

PRIVATE LABEL AGREEMENTS FOR MALT BEVERAGES, WINE OR CIDER SOLD IN OREGON

Prior to selling a private label product to a retail licensee in Oregon, the manufacturer or wholesaler and retailer must enter into a private label agreement and that agreement must be approved by the OLCC.

This guide provides detailed information about private label agreements, including: when a private label agreement is required in Oregon, the basic elements of a private label agreement, submitting private label agreements for approval to OLCC, and frequently asked questions.

AUTHORIZATION FOR PRIVATE LABELS

Oregon Administrative Rule (OAR) 845-010-0206 authorizes private labels. Here is a link to [OAR 845-010-0206](#)

WHAT IS A "LABEL," AND SPECIFICALLY, WHAT IS A "PRIVATE LABEL?"

- A label is all information-bearing material attached to or a part of a wine, cider or malt beverage package.
- A private label is a malt beverage, wine, or cider label that contains a retail licensee's trade name, trademark, or other words or symbols identifiable with a specific retail licensee.

WHO ARE RETAIL LICENSEES?

- In all circumstances, the following are always a retail licensee: Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, and Temporary Sales License.
- When Brewery-Public House licensee produces a malt beverage private label for a retail licensee, then the Brewery-Public House licensee is a manufacturer; however, when a manufacturer or wholesaler of malt beverage, wine, or cider produces the private label for a Brewery-Public House licensee, then the Brewery-Public House licensee is a retail licensee.

WHO ARE MANUFACTURERS AND WHOLESALERS?

Manufacturers and wholesalers means:

- Every person who produces, brews, ferments, manufactures, or blends an alcoholic beverage within Oregon; and
- Every person who imports or causes to be imported into Oregon an alcoholic beverage for sale or distribution within Oregon.

WHAT IS A PRIVATE LABEL AGREEMENT?

A private label agreement is a contract or other written agreement between a manufacturer or wholesaler and an Oregon retail licensee that commits the manufacturer or wholesaler to placing a retail licensee's

private label on a malt beverage, wine, or cider product that is made or distributed by the manufacturer or wholesaler.

A manufacturer or wholesaler may not make reference to any retail licensee on a label for any product, unless the label is covered by an approved private label agreement. The allowance for private label products in the Oregon marketplace is limited and the conditions for use of private labels are narrow and specific.

WHAT ARE THE PRIMARY PRIVATE LABEL RESTRICTIONS AND REQUIREMENTS?

- The retail licensee must pay all costs associated with the development, production and application of the private label.
- The manufacturer or wholesaler may not develop a new wine, cider or malt beverage product for the private label. The private label product must be identical to a malt beverage, wine or cider product the manufacturer or wholesaler sells under another generic label.
- The manufacturer or wholesaler must sell the private label product to the retail licensee for at least the wholesale-listed price of the product sold under the other generic label.
- The identical product sold under another generic label must be reasonably available to all the manufacturer or wholesaler's customers. NOTE: The manufacturer or wholesaler may, however, make the private label product available only to a retailer who pays the costs associated with the private label
- OLCC approval of the private label agreement before the manufacturer or wholesaler sells the private label product to the retail licensee.
- The private label agreement may not include a guaranteed quantity, a guaranteed price, credit sales, orders more than ten days in advance of delivery, product storage by the manufacturer or wholesaler or any other terms that violate financial assistance or tied-house statutes (ORS 471.394, 471.396, 471.398 and 471.400) or the rules adopted under these statutes

PRIVATE LABEL RECORDKEEPING REQUIREMENTS

The manufacturer or wholesaler must keep a record of all private label sales for two years from the date of selling the private label product to the retail licensee. The record must include:

- The name of the retail licensee buying the product;
- For each transaction, the quantity of product and the date of sale and delivery;
- The price of the product and the total cost of each transaction; and
- A list of the quantity of private label products sold to each retail licensee during each calendar year.

PROCESS FOR SUBMITTING AND RECEIVING OLCC APPROVAL FOR PRIVATE LABEL AGREEMENTS

The manufacturer or wholesaler must be the party to submit the private label agreement to the OLCC.

1. Include a signed copy of the private label agreement.
2. Send the email to: olcc.SupplierInquiries@oregon.gov

The OLCC will review the agreement and follow-up directly with the individual who submitted the agreement. Once the OLCC is able to approve the agreement, the submitting party will receive notice in writing (via email) that the agreement has been approved. OLCC will keep a record of the approved agreement.

FREQUENTLY ASKED QUESTIONS

Q: ARE OUT OF STATE MANUFACTURERS ALLOWED TO MAKE A PRIVATE LABEL PRODUCT FOR OREGON RETAIL LICENSEES?

- Yes, following all the same requirements discussed above AND must sell the private label product to a retail licensee only through an independently owned and controlled Oregon wholesale licensee. For more information, see OAR [845-010-0206](#).

Q: WHAT ABOUT DISTILLED LIQUOR PRIVATE LABELS? ARE THOSE ALLOWED?

- Oregon law does not allow a manufacturer of distilled liquor, or its representatives, employees, contractors, and agents, to produce a “private label” for distilled liquor for an Oregon retail licensee. For more information, see the Distilled Liquor – Private Labels and Customized Add-Ons informational sheet at the end of this document.

Q: WHAT IF A RECIPE IS DEVELOPED IN COLLABORATION WITH A RETAIL LICENSEE BUT THE MANUFACTURER THEN CONTINUES TO PRODUCE IT UNDER A GENERIC NAME AND MAKES IT AVAILABLE TO ALL RETAILERS?

- Send an email to olcc.SupplierInquiries@oregon.gov to discuss the proposal. It is possible, depending on the specifics, provided:
 - The recipe for the private label product is not developed exclusively for the retail licensee;
 - The retail licensee is not compensated directly or indirectly for participating in development of the recipe; and
 - The manufacturer or wholesaler sells the identical product under another generic label at the same price that is made available to all retailers.

Q: WHAT IF THE MANUFACTURER IS ALSO A RETAIL LICENSEE AND THE TRADENAME FOR THE MANUFACTURER’S PRODUCTS IS THE SAME AS THE NAME OF THE RETAIL ESTABLISHMENT?

- This is permitted.

Q: DO YOU HAVE ANY SAMPLE PRIVATE LABEL AGREEMENTS THAT CAN BE USED BY INDUSTRY MEMBERS SEEKING TO ENTER INTO THESE KINDS OF ARRANGEMENTS?

- Yes. See the sample agreement later in this document.

Q: ARE PRIVATE LABEL AGREEMENTS THE SAME AS BRAND (TRADEMARK) LICENSING AGREEMENTS?

- No. Although brand (trademark) licensing agreements are not defined under the Oregon Liquor Control Act or OLCC rule, they are generally used in the alcohol context when a well-known brand licenses use of its trademark on products or in businesses that it does not own or is not directly involved in.

A private label agreement is used when a manufacturer or wholesale licensee places a label identifying a retail licensee on one of its products as discussed in this document.

Q: ARE PRIVATE LABEL AGREEMENTS THE SAME AS CUSTOM CRUSH OR CUSTOM BREW AGREEMENTS?

- No. Custom crush or custom brew agreements are used when a *brand-owning manufacturer or wholesale licensee* hires a *producing manufacturer* to make and finish product that is owned by and then transferred to the brand owner.

Q: WHAT IF THE RETAILER I AM MAKING THE PRIVATE LABEL PRODUCT FOR IS OUTSIDE OF OREGON?

- OLCC does not regulate such an arrangement. You may want to check with the receiving state’s alcohol regulatory agency to determine what requirements and limitations may apply.

SAMPLE PRIVATE LABEL AGREEMENT

OAR 845-010-0206

(Manufacturer) _____ agrees to provide [WINE/CIDER/MALT BEVERAGES] to (Retailer) _____ under the _____ label, with the following terms and conditions:

1. (Retailer) _____ pays all costs associated with the development, production and application of the private label. The retailer will deliver printed labels to the manufacturer according to specifications provided by the manufacturer to satisfy federal and state labeling regulations, and to satisfy the requirements of the manufacturer’s labeling equipment.
2. (Manufacturer) _____ sells the private labeled [WINE/CIDER/MALT BEVERAGES] to (Retailer) _____ through (Wholesaler) _____. Manufacturer concurrently sells wine/ malt beverage identical to the _____ labeled [WINE/CIDER/MALT BEVERAGES] under its own label through (Wholesaler) _____.
3. (Wholesaler) _____ sells the private labeled products for at least the wholesale price for the identical [WINE/CIDER/MALT BEVERAGES] which it sells under the _____ label.
4. This private label agreement does not include a guaranteed quantity, a guaranteed price, credit sales, orders more than 10 days in advance of delivery, product storage by the manufacturer or wholesaler or any other terms that violate financial assistance or tied-house statutes (ORS 471.392, 471.394, 471.396, 471.398 and 471.400) or the rules adopted under these statutes.

Manufacturer

Date

Retailer

Date

Wholesaler

Date

DISTILLED LIQUOR

Private Labels and Customized Add-Ons

PRIVATE LABELS

1. For an Oregon Retail Licensee

Unless allowed by the exception explained below, a manufacturer of distilled liquor, and its representatives, employees, contractors, and agents, may not produce a "private label" for an Oregon retail licensee. This is true even if the manufacturing licensee is the same as the recipient retail licensee.

Exceptions:

- The distillery's own retail licensed business shares the same tradename as the distillery business. Example: ABC (a distillery tradename) owns ABC (a restaurant tradename) and "ABC" branding appears on the label for the distilled spirits product, but there is no specific reference to the retail operation on the label.
- A distillery produces a product for another distillery licensee that happens to have a retail licensed business with the same tradename. Example: ABC distillery produces a distilled liquor product for DEF distillery, which owns a restaurant called DEF and "DEF" branding appears on the label for the distilled spirits product, but there is no specific reference to the retail operation on the label.

2. For an Oregon Liquor Store

A manufacturer or wholesaler (supplier) of distilled liquor may not produce a "private label" for an Oregon liquor store.

CUSTOMIZED ADD-ONS

A customized add-on is something added to the bottle of distilled liquor that does not change the label and adds customized or personalized information to the bottle promoting a specific retail licensee in Oregon. Examples of add-ons include bottle-neckers and stickers.

1. For an Oregon Retail Licensee

A supplier may provide a customized add-on to a bottle of distilled liquor for a retail licensee. However, the retail licensee must purchase the customized add-on from the supplier for a reasonable fee (which the OLCC defines as at least the supplier's cost) and the customized add-on must be added to the bottle AFTER the bottle has been purchased by the retail licensee at a retail liquor store. Most likely, it is the retail licensee who places the additional markers on the bottles, but the retail licensee could hire a third-party to provide this service (cannot be the manufacturer).

2. For an Oregon Liquor Store

A supplier may provide a customized add-on to a bottle of distilled liquor for a retail liquor store. The customized add-on is added to the bottle by the supplier either prior to the bottle arriving at the OLCC warehouse or when the bottle is still at the Oregon liquor store.