



HANDBOOK

FOR

SPECIAL ORDER SHIPPING

**Division of Alcoholic Beverage Control
Kansas Department of Revenue
Docking State Office Building
915 SW Harrison Street
Topeka, Kansas 66612-1588**

**Phone: 785-296-7015 / Fax: 785-296-7185
Website: www.ksrevenue.org/abc.html
Email: KDOR_abc.email@ks.gov**

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Changes made to this handbook since the previous revision(s) have been highlighted with a yellow background. Statutory changes that become effective on January 1, 2017, are highlighted with a green 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 KDOR_abc.email@ks.gov.

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]

“Hard Cider”

means any alcoholic beverage that:

- (1) Contains less than 8.5% alcohol by volume;
- (2) has a carbonation level that does not exceed 6.4 grams per liter; and
- (3) is obtained by the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including such beverages containing sugar added for the purpose of correcting natural deficiencies.

[Subsection (n) of K.S.A. 41-102 effective Jan. 1, 2017]

“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. Effective Jan. 1, 2017, the term “wine” shall include hard cider and any other product that is commonly known as a subset of wine. [Subsection (ii) 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. [Subsection (a) of K.S.A. 41-350]

Application Process for Initial Licensure

Apply online at <https://www.ksabconline.org> or download and print the online forms from our webpage at www.ksrevenue.org/abcspecialorder.html. Follow the directions for submitting the application to ABC.

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

- One copy of the application form. [Subsection (b) of K.A.R. 14-11-22]

- One copy of the applicant's federal basic wine manufacturing permit. [Subsection (b)(1) of K.A.R. 14-11-22]
- A non-refundable registration fee of \$50. [Subsection (a) of K.S.A. 41-317 and subsection (b)(2) of K.A.R. 14-11-22]
- **A biennial license fee of \$100.** 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)(2) of K.A.R. 14-11-22]
- An 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 Kansas farm winery.

The applicant may pay either the full amount of the license fee or may pay half of the license fee at the time of application. The remaining half of the license fee, plus 10 percent of the remaining balance, is due one year from the date on which the license was issued. Failure to pay the remaining license fee and 10 percent fee timely will result in the license being canceled.

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 two years from the date the license is issued. [Subsection (b)(1) of K.S.A. 41-350 and Subsection (c) of K.A.R. 14-11-22]

An order by the director denying a license shall state the reason(s) therefore. The order denying a license is appealable to the Secretary of Revenue by filing a form available from the Office of the Secretary. The form must be either mailed to the secretary by certified mail or personally served upon the Office of the Secretary within 15 days from the date of service of the director's order upon the licensee. The review of the director's order will be conducted in accordance with the provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [K.S.A. 41-321]

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. [Subsection (b) of K.S.A. 41-350]

The director may reject the application of any winery if:

- The application does not include all information the director deems necessary; [Subsection (c)(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 (c)(2) of K.A.R. 14-11-22]

- The application does not include the appropriate license and application fee; [Subsection (c)(3) of K.A.R. 14-11-22]
- The application does not include the appropriate bond. [Subsection (c)(4) 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 (c)(5) 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 (c)(6) 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 (c)(7) of K.A.R. 14-11-22]
- The applicant has had a liquor license revoked for cause in Kansas or another state. [Subsection (c)(8) of K.A.R. 14-11-22]
- The applicant or its owners, officers, agents or managers are currently delinquent in payment of any tax, fees, or fines to any state or to the United States. [Subsection (c)(9) 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. [Subsection (d)(1) of K.S.A. 41-350 and Subsection (c) of K.A.R. 14-11-23] Approved internet age verification programs are located on our website at www.ksrevenue.org/abcspecialorder.html.

Every shipment of wine to a Kansas consumer shall be clearly marked “Alcoholic Beverages, Adult Signature Required”. 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. [Subsection (d)(2) of K.S.A. 41-350]

Special order shipping licensees must collect gallonage tax and enforcement tax on each shipment of wine to a Kansas consumer. [Subsection (g) of K.S.A. 41-350]

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 (h) 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 (c)(1) of K.A.R. 14-11-23]
- The name and address of the purchaser; [Subsection (c)(2) of K.A.R. 14-11-23]
- The date of the purchase; [Subsection (c)(3) of K.A.R. 14-11-23]
- The quantity and size of each brand of wine purchased; [Subsection (c)(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 (c)(5) of K.A.R. 14-11-23]
- A statement that the purchaser's age was verified and that the purchaser is at least 21 years of age; [Subsection (c)(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 (c)(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 winery directly to consumers in Kansas for personal or household use. [Subsection (b) of K.S.A. 41-350 and Subsection (b) of K.A.R. 14-11-23]

Collection of shipping charges.

Special order shipping licensees may collect shipping fees from the purchaser. [Subsection (b)(2) of K.S.A. 41-350]

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. [Subsection (c) of K.S.A. 41-350]

Sales to Minors.

A special order shipping licensee shall not sell or ship any wine to a person under 21 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. [Subsection (e) of K.S.A. 41-350]

Administrative Actions for Violations of Statutes and Regulations

If an ABC enforcement agent observes a violation of the state liquor statutes or administrative regulations, the agent may issue an administrative citation setting forth the details of the violation as listed in subsection (c) of K.S.A. 41-106. The agent shall deliver the administrative citation to the licensee or person in charge of the licensed premises at the time of the violation. A copy of the administrative citation shall also be sent to the licensee by U.S. mail within 30 days after the date of the violation. [Subsection (a) of K.S.A. 41-106]

If a law enforcement officer from any other law enforcement agency observes a violation of the state liquor statutes, the law enforcement officer may prepare a notice of the violation (Form ABC-60) and serve the notice on the licensee or person in charge of the licensed premise. The law enforcement officer shall then submit a report of the violation to ABC for review to determine if administrative action should be taken against the licensee. If ABC decides to take action, then an administrative citation and notice of administrative action is sent to the licensee by U.S. mail within 30 days after the date of the violation. [Subsection (b) of K.S.A. 41-106]

The “person in charge” is defined as any individual or employee present on the licensed premises at the time of the alleged violation that is responsible for the operation of the licensed premises. If no individual or employee has been designated by the licensee as being in charge, then any employee present is considered the “person in charge” for the purpose of delivering an administrative citation by an ABC Enforcement Agent or for delivering a notice of violation by any other law enforcement officer. [Subsection (e) of K.S.A. 41-106]

The director may suspend, involuntary cancel or revoke any license issued by the Division of Alcoholic Beverage Control for any of the following reasons after the issuance of a citation to the licensee and a hearing conducted by the director pursuant to the Kansas Administrative Procedures Act in which the licensee has an opportunity to participate:

- Providing false information on the license application or at any hearing relating to the issuance of the license.
- Violation of any provision of the Liquor Control Act or any administrative regulation adopted pursuant to such act.
- No longer meets the qualifications to obtain a license pursuant to K.S.A. 41-311 or K.S.A. 41-311b.

[Subsections (a) and (b) of K.S.A. 41-320, K.S.A. 41-320a and K.A.R. 14-16-15]

The director may also suspend, involuntary cancel or revoke any license for any of the following reasons:

- The licensee violated any provision of the Liquor Enforcement Tax Act, K.S.A. 79-4101 et seq. [Subsection (g)(1) of K.S.A. 41-350]
- The licensee failed to report or remit gallonage taxes collected on sales to Kansas consumers. [Subsection (f) of K.S.A. 41-350]
- The licensee sold and/or shipped wine to a person under 21 years of age in Kansas. [Subsection (f) of K.S.A. 41-350]

The director may also impose a civil fine not exceeding \$1,000 for each violation. 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]

Any order by the director suspending, involuntarily cancelling or revoking an existing license, or imposing a fine on a licensee is appealable to the Secretary of Revenue by filing a form available from the Office of the Secretary. The form must be either mailed to the Secretary by certified mail or personally served upon the Office of the Secretary within 15 days from the date of service of the director's order upon the licensee. The review of the director's order will be conducted in accordance with the provisions of the Kansas Administrative Procedures Act (K.S.A. 77-501 et seq.). [K.S.A. 41-321]

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 cents per gallon on wines containing 14% or less alcohol by volume. The rate is 75 cents per gallon for wine containing more than 14% alcohol by volume. [K.S.A. 41-501]

In State

Kansas farm wineries who possess also Special Order Shipping license report their special order shipping sales each month using the Farm Winery Monthly Gallonage Tax Return and Report. (form ABC-1010)

Out of State.

Special order shipping licensees (except Kansas farm wineries) shall pay gallonage tax on each order of wine to be shipped to a consumer in Kansas. [Subsection (g) of K.S.A. 41-350] Special order shipping licensees (except Kansas farm wineries) are required to file an annual gallonage tax return and sales report by the 15th day of January following each yearly reporting period. [Subsection (e) of K.A.R. 14-11-23] The Annual Gallonage Tax Return and Report (form ABC-1040) must be filed even if no wine was sold to a Kansas consumer during the reporting period.

Choices for filing and payment of the gallonage tax return:

- File the form ABC-1040 with conventional payment. www.ksrevenue.org/pdf/abc1040.pdf
- File the form ABC-1040 with EFT payment. To request EFT, the winery must submit the EF-101 EFT authorization form. More information available at www.ksrevenue.org/eserv101.html.

The forms are available on ABC's website at www.ksrevenue.org/abcspecialorder.html and <http://www.ksrevenue.org/abcforms.html>.

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 percent 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 with report forms provided by the department, or the tax may be reported and paid online using the Department's website. [Subsection (g) of K.S.A. 41-350]

Bond

Kansas farm wineries are covered by their farm winery license bond. Out-of-state special order shipping license applicants must post a \$750 escrow bond in a bank doing business in Kansas or a surety bond.

Appendix A – K.S.A. 41-350 and Legislative History

K.S.A. 41-350. Direct shipment to consumers by winery; special order shipping license; collection of gallonage taxes; rules and regulations. (a) For the purposes of this act, the term "winery" means any maker or producer of wine whether in this state or in any other state, who holds a valid federal basic wine manufacturing permit. The terms "director" and "secretary" have the meaning ascribed to these terms in K.S.A. [41-102](#), and amendments thereto.

(b) Any winery may be authorized to make direct shipments of wine to consumers in this state upon obtaining a special order shipping license from the secretary pursuant to this act.

(1) A special order shipping license shall only be issued to a winery upon compliance with all applicable provisions of this act and the regulations promulgated pursuant to this act, and upon payment of a license fee in the amount of \$100. The license term for a special order shipping license shall commence on the date the license is issued by the director and shall end two years after that date.

(2) A special order shipping license shall entitle the winery to ship wine upon order directly to consumers for personal or household use in this state. The purchaser shall pay the purchase price and all shipping costs directly to the permit holder. Enforcement taxes collected herein shall be paid solely on the purchase price and not on the shipping costs.

(c) No holder of a special order shipping license shall be permitted to ship in excess of 12 standard cases of wine of one brand or a combination of brands into this state to any one consumer or address per calendar year.

(d) (1) Before accepting an order from a consumer in this state, the holder of a special order shipping license shall require that the person placing the order to state affirmatively that he or she is 21 years of age or older and shall verify the age of such person placing the order either by 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 of alcoholic beverage control, or the director's designee.

(2) Every shipment of wine by the holder of a special order shipping license shall be clearly marked 'Alcoholic Beverages, Adult Signature Required' and the carrier delivering such shipment shall be responsible for obtaining the signature of an adult who is at least 21 years of age as a condition of delivery.

(e) A special order shipping license shall not authorize the shipment of any wine to any premises licensed to sell alcoholic beverages pursuant to this act or the club and drinking establishment act.

(f) The failure to comply strictly with the requirements of this act and rules and regulations promulgated pursuant to this act shall be grounds for the revocation of a special order shipping license or other disciplinary action by the director. After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. [41-501](#) et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes. Upon revocation of a special order shipping license for shipment of wine to a person not of legal age as required herein such winery shall not be issued any special order shipping license pursuant to this act for a period of one year from the date of revocation.

(g) The holder of a special order shipping license shall collect all gallonage taxes imposed by K.S.A. [41-501](#) et seq., and amendments thereto, shall remit such taxes annually in a manner prescribed by the secretary and shall accompany such remittance with such reports, documentation and other information as may be required by the secretary. In addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

(1) Collect and pay the applicable Kansas enforcement tax on each sale shipped to a consumer in Kansas imposed by K.S.A. [79-4101](#) et seq., and amendments thereto;

(2) accompany each remittance with such sales tax reports, documentation and other information as may be required by the director of taxation; and

(3) if the holder of the license is an out-of-state shipper, the licensee shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. [41-501](#) et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act.

(h) The secretary of revenue may adopt rules and regulations to implement, administer and enforce the provisions of this section.

(i) This section shall be part of and supplemental to the Kansas liquor control act.

History: L. 2009, ch. 114, § 1; L. 2010, ch. 142, § 10; July 1.

Legislative history

- The Special Order Shipping license was created by section 1 of Senate Bill No. 212 (see 2009 Session Laws, Chapter 114) and designated as K.S.A. 41-350 effective July 1, 2009.
- K.S.A. 41-350 was amended by section 10 of Senate Bill No. 452 (see 2010 Session Laws, Chapter 142) effective July 1, 2010, as follows:
 - The license fee was increased from \$50 to \$100.
 - The term of the license was set at two years commencing at the date of issuance.
- K.S.A. 41-308b was amended in 2016 by Section 3 of Senate Bill 326, effective Jan. 1, 2017, as follows:
 - Adds a definition of “hard cider.”
 - Adds to the definition of “wine” that it includes “hard cider” and any other product that is commonly known as a subset of wine.