

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 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. KRS 241.060(1) authorizes the department to promulgate reasonable administrative regulations governing procedures relative to application for licenses as well as the supervision and control of the trafficking of alcoholic beverages. This administrative regulation establishes 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, 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) Hold a current permit or authorization 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://abc-portal.ky.gov/s/kyabcnewlicensetype>;
- (4) Provide the address and a description of the premises from which the applicant will ship alcoholic beverages to consumers, and documentation showing ownership or possession of the premises under a written agreement;
- (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 9. Incorporation by Reference.

(1) "Online Direct Shipper License Application", 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.)