off premises licensees to include breweries, farm wineries and wineries holding a retail off premises license to make deliveries without obtaining an additional permit.

This General Permit authorizes the delivery of wine and beer under the following guidelines:

1. The General Permit shall be of a duration consistent with Executive Order Fifty-One (51) as is currently in effect and may be subsequently amended.
2. Sales are only authorized to individuals who are otherwise legally qualified to purchase wine and beer.
3. The General Permit authorizes delivery of such products without the necessity of the licensee obtaining a delivery permit from the Virginia Alcoholic Beverage Control Authority. All such deliveries of beer, wine, or farm wine shall be performed by either (i) the owner or any agent, officer, director, shareholder or employee of the permittee or (ii) an independent contractor of the permittee, provided that (a) the permittee has entered into a written agreement with the independent contractor establishing that the permittee shall be vicariously liable for any administrative violations of this section or § [4.1-304](#) committed by the independent contractor relating to any deliveries of beer, wine, or farm wine made on behalf of the permittee and (b) only one individual takes possession of the beer, wine, or farm wine during the course of the delivery.
4. Deliveries may be made to consumers in the Commonwealth forgoing the requirement to get the recipient's signature when making a delivery. Provided that whoever is making the delivery denotes on electronic or paper form the legible full name of the individual that is receiving the delivery as well as the



method of verification for documenting that the recipient was at least 21 years of age as the delivery permittee has the sole responsibility of verifying that the recipient is at least 21 years of age pursuant to [3VAC5-50-20](#).

5. Delivery shall be refused when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications.
6. All permittees delivering 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 delivered in 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 delivery permit or license number of the delivering permittee.
7. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold, except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient.



**Topic 11:**      **(03/23/20) ABC response to the use of alternative containers or novel containers**

**Purpose:**            Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-40-30.

**Background:**      Currently, no wine or beer shall be sold for off-premises consumption in any container upon which the original closure has been broken, except for a growler. A "growler" is defined as a re-sealable container made of glass, ceramic, metal., or other materials approved by the board as well as re-sealable containers approved by the board.

**Held:**                The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from this regulation and approve the below listed containers. All maximum limitations referenced in the regulation will remain in effect. Due to concerns around refilling customer owned growlers and the cost associated with glass, ceramic, or metal, containers, the Authority is approving the following types of containers until the expiration of Executive Order 51.

Current representative list of approved container types:

1. PET Plastic Growler Bottles (up to and including 64 oz. sizes).  
<https://www.thecarycompany.com/containers/plastic/bottles/growlers>
2. PET Plastic Bottles (up to and including 64 oz. sizes).  
<https://www.containerandpackaging.com/catalog/plastic-containers/plastic-bottles>
3. Swing Top Bottles (up to 750mL sizes). <https://www.morebeer.com/products/swing-top-bottles-750ml-amber-case-12.html>
4. Flip Top Beer Bottles (up to 32 oz.). <https://www.morebeer.com/products/ez-cap-flip-top-beer-bottles-16-oz-amber-case-12.html> and <https://www.morebeer.com/products/beer-bottles-flip-top-750-ml-amber-case-12.html>.

For container types not represented on the above list, licensees should submit a representation of the proposed container to their assigned special agent for consideration.





**Topic 12:** (09/29/20) ABC response to Executive Directive 10 for the deferring of collection for license renewals and waiver of penalties. \*Updated 09/29/2020

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion regarding the deferring of the collection for license renewal fees for 90 days from original expiration date for licenses and permits expiring on or after March 31, 2020 and before 30 days following the expiration or rescission of Executive Order 51.

**Background:** Currently, all licenses expire the last day of the month of renewal and late penalties are assessed for any fees not paid by the license renewal date as required by the Code of Virginia.

**Held:** The Authority acting under the abilities granted within Executive Order 51 and directed by Executive Directive 10 (2020), issued by the Governor of Virginia, will defer the collection of any Virginia Alcoholic Beverage Control Authority issued license or permit due to expire on or after March 31, 2020 and before 30 days following the expiration or rescission of Executive Order 51. For ease of administration, these licenses are considered active through the 90<sup>th</sup> day of the extension period. The Authority is waiving any late penalties and fees as long as the license is renewed by the 90 day expiration date. Any license that is not renewed by the end of its deferred collection period will be considered expired. (Note: Due to guidance on license fee deferral not being updated at start of new fiscal year in July, licensees with licenses or permits expiring in July, August and September may not have been aware of deferral option. Any licensee that renewed a license or permit with an original expiration date of July 31, 2020, August, 31, 2020, or September 30, 2020 and did not take advantage of the 90 day deferral period, will be granted a 90 day deferral at the end of the license expiration after the expiration of this topic. Late penalties previously assessed for the renewals during these three months will be refunded.)

In an effort to continue to work with our Licensee community the Authority will be following the process as outlined by the Code of Virginia 4.1-203 for a phased penalty schedule in order to allow licensees to still renew their ABC license.

At the expiration of the 90 days of the original license expiration date the Licensee **MUST STOP SERVING AND SELLING ALCOHOLIC BEVERAGES**. From that date the Licensee will have 30 days under the 1<sup>st</sup> penalty phase to renew their license. This will require the license renewal fee plus a civil penalty of \$25 or 10% of the license renewal fee, whichever is greater. Once this is done the licensee may resume selling and serving.

If the licensee does not renew by the expiration date of the 1<sup>st</sup> penalty phase, they will have 45 days under the 2<sup>nd</sup> penalty phase to renew their license. This will require the license



renewal fee plus a civil penalty of \$100 or 25% of the license renewal fee, whichever is greater. Once this is done the licensee may resume selling and serving.

Below is the calculation of 90 days from the date of expiration for each month as well as the dates associated with the 1<sup>st</sup> and 2<sup>nd</sup> phase penalty schedule. After the expiration of the 2<sup>nd</sup> phase penalty time frame the licensee would then have to re-apply for an ABC license in order to sell and serve alcoholic beverages.

<b>Expiring On:</b>	<b>90 days from the date of expiration:</b>	<b>1<sup>st</sup> Phase Late Penalty</b>	<b>2<sup>nd</sup> Phase Late Penalty</b>
March 31, 2020	June 29, 2020	June 30, 2020 - July 30, 2020	July 31, 2020 - Sept 14, 2020
April 30, 2020	July 29, 2020	July 30, 2020 - Aug. 29, 2020	Aug. 30, 2020 - Oct. 14, 2020
May 31, 2020	Aug. 29, 2020	Aug.30, 2020 - Sept. 29,2020	Sept. 30,2020 - Nov. 14, 2020
June 30, 2020	Sept. 28, 2020	Sept. 29, 2020 - Oct. 29, 2020	Oct. 30, 2020 - Dec. 14, 2020
July 31, 2020	Oct. 29, 2020	Oct. 30, 2020 - Nov. 29, 2020	Nov. 30, 2020 - Jan. 14, 2021
Aug. 31, 2020	Nov. 29, 2020	Nov. 30, 2020 - Dec. 30, 2020	Dec. 31, 2020 - Feb. 14, 2021
Sept. 30, 2020	Dec. 29, 2020	Dec. 30, 2020 - Jan. 29, 2021	Jan. 30, 2021 - March 16, 2021
Oct. 31, 2020	Jan. 29, 2021	Jan. 30, 2021 - Mar. 1, 2021	Mar. 2, 2021 - April 16, 2021
Nov. 30, 2020	Feb. 28, 2021	Mar. 1, 2021 - Mar. 31, 2021	April 1, 2021 - May 16, 2021
Dec. 31, 2020	March 31, 2021	April 1, 2021 - April 31, 2021	May 1, 2021 - June 15, 2021
Jan. 31, 2021	May 1, 2021	May 2, 2021 - June 1, 2021	June 2, 2021 - July 17, 2021
Feb. 28, 2021	May 29, 2021	May 30, 2021 - June 29, 2021	June 30, 2021 - Aug. 14, 2021



**Topic 13:** **(04/09/20) ABC response to Executive Directive 10 for the sale and service of cocktails for off premise consumption.**

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion regarding the sale and service of cocktails for off premise consumption to include to go, curbside, and delivery.

**Background:** Currently, the sales of mixed beverages or cocktails for off premise consumption are prohibited by the Code of Virginia.

**Held:** The Authority acting under the abilities granted within Executive Order 51 and directed by Executive Directive 10 (2020), issued by the Governor of Virginia, is issuing the following regulatory guidance which can also be accessed [HERE](#).

The Virginia Alcoholic Beverage Control Authority (“Authority”) has been delegated significant discretionary authority to control the possession, sale, transportation, and delivery of alcoholic beverages [§ 4.1-103(14)].

Pursuant to § 4.1-212.1 of the Code of Virginia, delivery privileges are limited to breweries, wineries, or farm wineries authorized to sell wine and beer for off-premises consumption and retail licensees authorized to sell wine or beer for off-premises consumption who have obtained a permit to authorize such deliveries. Recently, the Authority has temporarily extended delivery privileges to on-premises licensees and to mixed beverage licensees to allow them to deliver wine and beer for off-premises consumption without a permit. Executive Directive No. 10 (effective April 09, 2020) authorized the Authority to permit the sale and service of cocktails off premises by distillery, limited distillery, mixed beverage restaurant, and limited mixed beverage restaurant licensees as further delineated. It is by virtue of its inherent authority and the expanded authority granted in Executive Directive No. 10, that the Authority takes the present action.

In recognizing the need for mixed beverage licensees in the Commonwealth to be able to continue to provide service to their customers while complying with the ongoing preventative measures necessary to mitigate the spread of COVID-19 and deal with the economic challenges presented, the Authority adopts a temporary expansion of the delivery and takeout privileges authorized in Title 4.1 of the Code of Virginia for a limited number of mixed beverage licensees. The expansion of these privileges shall be subject to



the rules of Title 4.1 of the Code of Virginia and Authority regulations, as well as the restrictions stated herein.

**Definitions:** For the limited purpose of this temporary privilege, the term “cocktail” shall be defined as a single alcoholic drink consisting of one or more spirits as defined in § 4.1-100 of the Code of Virginia, wine or beer as defined in § 4.1-100 and at least one mixer, with a maximum combined volume not to exceed 16 ounces.

**Applicable Licensees:**

The temporary delivery and takeout privileges stated herein shall only be extended to the following licensees:

1. Distillery licensees [§§ 4.1-206(A)(1), (2), and (3)], that have entered into an agreement with the Authority as outlined in § 4.1-119
2. Limited distillery licensees [§ 4.1-206(B)], that have entered into an agreement with the Authority as outlined in § 4.1-119
3. Mixed beverage Restaurants [§ 4.1-210(A)(1)]
4. Limited mixed beverage restaurant licensees [§ 4.1-210(A)(12)]

Any eligible distillery or mixed beverage licensee exercising these temporary delivery and takeout privileges agrees to abide by the following restrictions and revocation provisions:

**Restrictions:**

1. Distillery licensees shall be limited to a maximum of two mixed drinks per delivery or takeout order that contain 1½ ounces or less of spirits per drink. In the case of mixed beverage restaurants and limited mixed beverage restaurants there shall be a limit of four cocktails for each delivery or take out sale.
2. Included in each order for delivery or takeout of cocktails for mixed beverage restaurants and limited mixed beverage restaurants shall be at least one meal as defined in Virginia Alcoholic Beverage Control Circular Letter 16-03 dated April 16, 2016, for every two cocktails included in the order.  
<https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\Guidance Docs\999\GDoc ABC 5991 v1.pdf>
3. Any such cocktail or mixed drink shall be packaged in a glass, paper or plastic container (or similar disposable container) or in a single original metal can with all container types having a secure lid or cap designed to prevent consumption without removal of the lid or cap (lids with sipping holes or openings for straws are



- prohibited).
4. Licensees shall not deliver or make available for takeout any combination of cocktails or mixed drinks where the entire contents of an original container or its equivalent of spirits is sold or served for off premises consumption.
  5. Any licensee selling such cocktails or mixed drinks for delivery shall ensure that such cocktails or mixed drinks will only be transported in the trunk of a motor vehicle or, if there is no trunk, the cocktails or mixed drinks must be transported in an area of the vehicle that cannot be accessed by the driver. Any licensee selling cocktails or mixed drinks for takeout shall inform operators of motor vehicles of the above requirements. It is unlawful for any person to consume an alcoholic beverage while driving a motor vehicle.
  6. All recipients of delivery orders shall demonstrate upon delivery that he/she is at least 21 years of age by presenting bona fide evidence of legal age as outlined in 3 VAC 5-50-20.B.
  7. All such deliveries pursuant to this temporary extended privilege shall be to consumers within the Commonwealth for personal consumption only. All such deliveries shall be performed by the owner or any agent, officer, director, shareholder or employee of the licensee or an independent contractor provided that the licensee has entered into a written agreement with the independent contractor establishing that the licensee shall be vicariously liable for any administrative violations of Title 4.1 of the Code of Virginia or Title 3 of the Virginia Administrative Act committed by the independent contractor during the scope of its employment.
  8. Cocktails shall not be consumed in public or in any other area where open containers are prohibited by law.
  9. Service of cocktails or mixed drinks for delivery or takeout must cease no later than 11pm daily and not resume until after 6am the following day.

**Revocation:** The temporary delivery and takeout privileges stated herein may be revoked summarily by the Authority for any noncompliance with the above-referenced restrictions or for any cause set forth in § 4.1-225 and § 4.1-325 without complying with subsection A of § 4.1-227. Revocation of the temporary delivery privilege shall be effective upon personal service of the notice of revocation to the licensee or upon the expiration of three business days after the notice is mailed to the licensee either at his/her residence or the address given for the business on the license application. The determination to revoke the temporary delivery and takeout privilege shall not be subject to appeal. The Authority retains discretion regarding the enforcement of delivery requirements as dictated by statute and regulations as well as the authority to pursue administrative and/or criminal charges for any violations committed.

**Conclusion:** The Authority, pursuant to Executive Directive No. 10, waives the specific requirements of § 4.1-212.1 of the Code of Virginia and expands delivery and takeout order privileges to the mixed beverage licensees included in this memo subject to the definitions and restrictions stated herein. The information and decisions contained herein shall remain in effect so long as Executive Order 51 remains applicable or by extension granted by the Authority for good cause shown.



**Topic 14:** (04/20/20) ABC response to deferred exchange of product by beer wholesale licensees to significantly impacted retailers.

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-30-10.

**Background:** Currently under Virginia Regulation a manufacturer, importer, bottler, broker, or wholesaler, or its representative, may not sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

- a. Products defective at the time of delivery may be replaced;
- b. Products erroneously delivered may be replaced or money refunded;
- c. Products of which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the board;
- d. Resalable draft beer may be returned and money refunded;
- e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;
- f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or
- g. Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the product for a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

**Held:** The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow a deviation from the regulation in which beer wholesalers may pick up beer products for quality control purposes from on or off premises licensees who have been significantly impacted by the Novel Coronavirus



(COVID-19) such that they have closed their business or seen a dramatic reduction in their primary business activity. Any exchange associated with a pickup from those licensees affected by COVID 19 may be exchanged pursuant to Virginia regulation for quality control purposes.

The full exchange must occur not later than 45 days after the earlier of the following two dates: expiration or rescission of Executive Order 51 or Executive Order 53,

Any such exchange procedure shall be documented by the wholesaler on the proper invoice indicating that the exchange shall occur before or at 45 days after the earlier of the following two dates: the expiration or rescission of Executive Order 51 or Executive Order 53;

The invoice should document that the exchange is not valid for a cash refund to the retailer unless the license is terminated by operation of law, voluntary surrender or order of the board as such money may be refunded upon permit issued by the board;

If the product that is being exchanged is no longer produced whereas a situation exists that the manufacturer of that product to be exchanged is no longer in operation, then the wholesaler may either refund money to the retailer for the products that have already been picked up or substitute a brand from another manufacturer at an equal price and quantity to complete the exchange. The topic in this document will serve as prior written approval from the Authority for this particular situation. This exchange shall also be documented on the proper invoice showing the final outcome.



**Topic 15:**     **(04/23/20) ABC response to licensed breweries utilizing the licensed premises to manufacturer hand sanitizer.**

**Purpose:**       Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to 3VAC5-70-60.

**Background:**   Currently in Virginia, a brewery may only manufacturer beer on its licensed brewery premises.

§ 4.1-200; Exemptions for licensure allows the manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

§ 4.1-100 defines alcohol as "Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

**Held:**           The Authority acting under the abilities granted within Executive Order 51 has made the decision to grant this one time exception to allow brewery premises to be used for manufacturing hand sanitizer to help meet the demand for this product during the COVID-19 emergency. In addition to the requirements contained within this guidance document, breweries shall adhere to all federal guidelines produced for the making of hand sanitizer. All other Virginia Alcoholic Beverage Control laws and regulations apply to these manufacturers.

The Authority will permit the licensed beer manufacturer to utilize the brewery premises and manufacturing equipment for the manufacturing of hand sanitizer under the following:

- 1) Only the licensee of the manufacturing premises is permitted to engage in the manufacturing of hand sanitizer pursuant to this topic.
- 2) The manufacturer shall provide in writing at least 48 hours advance notice to their assigned ABC Special Agent explaining the dates and times a brewery premises will be utilized for manufacturing hand sanitizer and/or the resuming of beer manufacturing.
- 3) The business must establish and utilize a method of visual cues to indicate which type of manufacturing is using the shared equipment at the time it is utilizing such. The business will also maintain all records associated with the manufacturing





and distribution of hand sanitizer and all other records in accordance with federal and state requirements.

- 4) This permission will cease after the earlier of the following two dates: expiration or rescission of Executive Order 51 or Executive Order 53.
- 5) The brewery must use bulk industrial alcohol and not spirits for the manufacturing of the hand sanitizer.
- 6) Any specific alcohol products used for the manufacturing or manufactured hand sanitizer shall be removed from the brewery premises within 48 hours after the expiration or rescission of either Executive Order 51 or Executive Order 53.
- 7) During this COVID-19 emergency, the Authority will allow an active brewery license to serve as an industrial alcohol permit as long as all the requirements contained within this guidance topic are followed.



**Topic 16: (05/13/20) ABC Response to Temporary Approval of Outside Dining Areas**

**Purpose:** Pursuant to Executive Order 51 dated March 12, 2020, the Virginia Alcoholic Beverage Control Authority is offering the following opinion in regard to the temporary approval of outside dining areas in conjunction with Executive Orders 61 and 62.

**Background:** The Authority is creating this accelerated process for receiving requests for outside dining areas. Any outside dining areas previously approved by the Authority remain in effect and are not subject to this expedited process and required listed conditions. Any licensee that does not qualify for the expedited process or meet the required conditions, may make application through the normal process by contacting your local ABC enforcement office. Since these requests will take additional resources and due to the anticipated volume of submissions, the approval of these requests could experience longer processing times.

**Held:** The Authority acting under the abilities granted within Executive Order 51 and Virginia Regulation has made the decision to create this accelerated process for receiving and processing requests for outside dining areas. The Authority will allow the temporary expansion of outside dining rooms or areas only until the expiration of EO 61 and EO 62 under the following conditions:

1. All requirements specified under [EO 61](#) and [EO 62](#) are followed. Licensees located within the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, as well as the Towns of Dumfries, Herndon, Leesburg, and Vienna (Northern Virginia Region) shall become eligible for this process on May 29, 2020 or as may be extended by further Executive Order.
2. The licensee receives written approval for use of the temporary outside dining area from the locality where the business is located.
3. The area, or areas, need not be covered under the licensee's lease; however, if not, the licensee must have written approval from the owner of the property to have exclusive control over the area(s), with the expressed permission to the Virginia Department of Health and any other regulatory agency for entry and inspection into the outside area(s). The area(s) must be contiguous to the licensee's leased premises. (If the area is not contiguous, it shall be within **100 feet** of the licensed premises. Such noncontiguous designated areas shall not be approved for any retail license issued pursuant to subdivision A 5 of § [4.1-201](#).)
4. The licensee shall provide a diagram of the outdoor dining area to the Authority.
5. The licensee shall provide items 2-4 to their assigned ABC agent before the licensee may utilize the temporary outside dining area. **Once items 2-4 are sent to the ABC agent and an "acknowledgement of receipt" is received by the licensee, the licensee may begin using the area pending final approval or disapproval by the Authority.**



6. The area may be used for the selling and consumption of alcohol only between 6am and 11pm unless such area is further limited by authorization from the locality in number three. Any area used after sunset must be well lit. The lighting should be sufficient to determine the patron's age and sobriety, as well as to facilitate the consumption of food and beverages.
7. There shall be no entertainment in the temporary approved areas.
8. The area shall only be used for table seating and used exclusively for dining and/ or beverage consumption. (i.e. no food or drink preparation)
9. Access to the area(s) must be made by well-defined points of ingress and egress. With the exception of the ingress and egress point(s), the entire area must be enclosed with a well-defined barrier designed to prevent entry and exit except for at the designated entry and exit point(s). An example of an acceptable barrier would be the temporary orange event fencing.
10. Each licensee shall have their own exclusive outside dining area. There shall be no sharing or comingling of outside dining areas by any licensees. There will be no approval of any type of food court concepts.
11. Adequate tables and chairs must be provided. If it is a mixed beverage license and it exceeds the existing seating tax, no additional seating tax will be required. Meals as defined in Virginia Alcoholic Beverage Control Circular Letter 16-03 dated April 16, 2016 must be offered during the time the establishment is utilizing the temporary area. ([https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\999\GDoc\\_ABC\\_5991\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\999\GDoc_ABC_5991_v1.pdf))

**Revocation:** The temporary outdoor dining areas/rooms stated herein may be revoked summarily by the Authority for any noncompliance with the above-referenced restrictions or for any cause set forth in § 4.1-225 and § 4.1-325 without complying with subsection A of § 4.1-227.

Revocation of the temporary outdoor dining areas/rooms shall be effective upon personal service of the notice of revocation to the licensee or upon the expiration of three business days after the notice is mailed to the licensee either at his/her residence or the address given for the business on the license application.

The determination to revoke the temporary outdoor dining areas/rooms shall not be subject to appeal. The Authority retains discretion regarding the enforcement of delivery requirements as dictated by statute and regulations as well as the authority to pursue administrative and/or criminal charges for any violations committed.

