



Brewer's Brief: FAQ on Regulatory Requirements for Hard Seltzer

OVERVIEW

What is Hard Seltzer?

Hard seltzer is produced from either a base of brewed-malt ("clear malt") or brewed-sugar (where 100% of the fermentables are derived from non-malt sugar), with carbonated water and added flavor.

Am I Able to Brew Hard Seltzer at my Brewery in California?

Hard seltzer is defined as a Flavored Malt Beverage (FMB) by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and classified as "beer" by the California ABC if fermentables are malt or sugar based. With a TTB Brewers Permit and a type 23/01 license from the California ABC, breweries are able to legally brew this product on their premises. If you are using a rice fermentable (similar to how sake is made) the California ABC requires a type 02 wine makers license.

TTB DEFINITION: 27 CFR § 25.15 Materials for the production of beer.

- a. Beer must be brewed from malt or from substitutes for malt. Only rice, grain of any kind, bran, glucose, sugar, and molasses are substitutes for malt. In addition, you may also use the following materials as adjuncts in fermenting beer: honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials.
- b. You may use flavors and other nonbeverage ingredients containing alcohol in producing beer. Flavors and other nonbeverage ingredients containing alcohol may contribute no more than 49% of the overall alcohol content of the finished beer. For example, a finished beer that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of ingredients at the brewery and may derive not more than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol. In the case of beer with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

ABC DEFINITION: Section 23006 of Business and Professions Code

"Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, but does not include sake, known as Japanese rice wine. Beer may be produced using the following materials as adjuncts in fermentation: honey, fruit, fruit juice, fruit concentrate,



herbs, spices, and other food materials. Beer aged in an empty wooden barrel previously used to contain wine or distilled spirits shall be defined exclusively as “beer” and shall not be considered a dilution or mixture of any other alcoholic beverage.

What Authorities Regulate Hard Seltzer?

The California ABC regulates everything manufactured on a type 23/01 premise. This means you must conform with all rules, requirements and restrictions applicable to beer products.

Under **Alcohol and Tobacco Tax and Trade Bureau (TTB)** regulations, *both* malt- and sugar-based hard seltzers are considered “beer,” but *only* malt-based hard seltzers are also considered “malt beverages.” This means it is necessary for you to conform with all TTB requirements you currently conform with in the manufacturing of beer, including but not limited to holding a Brewers Permit, conforming with TTB labeling requirements, paying taxes, etc. ([Code available here](#)).

If your seltzer is brewed with non-malt fermentables such as sugar (zero malt-based products) your Hard Seltzer must conform with TTB requirements for brewing beer but instead of conforming with TTB labeling requirements, these seltzers must conform with the **Federal Drug Administration (FDA)** labeling requirements, which are much more complex ([Code available here](#)).

CCBA FREQUENTLY ASKED QUESTIONS

Do I Need to Comply with all ABC Requirements Applicable to Beer?

YES. Even if you are only brewing Hard Seltzer, your brewery must conform with all ABC regulations that pertain to beer. This includes but is not limited to price posting, brand registration, social media restrictions, self-distribution, “free goods” laws, etc.

A list of commonly asked ABC questions is available on the CCBA Members Only website pages at www.californiacraftbeer.com.

Do I Need Formula Approval from the TTB?

Yes: if you are adding flavors and/or colors to the hard seltzer you are required to obtain formula approval from the TTB.

No: if you DO NOT add any additional ingredients to the carbonated water and base fermentable (sugar substitute or malt).

Do I Need Label Approval from the TTB or FDA?

YES. Malt based hard seltzer labels are regulated by TTB while sugar based hard seltzers labels are regulated by FDA. All alcoholic beverages are required to include the “Government Warning.”



- **Malt Based:** Hard seltzers fermented with a malt base must conform to federal malt beverage labeling rules, aka Certificate of Label Approval (COLA)
- **Sugar Based:** Hard seltzers fermented with a sugar-base do need to comply with FDA labeling rules. FDA labeling strongly differs from TTB labeling.

What Do I Need to Know about FDA Label Approval?

There is no pre-market approval for labels within FDA's jurisdiction. This means the agency will not review your product's label before the product goes to market. Beer manufacturers are solely responsible for ensuring that their labels conform to **ALL** applicable FDA labeling laws and regulations. Failing to meet FDA labeling requirements may be subject to regulatory action

All requirements for FDA labels available in code section: [21 CFR Part 101](#). Here are some examples of what FDA requires sugar based hard seltzers labels to include:

- Nutrition Facts Panel
- Ingredients Statement
- Allergy Warnings
- Health Warnings (Including TTB's Government Health Warning)

FDA labels will allow you to make claims such as "gluten free" on the label. The claim should be accurate and true, as the FDA investigates voluntary claims if it receives a [consumer complaint](#) about a voluntary claim included on an FDA regulated label.

In 2014 the FDA produced the following Industry Advisory outlining some of their requirements: [Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration](#). This was written before there were many alcoholic kombuchas or hard seltzers on the market, so these types of beverages are not mentioned specifically, but this applies to any beverage that is classified as beer but not malt beverage

Do I Pay Taxes on Hard Seltzer?

Both malt and sugar-based hard seltzers are taxed federally as "beer."

The Federal Alcohol Administration Act defines 'malt beverage' for labeling, trade practices, and other regulatory purposes. That definition includes barley malt as an ingredient. However, the Internal Revenue Code (and subsequently the TTB) defines "beer" more broadly for tax purposes, which includes substitutes for malt.

ADDITIONAL RESOURCES:

- [Hard Seltzer: TTB and FDA Labeling Considerations](#)
- [Does the FDA Control Alcohol Beverages?](#)
- [Hard Seltzer Regulatory Considerations](#)
- [Kombucha, Hard Seltzer and Sodas – Oh My! Or When "Beer" isn't a "Malt Beverage"](#)

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DISCLAIMER: The CCBA provides information to help California brewers comply with ABC regulations and is intended only as general guidance. The consultation is not legal advice and does not replace the advice or representation of a licensed attorney. The CCBA highly recommends that all licensed beer manufacturers have an attorney or consultant review matters pertaining to ABC compliance.