



# **HARD SELTZER REGULATION IN OREGON**

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# CONTENTS

- CONTENTS ..... 2**
  
- HARD SELTZER REGULATION IN OREGON..... 3**
- What is a hard seltzer?..... 3**
- The Classifications OLCC Gives to Hard Seltzers..... 3**
- MALT BEVERAGE..... 3*
- WINE ..... 4*
- CIDER ..... 4*
- DISTILLED LIQUOR ..... 4*
  
- Manufacturing and Wholesaling (Including Importing And Distributing) Hard Seltzer In Oregon ..... 4**
- Who may MAKE hard seltzer in Oregon?..... 4*
- Who may IMPORT into (receive) hard seltzer in Oregon? ..... 5*
- Who may conduct WHOLESALE activities (sell at wholesale and distribute) hard seltzer in Oregon? 5*
  
- Taxes On Hard Seltzer In Oregon ..... 6**
- Privilege Tax ..... 6*
  
- RETAIL ..... 7**
  
- Liquor Licensing in Oregon..... 8**
- For application information..... 8*
- To submit a liquor license application or for liquor licensing questions..... 8*

# HARD SELTZER REGULATION IN OREGON

## WHAT IS A HARD SELTZER?

"Seltzer" is simply carbonated water.

In Oregon, a hard (sometimes also known as "spiked") seltzer is a seltzer with more than one-half of one percent of alcoholic beverage in it.<sup>1</sup>

It is important to determine the classification of hard seltzer as this determines who may make it, import it into Oregon, distribute it, sell it at retail or wholesale, and the appropriate Oregon privilege tax category.

## THE CLASSIFICATIONS OLCC GIVES TO HARD SELTZERS

### MALT BEVERAGE HARD SELTZER

The OLCC will classify a hard seltzer as a malt beverage if it meets the definition of "malt beverage" in Oregon Revised Statute (ORS) 471.001(6):

- **Effective June 8, 2021,** "Malt beverage" means beer, ale, porter, stout and other similar fermented beverages that contain more than one-half of one percent and not more than 16 percent of alcohol by volume and that are brewed or produced from malt, wholly or in part, or from rice, grain<sup>2</sup>, bran, glucose, sugar or molasses as a substitute for malt. (b) "Malt beverage" does not include cider, mead, sake or wine."

### *Verification of a "malt beverage"*

The OLCC may require the manufacturer, wholesaler, or importer who is claiming an alcoholic beverage as a malt beverage for privilege tax purposes to provide verification that the malt beverage meets the definition in ORS 471.001(6).

### *Examples of what is NOT a "malt beverage" include:*

- An alcoholic beverage obtained by *fermentation*; however, the alcohol by volume is over 16 percent and not more than 21 percent. [In this instance, the alcoholic beverage may qualify as a wine in Oregon.]
- An alcoholic beverage classified as a beer or malt beverage in a different state; however, the alcoholic beverage does not meet the definition of malt beverage in ORS 471.001(6).

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<sup>1</sup> Some may be familiar with the definition of "hard seltzer" in ORS 459A.700(9). However, this definition pertains only to beverage container redemption in Oregon.

<sup>2</sup> OLCC relies on the federal definition of "grain" to mean barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat and the subsequent definition for each specific grain.

## WINE HARD SELTZER

The OLCC will classify a hard seltzer as a wine, if it meets the definition of “wine” in ORS 471.001(11):

- “Wine” means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. “Wine” includes fortified wine. “Wine” does not include cider.
- Wine may contain distilled liquor and other “non-traditional” ingredients, provided that it does not contain more than 21 percent alcohol by volume.
- “Wine” does not include malt beverage, cider, or distilled liquor.

## CIDER HARD SELTZER

The OLCC will classify a hard seltzer as a cider (and therefore tax it as a malt beverage) if it meets the definition of “cider” in ORS 471.023:

- “For the purposes of this chapter, “cider” means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than 8.5 percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider.”
- The juice is not required to come only from apples or pears, but must include at least some fermented apple or pear juice.
- “Cider” may include flavored, sparkling, or carbonated cider.
- “Cider” does not include malt beverage, wine, or distilled liquor.

## DISTILLED LIQUOR HARD SELTZER

The OLCC will classify a hard seltzer as a distilled liquor, if it meets the definition of “distilled liquor” in ORS 471.001(4):

- “Distilled liquor” means any alcoholic beverage other than a wine, cider or malt beverage. “Distilled liquor” includes distilled spirits.”

Other common names for “distilled liquor” are distilled spirits, hard liquor, hard alcohol, ethyl alcohol, and ethanol.

Typically, distilled liquor comes from a distillation process. Oregon considers distilling to be any process that separates beverage alcohol (also known as ethanol or ethyl alcohol) from any substance or mixture. The two primary methods of distilling are using a still to apply heat and freeze distillation.

However, in Oregon, it is not a requirement that the liquor be distilled to be considered distilled liquor. A fermented liquor that does not meet the definition of malt beverage, wine, or cider would be considered a distilled liquor.

# MANUFACTURING AND WHOLESALING (INCLUDING IMPORTING AND DISTRIBUTING) HARD SELTZER IN OREGON

## WHO MAY MAKE HARD SELTZER IN OREGON?

- A Brewery licensee may make a malt beverage hard seltzer.

- A Brewery-Public House licensee may make a malt beverage hard seltzer.
- A Distillery licensee may make a distilled liquor hard seltzer.
- A Winery licensee may make a wine or cider hard seltzer.

### **WHO MAY IMPORT INTO (RECEIVE) HARD SELTZER IN OREGON?**

- A Brewery licensee may import a malt beverage hard seltzer, but only if the malt beverage is of a brand produced by a manufacturer that is under common control with the Brewery licensee.
- A Distillery licensee may import a distilled liquor hard seltzer.
- A Warehouse licensee may import a malt beverage, wine, or cider hard seltzer.
- A Wholesale Malt Beverage and Wine licensee may import a malt beverage, wine, or cider hard seltzer.
- A Winery licensee:
  - With a Producer/Blender permit from the Alcohol Tobacco Tax and Trade Bureau (TTB)
    - If the container has a capacity of more than four liters, may import a wine or cider hard seltzer.
    - If the container has a capacity of four liters or less, may import a wine or cider hard seltzer only if the wine or cider hard seltzer brand is under the control of the Winery licensee. "Control" is defined in ORS 471.223.
  - With a Wholesaler or Wine Cellar permit from the TTB
    - Regardless of container size, only if the wine or cider hard seltzer brand is under the control of the Winery licensee. "Control" is defined in ORS 471.223.
- The OLCC may import a distilled liquor hard seltzer.
- A consumer may receive a malt beverage, wine, or cider hard seltzer (but not a distilled liquor hard seltzer) from a Direct Shipper Permittee.

### **WHO MAY CONDUCT WHOLESALE ACTIVITIES (SELL AT WHOLESALE AND DISTRIBUTE) HARD SELTZER IN OREGON?**

- If the hard seltzer is a malt beverage, wine, or cider:
  - A Brewery licensee may sell at wholesale and distribute a malt beverage hard seltzer, but only to a Wholesale Malt Beverage and Wine licensee.
  - A Brewery-Public House licensee may sell at wholesale and distribute a malt beverage hard seltzer only if it:
    - Produced the malt beverage hard seltzer; and
    - Sells at wholesale and distributes no more than 7,500 barrels of any malt beverage that it produced in a calendar year.
  - A Grower Sales Privilege licensee may sell at wholesale and distribute a hard seltzer, but only hard seltzer that is a wine or cider that was made from fruit or grapes grown in Oregon under the control of the licensee.
  - A Wholesale Malt Beverage and Wine licensee may sell at wholesale and distribute a malt beverage, wine, or cider hard seltzer.
  - A Winery licensee:
    - With a valid Producer and Blender Basic Permit from the TTB may sell at wholesale and distribute a wine or cider hard seltzer.

- With a valid Wholesaler Basic Permit from the TTB may sell at wholesale and distribute only hard seltzer made from wine and cider brands that are under the control of the licensee.
- If the hard seltzer is a distilled liquor:
  - A Distillery licensee may sell at wholesale and distribute a distilled liquor hard seltzer, but only to the OLCC.

## TAXES ON HARD SELTZER IN OREGON

If the hard seltzer is a malt beverage, wine, or cider Oregon assesses a tax for the privilege of:

- Manufacturing malt beverage, wine, or cider in Oregon.
- Importing malt beverage, wine, or cider into Oregon.
- Shipping malt beverage, wine, or cider into Oregon.

This tax is sometimes called a “privilege tax.”

### PRIVILEGE TAX

#### *Who pays and what is the rate?*

- Malt Beverage. Under ORS 473.030(1), a manufacturer in Oregon and all importing distributors must pay the tax at a rate of \$2.60 per barrel of 31 gallons.
- Wine. A manufacturer in Oregon and all importing distributors must pay the tax at a rate of:
  - 67 cents per gallon (as per ORS 473.030 (2) & (4))
  - An additional 10 cents per gallon for all wines containing more than 14% ABV (as per ORS 473.030 (3))
- Cider. Under ORS 473.035(1), a manufacturer in Oregon and all importing distributors must pay the tax at a rate of \$2.60 per barrel of 31 gallons.

#### *Which OLCC licensees are responsible for paying the privilege tax?*

Brewery, Winery, Wholesale Malt Beverage & Wine, Warehouse, Brewery-Public House, Growers Sales Privilege, Wine Self-Distribution (WSD), and Direct Shipper (DS). The privilege tax is paid only once.

#### *What is a privilege tax bond?*

This is a bond that certain OLCC licensees and permittees are required to obtain. It allows the OLCC to collect payment if the privilege taxes are not paid. The minimum bond amount is \$1,000.

#### *Who obtains a privilege tax bond?*

Unless eligible for a waiver as per ORS 473.065(4), an applicant for any of the following licenses is responsible for paying the privilege tax; and therefore, must obtain a privilege tax bond before getting a license or a temporary authority to operate: Brewery (only at 1st location), Winery (at each location where production occurs), Wholesale Malt Beverage & Wine, Warehouse, Brewery-Public House (only at 1st location), Growers Sales Privilege (only at 1st location), Wine Self-Distribution (WSD), and Direct Shipper (DS).

#### *What are the payment, record keeping, and reporting requirements for privilege taxes?*

Unless eligible for a waiver, a licensee must file on a quarterly basis with the OLCC’s privilege tax department and pay any owed tax. Reports for the preceding calendar quarter are due on or before the 20th day of January, April, July and October.



### *Under what circumstances is a privilege tax not imposed?*

See ORS 473.050.

### *Questions about privilege taxes?*

Contact the OLCC's privilege tax department: [OLCC.privilegetax@oregon.gov](mailto:OLCC.privilegetax@oregon.gov)

### *If the hard seltzer is a distilled liquor*

Oregon does not assess a privilege tax on distilled liquor. Instead, the distilled liquor hard seltzer must be listed with the OLCC and factory-sealed containers of distilled are then sold at retail in a liquor store or by a distillery outlet agent.

## **RETAIL**

Who may SELL malt beverage, wine, or cider hard seltzer at RETAIL (direct to consumer) in Oregon?

- A Brewery licensee may sell hard seltzer at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
- A Brewery-Public House licensee may sell hard seltzer at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
- A Direct Shipper Permittee:
  - If the product is a wine or cider, may sell and deliver sealed containers of hard seltzer at retail direct to an Oregon resident provided the permittee follows the delivery rules at OAR 845-006-0392.
  - If the product is a malt beverage, may sell and deliver sealed containers of hard seltzer at retail direct to an Oregon resident only if the state from which it is coming allows Oregon licensees to deliver malt beverages directly to a resident of that state and provided the permittee follows the delivery rules at OAR 845-006-0396.
- A Full On-Premises Sales licensee may sell hard seltzer at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
- A Grower Sales Privilege licensee may sell hard seltzer, but only hard seltzer that is a wine or cider made from fruit or grapes grown in Oregon under the control of the licensee, at retail for both on and off premises consumption. It may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392.
- A Limited On-Premises Sales licensee may sell hard seltzer at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
- An Off-Premises Sales licensee may sell hard seltzer at retail, but only for off-premises consumption, and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
- A Wholesale Malt Beverage and Wine licensee may sell hard seltzer at retail (direct to consumer):
  - If the product is a wine or cider, may sell in quantities of not less than four gallons or more than 55 gallons at any one time. The licensee may not deliver the hard seltzer (the consumer must pick up the product at the licensed premises).

- If the product is a malt beverage, may sell a malt beverage that is not more than 9% alcohol by volume in quantities not less than four gallons. The licensee may not deliver the hard seltzer (the consumer must pick up the product at the licensed premises).
- A Winery licensee:
  - With a valid Producer and Blender Basic Permit from the TTB may sell hard seltzer at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392 and 845-006-0396.
  - With a valid Wholesaler Basic Permit from the TTB:
    - For wine and cider, may only sell hard seltzer made from wine and cider brands that are under the control of the licensee and may sell it for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0392.
    - For malt beverage, may sell hard seltzer made from malt beverage at retail for both on and off premises consumption and may deliver such direct to consumer provided it follows the delivery rules at OAR 845-006-0396.

If the hard seltzer is a distilled liquor:

- A Retail Liquor Store may sell hard seltzer at retail in a sealed container for off-premises consumption.
- A Distillery licensee who has also been appointed by the OLCC as a distillery retail outlet agent may sell hard seltzer at retail in a sealed container, but only at retail direct to consumer, and may sell it by the drink for consumption on the premises if the licensee has obtained a Special Event Distillery (SED) special event license.

## **LIQUOR LICENSING IN OREGON**

### **FOR APPLICATION INFORMATION**

<https://www.oregon.gov/olcc/lic/Pages/default.aspx>

### **TO SUBMIT A LIQUOR LICENSE APPLICATION OR FOR LIQUOR LICENSING QUESTIONS**

[OLCC.LiquorLicenseApplication@oregon.gov](mailto:OLCC.LiquorLicenseApplication@oregon.gov)