



## July 2021 Newsletter

### **Sending Alcohol Through the Mail? It's Complicated.** By Pamela S. Erickson

For years we've counted on the US Postal Service to mail our letters and ship our packages, but most of us don't know much about what you can't send. It turns out there is a large list of such things! In fact, there is an entire publication detailing what is absolutely banned versus restricted versus okay to mail. ("Publication 52--Hazardous, Restricted and Perishable Mail.") On the list of restricted products is alcohol. With very few exceptions--like cough syrup--the US Postal Service is prohibited from shipping alcohol. But a new bill in Congress could change that. Proponents claim it would be a simple way to expand markets and raise revenue for a struggling postal service.

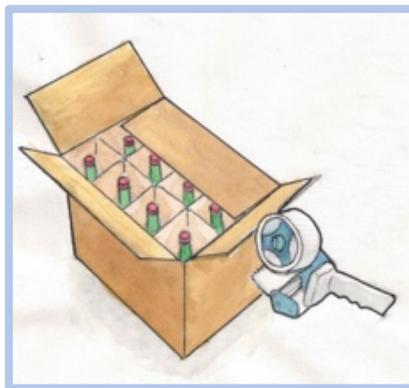
I realize that it sounds simple, but as a former alcohol regulator, I know the idea raises serious public safety concerns and lots of complications. I immediately wondered how it could be accomplished, what are the safety risks and whether the revenue would be enough to cover the costs. I think it's important to raise these issues so that our elected officials can make the best decision. For many of these issues, I have no answers and being a non-lawyer, I can't attempt to answer legal questions. But let's look at some of the specific concerns:

**1. Public health and safety:** As most people know, alcohol can cause great harm and is regulated to reduce that harm. It's a balancing act because after Prohibition, our nation decided to allow businesses to sell alcohol but to use regulation to curb harmful practices. It doesn't work perfectly, but we have achieved a reasonable level of balance and moderation. For example, the US ranks 45th in terms of total alcohol consumed per person according to the World Health Organization, well below a lot of developed countries. Nevertheless, we continue

to be concerned about issues of underage drinking, excessive drinking and drunk driving. These issues are in the news today as these problems seem to have gotten worse during the Pandemic. Expanding the shipping of alcohol to homes could exacerbate these problems.

**2. Tax Collection and Safe Products:** A unique feature of our regulatory system is a requirement that all alcohol products flow through a closed "three-tier system". This means a licensed manufacturer of alcohol may only sell products to a licensed distributor who can only sell to a licensed retailer. This system maintains control over products entering local markets and ensures almost 100% excise tax collections and safe products. In both cases, the distributor usually collects the tax and tracks each product to ensure safety, saving government dollars to perform these tasks. Other countries that don't have such a system lose considerable tax dollars and experience severe illness and death of citizens

who have purchased fake or tainted alcohol products. Sales that go directly to the consumer forego the safeguards of the "three-tier system" which could mean revenue loss and unsafe products.



**3. Compliance:** Online ordering and shipping products directly to homes has been a growing retail strategy; and, it got bigger during the pandemic. But it also expands the ways to purchase alcohol and regulators are challenged to try to enforce current safeguards that were never designed for home delivery. As states become

more active in enforcing delivery requirements, widespread non-compliance has been revealed. Currently, the Uniform Law Commission is attempting to develop a model law for alcohol shipment and delivery because of the high level of non-compliance. And, some states have gotten more aggressive with companies that ignore the law. Some have used the 21st Amendment Enforcement Act to obtain a court injunction to stop illegal shipments. Some states have noted a lack of tax payments and are now conducting audits or requiring new reports. (I know, anecdotally, that the Postal Service has shipped alcohol illegally. Some years ago, the US Postal Service delivered a "thank you gift" of wine to our house!)

**4. Licensing:** How does a state license a federal agency? Almost all states that allow shipments require a special license. Would the Postal Service just be exempt? That seems unlikely. The 21st Amendment to the US Constitution prohibits the "transportation or importation" of intoxicating liquors for delivery or use in a situation that would violate that state's laws. If the Postal Service needs a license, it would have to apply to each state that requires one. In states that require licensing there is usually an application process, fees to be paid and restrictions such as how much alcohol can be shipped to a given residence per month. Many states have extensive requirements for marking the package and some require mandatory monthly reporting. Would these things apply to the Postal Service? Does the Postal Service have the infrastructure for this?

**5. Enforcement:** How exactly would a state enforce its delivery laws on a federal agency? And, who is the responsible party if there is a violation? In some states, the original supplier is responsible, but in others the shipper is licensed and would be the responsible party. The states that do compliance checks have found that all too often a package is just left at the door or that an ID check is inadequate. Some states have developed training programs for drivers. Could a state require the Postal Service employees to get mandatory training? Could a state use the 21st Amendment Enforcement Act against the Postal Service if there were frequent violations?

**6. Costs:** If the issues involving compliance, enforcement and licensing were resolved, then the Postal Service would have to develop a system to deliver alcohol. Such development has significant costs to get licensed (or somehow get authorized to deliver alcohol in a given state), change forms and train employees. Training alone is a huge job as the Postal Service has almost half a million employees. For some, training may not need to be extensive, but it would still be a cost. According to [payscale.com](https://www.payscale.com), the USPS's average annual base salary is about \$62,000...and that doesn't include benefits. Other costs might include labor to change forms and devise new reports, increased legal fees to deal with legal and compliance issues, and required fees to get licensed in over 40 states. Would the revenue received from the new program be sufficient to cover costs and would it be enough to make the new program worthwhile?

So, you see that sending alcohol through the mail is just not a simple matter. And, it might not be a money-maker for the Postal Service. Afterall, the Postal Service's mission is just that: service.

**Sources:**  
[Publication 52, Hazardous, Restricted, and Perishable Mail, USPS.com](#)

["List of Allowable Objects You Can Send Through the US Postal Service,"](#) By: Fraser Sherman, reviewed by: Jayne Thompson, LL.B., LL.M. *Updated March 30, 2020*

[Countries that drink the most alcohol – ranked,](#) The Facts Institute (based on data from the World Bank)

[List of countries by alcohol consumption per capita,](#) Wikipedia

[HMRC Alcohol Strategy,](#) The UK's alcohol tax loss is 1.2 billion pounds annually according to Damian Hinds, Exchequer Secretary to the Treasury.

[Alcohol Direct- Shipping Compliance Act Committee,](#) Uniform Law Commission

[Ohio Concludes 21st Amendment Enforcement Act Litigation,](#) Alcohol Law Review

[Unites States Postal Service,](#) Wikipedia

[Average Salaries for U.S. Postal Service Employees,](#) [payscale.com](https://www.payscale.com)