

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(Amendment)**

**804 KAR 4:415. Direct shipper license.**

RELATES TO: KRS 243.027, 243.028, 243.029~~[, 243.030(33), 244.050, 244.440, 244.585]~~

STATUTORY AUTHORITY: KRS 241.060, 243.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.027(4) requires the Department of Alcoholic Beverage Control to set forth the requirements and the form for a direct shipper license application.~~[ KRS 243.027(3)(c) requires the Department to establish through regulation what information the Department determines to be necessary to implement and administer the direct shipper license. KRS 243.027(6)(a) requires the department to reduce unlicensed deliveries and shipments of alcoholic beverages in the state.]~~In relation to the direct shipper license, KRS 241.060(1) authorizes the Department only to promulgate an[reasonable] administrative regulation[s] to establish the license application[governing procedures relative to application for licenses as well as the supervision and control of the trafficking of alcoholic beverages]. This administrative regulation establishes the direct shipper license application[requirements for the direct shipper license and the privileges and responsibilities of a direct shipper license].

Section 1. Qualifications. To qualify for a direct shipper license, ~~the[an]~~ applicant shall:

(1) Hold a current license, permit, or other authorization to manufacture alcoholic beverages in the state where it is located or a current license in this state under KRS 243.212 or 243.215 to supply alcoholic beverages;

(2) Provide [Hold] a current license, permit, or other authorization to manufacture, store, or supply alcoholic beverages in the state where the applicant is located[under the Federal Alcohol Administration Act as follows:]

~~[(a)] [If a manufacturer other than a brewery, a basic permit to produce or manufacture beverage alcohol;]~~

~~[(b)] [If a manufacturer that is a brewery, a brewer's notice to produce or manufacture malt beverages; or]~~

~~[(c)] [If an importer, wholesaler, or distributor licensed as a supplier under KRS 243.212 or 243.215, a basic importer's or wholesaler's permit for the purpose of directly shipping only those products for which the applicant is designated the primary source of supply under the applicant's supplier license];~~

(3) Complete the online direct shipper license application via the department's licensing portal at <https://abcportal.ky.gov/BELLEExternal>~~[https://abcportal.ky.gov/s/kyabenewlicensetype]~~;

(4) Provide the address ~~[and a description ]~~of the applicant's premises~~[ from which the applicant will ship alcoholic beverages to consumers, and documentation showing ownership or possession of the premises under a written agreement]; and~~

(5) Pay the annual license fee established in KRS 243.030(33).~~;~~

~~[(6)] [Disclose all of the applicant's current alcohol-related licenses, permits, and authorizations granted by this state, the federal government, and, if applicable, the state in which the applicant manufactures alcoholic beverages;]~~

~~[(7)] [Disclose all convictions for violations of alcoholic beverage laws, or misdemeanors directly or indirectly attributable to the use of alcoholic beverages or the use or trafficking in controlled substances, in the last two (2) years in any state, by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015;]~~

~~[(8)] [Disclose all convictions or sentences served for felonies of any kind by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015, in the last five (5) years;]~~

~~[(9)] [Complete all registration requirements with respect to payment of any applicable excise tax, state or local sales or use tax, local regulatory license fee, or other tax owed in this state to directly ship alcoholic beverages to consumers in this state; and]~~

~~[(10)] [Consent to the jurisdiction of the Commonwealth of Kentucky for purposes of enforcement of KRS Chapters 241 to 244.]~~

~~[Section 2.] [Prohibited substantial interests. A direct shipper license applicant and direct shipper licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a manufacturer as defined in 804 KAR 4:015.]~~

~~[Section 3.] [Licensed Premises.]~~

~~[(1)] [The licensed premises described in a direct shipper license application may be different from the premises where the applicant is licensed, permitted, or otherwise authorized to manufacture or supply alcoholic beverages.]~~

~~[(2)] [If the direct shipper licensee uses, or intends to use, the licensed premises described in the direct shipper license application for storage of alcoholic beverages incidental to shipment, the premises shall also comply with the laws of the jurisdiction in which it is located in order to store the alcoholic beverages to be shipped.]~~

~~[(3)] [Direct shipper licensees may engage in transportation of their products as permitted by their license, permit, or authorization to manufacture or supply alcoholic beverages.]~~

~~[Section 4.] [Minimum Production. A manufacturer that is a direct shipper license applicant or a direct shipper licensee, and who intends to ship wine or distilled spirits, shall meet the minimum quantities of production set forth in KRS 243.155(2) and KRS 243.120(2)(a) as applicable.]~~

~~[Section 5.] [Brand Registration. In accordance with 804 KAR 4:410, a direct shipper licensee shall register with the department all brands the licensee intends to ship to consumers in this state.]~~

~~[Section 6.] [Independent Contractors. A direct shipper licensee shall not contract with an independent contractor or agent who has, or would have, a substantial interest prohibited under 804 KAR 4:015 if the independent contractor or agent is treated as a manufacturer as defined in 804 KAR 4:015.]~~

~~[Section 7.] [Records. A direct shipper licensee shall comply with the record retention and audit requirements set forth in 804 KAR 4:100, except a licensee shall maintain records for a minimum of three (3) years. At the request of the department, the licensee shall make available for inspection all records regarding direct shipment to Kentucky consumers.]~~

~~[Section 8.] [Minimum Price. A direct shipper licensee shall sell alcoholic beverages at a price no less than the cost of production in accordance with KRS 244.050.]~~

Section 2. ~~[Section 9.]~~ Incorporation by Reference.

(1) "Online Direct Shipper License Application", October 2021~~[December 2020]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(47 Ky.R. 485; 627; 1218; 1387; eff. 12-14-2020; 48 Ky.R. 1919; eff.5-31-2022.)

*ALLYSON C TAYLOR, COMMISSIONER*  
*RAY PERRY, Secretary*

APPROVED BY AGENCY: October 25, 2021

FILED WITH LRC: October 26, 2021 at 9:40 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on Monday, January 24, 2022 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on January 24, 2022, but if the location is closed to in-person services on January 24, 2022, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 AM on January 24, 2022. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW and a link will be provided on the Web site of the Department of Alcoholic Beverage Control, <http://abc.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

**CONTACT PERSON:** Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email [Joshua.Newton@ky.gov](mailto:Joshua.Newton@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person: Joshua Newton**

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This amended administrative regulation outlines the changes required by House Bill 415 of the 2021 Regular Session of the Kentucky General Assembly in which limitations were placed on the Department of Alcoholic Beverage Control's ability to regulate direct shipment of alcohol to consumers in and outside of Kentucky. Specifically, this amendment focuses on the requirements for licensing as outlined in the latest legislation.

**(b) The necessity of this administrative regulation:**

KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. Therefore, a majority of the previously approved regulation requires deletion.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. KRS 241.060(1) specifies that no other regulation related to direct shipping may be promulgated. Therefore, a majority of the previously approved regulation requires deletion.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

KRS 241.060(1) specifically prohibits the Department of Alcoholic Beverage Control from regulating direct shipping licensees. Deletion of previous regulation is mandated to comply with the statute.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

The amendment deletes all previous regulation related to direct shipper applications except for the applicant's address and out of state license where necessary.

**(b) The necessity of the amendment to this administrative regulation:**

HB 415 of the 2021 Regular Session of the General Assembly requires the department to make these changes.

**(c) How the amendment conforms to the content of the authorizing statutes:**

KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. KRS 241.060(1) specifies that no other regulation related to direct shipping may be crafted. Therefore, a majority of the previously approved regulation requires deletion.

**(d) How the amendment will assist in the effective administration of the statutes:**

The amendment deletes regulatory language specifically prohibited by the legislature.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**

The direct shipper license affects an unknown number of individuals, businesses, and organizations. However, this amendment will not affect current or future applicants beyond outlining the two pieces of information they must provide. (4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment will not affect current or future applicants beyond outlining the two pieces of information they must provide. Currently licensed businesses will be required to do nothing new as a consequence of this regulation. New applicants will be required to provide less information under this amended regulation. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will cost each entity at least the amount of the application fee under KRS 243.030(33). The amendment does not change what an applicant pays. (c) As a result of compliance, what benefits will accrue to the entities: This amendment will provide no benefit to the entities other than requiring that they provide less documentation for the license application.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:**

No answer provided.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):**

No answer provided.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):**

No answer provided.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:**

Changes to the licensing system have been completed in house with no quantifiable costs to the department.

**(b) On a continuing basis:**

There are no anticipated additional costs related to this amendment.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:**

Enforcement of this administrative regulation will be funded by the statutory licensing fees paid by applicants under this regulation. The amendment itself will require no additional or separate funding for implementation.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

At this time, no increase in fees or funding will be necessary to implement this amendment.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:**

This administrative regulation did not establish any fees, and did not directly or indirectly increase any fees.

**(9) TIERING: Is tiering applied?**

Tiering is not applied because this will affect all regulated entities equally.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

The Department of Alcoholic Beverage Control and local Alcoholic Beverage Control administrators are affected generally by the licensing of direct to consumer shippers. However, this amendment will have no changed effect on the state or local government entities.

**(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 243.027(4), KRS 241.060.

**(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

The amendment will generate no new revenues for state or local governments.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

The amendment will generate no new revenues for state or local governments in subsequent years.

**(c) How much will it cost to administer this program for the first year?**

Costs to administer this program are currently unknown. The Department will have costs associated with modification and maintenance of the online direct shipper application and database for accepting applications. The Department will also have unknown costs to develop enforcement protocols and procedures and enforce the regulation. The Department does not know if these costs will exceed current budgetary estimates. The specific amendment will not change the costs to administer the direct to consumer licensing of applicants.

**(d) How much will it cost to administer this program for subsequent years?**

Costs to administer this program in the future are currently unknown.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):**

**Expenditures (+/-):**

**Other Explanation:**