

CROSSING STATE LINES

Navigating Compliance Issues to Sell Distilled Spirits

BY MAGGIE BOYD

Imagine this ... you have the perfect product, of course, and you have interest from a distributor in another state, and those sales will make your month. Your eyes light up. You can make ends meet this month because now your product is ready to be sold to the new state, right? Maybe. This article will explain the step-by-step process of how to get your product to market in a new state.

The first step is licensing. Of course, you are already licensed as a distiller in your home state, but the state where you are selling to may also require a permit and brand registration. For distilled spirits products, as we all know, each state is either “open” or a “control” state. In the simplest of terms, an open state is where the supplier sells directly to a licensed wholesaler in that state. A control state is where the supplier must sell directly to the state and the state sells the product via its own retail stores or to licensed wholesalers in the state.

This article is going to focus on the compliance process with open states. The first step, after having a distributor in place, is to determine what type of license is required. As noted, most open states require some type of out-of-state supplier license. The application is usually pretty simple but does require disclosing the names of officers and directors of the company and some, like Colorado and Florida, even require fingerprints. Another item that many forget is that some states, like Illinois and Florida, require registration with the Secretary of State as a foreign entity and/or registration with the state’s department of revenue.

Another type of license to consider is a salesperson license. Most states, if a person will be actively selling products in the state

to licensed wholesalers/retailers, require a salesperson license. This application will either need to be completed by the out-of-state supplier or some states, like Georgia and Washington, D.C., require the person to register as the applicant.

After the license is in process, determine if the state you are looking to sell to requires brand registration. Brand registration is typically completing a small application about the product you wish to sell in the state and providing the federal Certificate of Label Approval. Most states have moved the applications online and approval can be anywhere from instantly to up to 90 days. Once approved, brand registrations typically must be renewed on an annual basis and if a label changes, a label revision may be required as well.

Another matter that must be considered prior to selling the product is price posting. Several states, such as New York and Minnesota, require the prices to be submitted to the state. Some states require a monthly price posting, like New York (for certain licensees), others only require submission when a price has changed and some require annual postings. Price postings consist of a form that must be completed that lists the products and the price of the product(s) in the state. For instance, in New York, there is the supplier to wholesaler and then wholesaler to retailer price postings.

Phew. Now that you have received all the licenses to sell, successfully completed brand registration and price posting requirements, let’s sell! One last item to consider is whether the state requires monthly shipping reports. These are typically excise tax forms that must be submitted once a month that

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include the number of products you have sold into the state in the previous month and to whom the product was sold. These forms are typically simple. The hardest part is often remembering the due date every month, so be sure to set a calendar reminder for yourself or compliance team.

This list is not comprehensive but includes most items to consider when selling distilled spirits products to a distributor in a new state. Always review the requirements on the relevant state alcoholic beverage control/division website to determine any and all compliance requirements for selling. ■



This article is for information and education purposes only and not intended to be specific legal advice of Malkin Law PA. Maggie Boyd has

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