



HANDBOOK
FOR
SPECIAL ORDER SHIPPING

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Changes made to this handbook since the previous revision date have been highlighted with a **gray background**. Please report errors, omissions or suggestions for improvement to this handbook to the Division of Alcoholic Beverage Control by telephone at 785-296-7015, by fax at 785-296-7185 or by email to abc_mail@kdor.state.ks.us.

Overview

The Special Order Shipping license was created by Section 1 of 2009 Senate Bill 212 which became effective July 1, 2009.

The Special Order Shipping license is available to any maker or producer of wine whether in this state or in any other state who holds a valid federal basic wine manufacturing permit. A Special Order Shipping license authorizes the winery to ship wine upon order directly to consumers for personal or household use in Kansas and not for resale.

Definitions

“Bonded wine premises” means a facility registered under the internal revenue code, 26 U.S.C., for the production, blending, cellar treatment, storage, bottling, or packing of wine. [Subsection (a) of K.A.R. 14-11-1]

“Calendar year” means the period of time from the first day of January through the 31st day of December. [Subsection (b) of K.A.R. 14-11-1]

“Federal basic wine manufacturing permit” means a permit issued under the federal alcohol administration act, Title 27 U.S.C. chapter 8, to a bonded wine premises to produce wine. [Subsection (h) of K.A.R. 14-11-1]

“Standard case” means a package of original containers consisting of a total of 9000 milliliters of wine of one brand or a combination of brands. [Subsection (j) of K.A.R. 14-11-1]

"Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. [Subsection (ff) of K.S.A. 41-102]

“Winery” means any maker or producer of wine, whether in this state or any other state, that holds a valid federal basic wine manufacturing permit. [New statute, Senate Bill 212, Section 1]

Qualifications for licensure

Any winery located in one of the United States that possesses a valid federal basic wine manufacturer’s permit may apply for a special order shipping license. [New statute, Senate Bill 212, Section 1]

The Director may reject the application of any winery if:

- The application does not include all information the director deems necessary; [Subsection (b)(1) of K.A.R. 14-11-22]
- The application does not include a copy of the winery’s federal basic wine manufacturing permit; [Subsection (b)(2) of K.A.R. 14-11-22]
- The application does not include the appropriate license and application fee; [Subsection (b)(3) of K.A.R. 14-11-22]

- The applicant or its owners, officers, agents, or managers have violated a provision of the liquor control act or regulations relating to special order shipping; [Subsection (b)(4) of K.A.R. 14-11-22]
- The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the State of Kansas [Subsection (b)(5) of K.A.R. 14-11-22]; or,
- The applicant or its owners, officers, agents, or managers previously held a license issued under the Liquor Control Act or the Club and Drinking Establishment Act, and at the time that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the State of Kansas. [Subsection (b)(6) of K.A.R. 14-11-22]

If the holder of the special order shipping license has had their license revoked for shipping wine to a person under 21 years of age in Kansas, they may not obtain a license for a period of one year from the date of revocation. [New statute, Senate Bill 212 New Section 1, subsection (f)]

Application process for initial licensure

The initial application for a special order shipping license shall be made upon forms prescribed and furnished by the Director of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue in Topeka. For forms and instructions for initial licensure, go to the ABC website at www.ksrevenue.org/abc or contact ABC Marketing Unit at 785-296-7015.

Each applicant shall submit the following to the Director of ABC:

- Completed application form; [Subsection (a) of K.A.R. 14-11-22]
- One copy of the applicant’s federal basic wine manufacturing permit; [Subsection (b)(2) of K.A.R. 14-11-22]
- Non-refundable registration fee of \$50 in the form of a certified or cashier’s check; [Subsection (a) of K.S.A. 41-317 and subsection (b)(3) of K.A.R. 14-11-22]
- Annual license fee of \$50 in the form of a certified or cashier’s check. The license fee shall be returned to the applicant if the application is denied; [Subsection (e) of K.S.A. 41-310 and subsection (b)(3) of K.A.R. 14-11-22]
- Escrow or surety bond in the amount of \$750, unless the applicant is a licensed Kansas farm winery; [Subsection (b)(7) of K.S.A. 41-317]
- A copy of the Irrevocable Consent to Jurisdiction Form (ABC-160) that has been stamped “filed” by the Kansas Secretary of State, unless the applicant is a licensed Kansas farm winery.

Within 30 days after the application, supporting documents and fees are submitted to ABC, the Director of ABC shall enter an order either granting or denying the license. This time period may be extended for another 30 days upon the written consent of the applicant. If the Director of ABC fails to enter an order within the 30 days or extended time, then the license shall be deemed to be denied. [K.S.A. 41-319]

If the license is issued, it shall be valid for one year from the date the license is issued. [Subsection (m) of K.S.A. 41-310 and Subsection (c) of K.A.R. 14-11-22]

Sales and shipment of wine to Kansas consumers

Special order shipping licensees shall verify the age of every Kansas consumer attempting to purchase wine for shipment into Kansas. Verification may be done through the physical examination of an approved government issued form of identification or by utilizing an internet based age and identification service approved by the Director. [New statute, Senate Bill 212, Section 1, Subsection (a) of K.A.R. 14-11-23] Approved internet age verification programs are located on our website at: <http://www.ksrevenue.org/abcspecialorder.htm>

Every shipment of wine to a Kansas consumer shall be clearly marked “Alcoholic Beverages, Adult Signature Required”. [New statute, Senate Bill 212, Section 1] Each carrier of wine shipped to a Kansas consumer shall be responsible for obtaining the signature of an adult at least 21 years of age prior to delivering the wine. [New statute, Senate Bill 212, Section 1]

The purchaser shall pay the purchase price, all applicable taxes and shipping costs directly to the special order shipping licensee.

Records to be retained and available for inspection

A winery possessing a special order shipping license shall maintain, on the licensed premises, a copy of the invoice or sales slip for each sale of wine for direct shipment to a consumer in Kansas for a period of three years from the date of sale. Such copies shall be made available for inspection by the director or any agent or employee of the director or secretary upon request. [Subsection (k) of K.A.R. 14-11-23]

For each sale of wine to be shipped directly to a consumer in Kansas, the licensee shall complete an invoice or sales slip containing the following information:

- The name, address, and license number of the winery; [Subsection (d)(1) of K.A.R. 14-11-23]
- The name and address of the purchaser; [Subsection (d)(2) of K.A.R. 14-11-23]
- The date of the purchase; [Subsection (d)(3) of K.A.R. 14-11-23]
- The quantity and size of each brand of wine purchased; [Subsection (d)(4) of K.A.R. 14-11-23]
- The subtotal of the cost of the wine and the total price of the shipment, including enforcement tax, gallonage tax, and shipping charge; [Subsection (d)(5) of K.A.R. 14-11-23]
- A statement that the purchaser’s age was verified and that the purchaser is at least twenty-one years of age; [Subsection (d)(6) of K.A.R. 14-11-23]
- The type of photo identification examined and/or the internet based age and identification service utilized. [Subsection (d)(7) of K.A.R. 14-11-23]

Authorized activities

Special order shipping licensees are authorized to engage in the following activities:

Direct Wine Shipping. Special order shipping licensees may sell and ship wine manufactured by the licensee directly to consumers in Kansas for personal or household use. [New statute, Senate Bill 212, Section 1, Subsection (a) of K.A.R. 14-11-22]

Collection of shipping charges. Special order shipping licensees may collect shipping fees from the purchaser. [New statute, Senate Bill 212, Section 1]

Prohibited activities

Shipping more than 12 standard cases to any one person or address in a calendar year. A special order shipping licensee shall not ship more than 12 standard cases of one brand or a combination of brands of wine to any one consumer or purchaser in the state during the calendar year. [New statute, Senate Bill 212, Section 1, Subsection (c) of K.A.R. 14-11-23]

Sales to minors. A special order shipping licensee shall not sell or ship any wine to a person under twenty-one years of age. [Subsection (a) of K.A.R. 14-11-23]

Shipping wine not manufactured by the licensee. A special order shipping licensee shall not sell or ship any wine that was not manufactured by the licensee to a consumer in Kansas. [Subsection (b) of K.A.R. 14-11-23]

Shipping wine to a licensed premise. A special order shipping licensee shall not sell or ship any wine to any premises in Kansas authorized to sell alcoholic liquor under the Liquor Control Act or the Club And Drinking Establishment Act. [New statute, Senate Bill 212, Section 1]

Administrative actions for violations of statutes and regulations

Senate Bill 212, Section 1 provides for revocation of a special order shipping license for any violation of the Liquor Control Act or the regulations adopted thereunder. K.S.A. 41-328a also authorizes the imposition of a civil fine of no more than \$1,000 per violation.

Grounds for administrative action (see Senate Bill 212, Section 1, subsections (f) and (g))

- The licensee violated any provision of the Liquor Control Act or any rules or regulations adopted thereunder. [Subsection (f) of Senate Bill 212, Section 1]
- The licensee violated any provision of the Liquor Enforcement Tax Act, K.S.A. 79-4101 et seq. [New statute, Senate Bill 212, Section 1, Subsection (a) of K.S.A. 41-407, and Subsection (g)(1) of Senate Bill 212, Section 1]
- The licensee failed to report or remit gallonage taxes collected on sales to Kansas consumers. [Subsection (f) of Senate Bill 212, Section 1]
- The licensee sold and/or shipped wine to a person under 21 years of age in Kansas. [Subsection (f) of Senate Bill 212, Section 1]

No license shall be revoked by the Director of Alcoholic Beverage Control except after a hearing by the Director. [Subsection (a) of K.S.A. 41-320] The provisions of the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., apply to these hearings. [Subsection (a) of K.S.A. 41-320] Revocation orders issued by the Director shall state the reason for such action. [K.S.A. 41-321] Appeals of orders of revocation may be made by licensees as set forth in the Liquor Control Act, specifically K.S.A. 41-321 through 41-324.

Any fine imposed for a violation of the act shall be by written order of the Director and state the nature of the violation, amount of fine, and the right of the licensee to appeal the order. A licensee will be granted a formal hearing under KAPA upon written request to the Director. Fines are to be remitted to the State Treasurer for deposit into the state general fund. [K.S.A. 41-328]

Gallonage tax and sales reporting requirements

Kansas imposes a gallonage tax on all wine manufactured in Kansas or imported into Kansas. The rate is \$.30 per gallon on wines containing 14% or less alcohol by volume. The rate is \$.75 per gallon for wine containing more than 14% alcohol by volume. [K.S.A. 41-501 et seq.]

If an out-of-state Wine Manufacturer holds a Special Order Shipping License, they must:

- Collect and remit the gallonage tax annually on all wine shipped to Kansas consumers and report their direct wine shipments into Kansas. The annual Gallonage Tax Return is reported for the calendar year and it is due on or before January 15th of the following year. For example, gallonage tax is calculated on all wine shipments to Kansas consumers from July 1st, 2009 thru December 31st, 2009 then the Gallonage Tax Return with payment is due by January 15th, 2010. [New statute, Senate Bill 212, Section 1, Subsection (e) of K.A.R. 14-11-23]
- File an annual sales report that contains the Kansas consumer and product information. The annual Sales Report is reported for the calendar year and it is due on or before January 15th of the following year. [New statute, Senate Bill 212, Section 1, Subsection (g)]
- Use the Kansas Special Order Shipping Annual Gallonage Tax Return and Sales Report (ABC-1040) to file and pay their gallonage tax and report their wine shipments to Kansas consumers. [Subsection (f) of K.A.R. 14-11-23]

If a Kansas Farm Winery holds a Special Order Shipping license, they:

- are not required to file an annual gallonage tax return because they file a gallonage tax return each month reporting the quantity of wine manufactured and remitting payment of the gallonage tax.
- must file a monthly sales report that contains information for all wine shipped within Kansas.
- must use the Kansas Farm Winery Monthly Gallonage Tax Return and Sales Report (ABC-1013) to submit their intrastate wine shipments to Kansas consumers.

Liquor enforcement tax

Kansas imposes a liquor enforcement tax on all wine sold by a special order shipping licensee to Kansas consumers. The tax is 8% of the retail sale price (does not include shipping costs) of the wine and is collected by the licensee from the consumer at the time of sale. [K.S.A. 79-4101]

The liquor enforcement tax is remitted monthly to the Kansas Department of Revenue using the Liquor Enforcement Tax Return (LE-3) or electronically through the Kansas Business Center <http://www.ksrevenue.org/kswebtax.htm> [Subsections (h) and (i) of K.A.R. 14-11-23]

Liquor Enforcement tax returns and tax payments must be filed each month and they are due by the 25th day of the following month, e.g. Liquor Enforcement tax collected from all July wine shipments to Kansas consumers is due by August 25th. If the licensee does not have any sales for the month, they must file a return indicating \$0.00 sales.

All Applicants for a Special Order Shipping license must make application for a Liquor Enforcement Tax Certificate separately from the liquor license. The application forms are available on our website at: <http://www.ksrevenue.org/abcsosforms.htm>

Special Order Shipping licensees are responsible for collecting the 8% Liquor Enforcement tax from Kansas consumers at the time of sale.

Tax bond

Out-of-state wine manufacturers applying for a special order shipping license are required by the Kansas Department of Revenue to post an escrow or surety bond to assure payment of gallonage and liquor enforcement taxes, fines and fees.