

TERRITORIAL AGREEMENTS FOR MALT BEVERAGE BRANDS DISTRIBUTED IN OREGON

A malt beverage brand in Oregon may only be sold at wholesale (distributed) to retail licensees by one wholesaler in a given territory within Oregon.

This guide provides detailed information about territorial agreements, including when a territorial agreement is required in Oregon, the basic elements of a territorial agreement, the OLCC's role in reviewing and maintaining territorial agreement records, instructions for submitting a territorial agreement, and replacing territorial agreements.

AUTHORIZATION FOR TERRITORIAL AGREEMENTS

- Oregon Revised Statute (ORS) 474.115 authorizes wholesale distribution agreements (or more commonly known as "territorial agreements"). Here is a link to a document where you may find [ORS 474.115](#)
- Oregon Administrative Rule (OAR) 845-010-0166 is the OLCC rule interpreting ORS 474.115. Here is a link to [OAR 845-010-0166](#)

OLCC ROLE

As per OAR 845-010-0166, sub (6), the OLCC's only responsibilities are to accept and file notices, affidavits, and territorial agreements a manufacturer submits to the OLCC.

The OLCC does not hear or resolve disputes relating to territorial agreements, nor does it assess whether a malt beverage manufacturer has appropriate cause to terminate a territorial agreement. The OLCC does not determine whether a territorial agreement has been properly amended or terminated when a malt beverage manufacturer provides the OLCC with an updated agreement for its brands in a given territory. Again, the OLCC strictly serves a repository for the territorial agreements.

KEY TERMS

"Brand" means brand label which could be an individual product.

"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, bran, glucose, sugar or molasses as a substitute for malt. Malt beverage does not include cider, mead, sake or wine.

"Territorial agreement" (also called a wholesale distribution agreement) means any contract or other written agreement for a definite or indefinite period between a malt beverage manufacturer, or its agent, and an Oregon wholesaler identifying malt beverage brands to be distributed by the wholesaler in a given territory in Oregon.

BASIC FRAMEWORK

FUNDAMENTALS

- A malt beverage brand in Oregon may only be *sold at wholesale* (distributed) to retail licensees by one wholesaler in a given territory *within Oregon*.
- Unless allowed by an exception for a Brewery-Public House licensee and a Brewery licensee (as described in the next bullets), a wholesale distribution agreement (or more commonly known as a “territorial agreement”) is required to ensure that only one wholesaler distributes a brand of malt beverage in a given territory.
- A Brewery-Public House licensee licensed under ORS 471.200 may self-distribute malt beverages it produced without a territorial agreement provided the distribution is to:
 - The same licensee (as the Brewery-Public House licensee), whether a manufacturer, wholesaler, or retailer; and
 - Other licensees of the OLCC, provided the amount distributed is no more than 7,500 barrels in any calendar year.
- A Brewery licensee licensed under ORS 471.221 who holds a Wholesale Malt Beverage and Wine (WMBW) license issued under ORS 471.235 may distribute under its own WMBW license without a territorial agreement. However, note that if a Brewery licensee uses a WMBW not held by the Brewery licensee, a territorial agreement with the other WMBW licensee is required.

WHEN A TERRITORIAL AGREEMENT IS REQUIRED

The agreement must identify at least the following four main elements:

1. Identification of the manufacturer of the malt beverage, or its agent, and an explanation for why the named manufacturer or agent has the authority to assign a wholesale distributor in Oregon (i.e. as producer and owner of the brand at the licensed address).
2. Identification of the wholesaler who will be distributing the brand(s) and any sub-wholesale distributors.
3. The brands to be distributed by the wholesaler.
4. The territory for distribution of those brands by the wholesaler (or the sub-wholesaler).

STANDARD FOR IDENTIFYING BRANDS

Malt beverage manufacturers, and their agents, have a great deal of flexibility to define the brands covered by a territorial agreement. Here are some examples:

1. A single product (or brand label)
2. A suite of products produced under a common brand
3. Segments of the malt beverage manufacturer’s portfolio (possibly including different brands and brand labels)
4. All of the malt beverage manufacturer’s portfolio

STANDARD FOR DESIGNATING THE TERRITORY

A malt beverage manufacturer, and its agents, may work with as many wholesaler as it would like in the state of Oregon as long as it does not work with more than one wholesaler for the same product in the same territory.

Malt beverage manufacturers, and their agents, have flexibility in defining the territory for distribution of their brands. Here are some examples:

1. A neighborhood
2. A city or county
3. All of Oregon

GROUNDINGS FOR TERMINATION OF A TERRITORIAL AGREEMENT

Oregon law prohibits a malt beverage manufacturer, and its agents, from canceling, terminating or failing to renew a distribution agreement, unless:

1. Good cause exists to terminate the agreement. ORS 474.011 defines good cause. Good cause determination proceedings are a private matter not overseen by the OLCC.
2. A malt beverage manufacturer or acquiring wholesale distributor may terminate the agreement without cause by compensating the current wholesale distributor with fair market value for exclusivity rights in the territory. This process is a private matter not overseen or approved by the OLCC.
3. Any of the conditions outlined in ORS 474.115 exist. If any such conditions exist, the malt beverage manufacturer may terminate the agreement immediately and it is effective upon the wholesale distributor's receipt of the notice of termination in writing.

SUBMITTING A NEW TERRITORIAL AGREEMENT

The malt beverage manufacturer or agent (not the wholesaler) must submit the territorial agreement to the OLCC.

1. Include a signed copy of the territorial agreement (as described above), **and**
2. If the submitting party is not the malt beverage manufacturer but instead is the agent of the malt beverage manufacturer, include an agreement whereby the malt beverage manufacturer gives the agent the authority to designate the wholesaler.
3. Email to: olcc.SupplierInquiries@oregon.gov

REPLACING AN EXISTING TERRITORIAL AGREEMENT

The malt beverage manufacturer or agent (not the wholesaler) must submit the territorial agreement to the OLCC.

1. Include a signed copy of the territorial agreement (as described above), **and**
2. Include a statement from the malt beverage manufacturer, or if appropriate its agent, that the level of service in the territory will not be affected by the change.
3. Email to: olcc.SupplierInquiries@oregon.gov