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Beyond Traditional Beers: Low/No Alcohol Beer, Hard Seltzers, and Hard Kombuchas

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It is not intended to establish any new, or change any existing, definitions, interpretations, standards, or procedures regarding those laws and regulations.

In addition, this presentation may be made obsolete by changes in laws and regulations.

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Sample documents (such as records, returns, and labels) are for illustrative purposes only and contain fictitious data.



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Low and No Alcohol Beers and Malt Beverages



Agenda

In this session we'll cover:

- Some definitions
- The basics
- Formula and label requirements
- Specific labeling terms
- Certificates of Label Approval (COLAs) and Certificates of Exemption
- Advertising and Trade Practices



Definitions



Beer

Internal Revenue Code

- Beer, ale, porter, stout, and other similar **fermented beverages** (including saké and similar products)* of any name or description
 - containing **one-half of one percent or more of alcohol by volume**
 - brewed or **produced from malt**, wholly or in part, or from any **substitute for malt**
 - Substitutes for malt are rice, grain of any kind, bran, glucose, sugar, and molasses

*Not covered in this presentation

27 CFR 25.11



Cereal Beverage

Internal Revenue Code

- A beverage, **produced either wholly or in part from malt (or a substitute for malt)**, and
 - either **fermented or unfermented**,
 - **which contains, when ready for consumption, less than one-half of 1 percent (0.5%) of alcohol by volume**
- Substitutes for malt are rice, grain of any kind, bran, glucose, sugar, and molasses

27 CFR 25.11



Malt Beverage

Federal Alcohol Administration Act

- A beverage made by the **alcoholic fermentation**
 - of an infusion or decoction, or combination of both,
 - in potable brewing water,
 - of **malted barley with hops**, or their parts, or their products,
 - and with or without other malted cereals,
 - and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom,
 - and with or without the addition of carbon dioxide, and
 - with or without other wholesome products suitable for human food consumption

27 CFR 7.1



Cereal Beverage

Federal Alcohol Administration Act

- **Cereal Beverage** is a labeling class designation that may be used on malt beverages containing less than one-half of 1 percent (.5%) of alcohol by volume
- Under the FAA Act, any product labeled as a cereal beverage must meet the definition of a malt beverage shown on the previous slide

27 CFR 7.145(a)



In Summary

Here are the pertinent differences between the IRC definitions and FAA Act definitions:

	Internal Revenue Code (Part 25)		FAA Act (Part 7)	
	Beer	Cereal Beverage	Malt Beverage	Cereal Beverage
Must be fermented	X		X	X
Must be made with both malted barley and hops			X	X
Must contain 0.5% ABV or more	X			
Must contain less than 0.5% ABV		X*		X
May contain no alcohol (0.0%)		X*	X	X

*when ready for consumption



We'll Cover These Two Categories of Low/No Alcohol Beers/Malt Beverages

1

Products that contain 0.0% alcohol by volume

2

Products that contain more than 0.0 but less than 0.5% alcohol by volume

The Basics





Must it be Made at a Brewery?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
Not required to, but may be 27 CFR 25.23, 25.241	Not required to, but may be 27 CFR 25.23, 25.241

Must be made at a brewery if the ABV exceeds 0.5% at any point during or after production



From this Point on:

The remaining slides in this presentation will only address products that are made:

- at a domestic brewery
- by fermentation
- with both malted barley and hops



How is it Referred to in 27 CFR Part 25? The Internal Revenue Code

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
Cereal Beverage 27 CFR 25.11	Cereal Beverage 27 CFR 25.11



How is it Referred to in 27 CFR Part 7?

Federal Alcohol Administration Act

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
Malt beverage, cereal beverage, near beer 27 CFR 7.1, 7.145(a)	Malt beverage, cereal beverage, near beer 27 CFR 7.1, 7.145(a)

Part 7 only applies to fermented products that contain both malted barley and hops



Formula and Label Requirements



Is Formula Approval Required?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
<p data-bbox="384 601 1207 729">Yes with laboratory sample analysis</p> <p data-bbox="631 1065 960 1110">TTB G 2016-1A</p>	<p data-bbox="1289 522 2188 576">Yes, if any of the following are used:</p> <ul data-bbox="1289 605 2135 976" style="list-style-type: none">-non-traditional process-flavors or other nonbeverage products containing alcohol-coloring material-natural flavors or artificial flavors-food materials <p data-bbox="1600 1065 1882 1105">27 CFR 25.55</p>

When required, formula approval applies even if the product will be sold only at the brewer's brewpub or otherwise sold only within the state in which it is produced



Does TTB Ruling 2015-1 Apply?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
No	No

[TTB Ruling 2015-1](#) exempts from TTB formula requirements certain ingredients and processes used to make products with 0.5% or more ABV and made with both malted barley and hops



Must it be Labeled in Compliance with Part 25?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
<p data-bbox="749 651 843 708">Yes</p> <p data-bbox="379 776 1212 976">Including, must be labeled “Nontaxable under section 5051 I.R.C.”</p> <p data-bbox="614 1079 978 1129">27 CFR 25.242</p>	<p data-bbox="1691 651 1786 708">Yes</p> <p data-bbox="1327 776 2160 976">Including, must be labeled “Nontaxable under section 5051 I.R.C.”</p> <p data-bbox="1561 1079 1926 1129">27 CFR 25.242</p>



Must it be Labeled in Compliance with Part 7?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
Yes	No	Yes	No
27 CFR 7.4(a)	27 CFR 7.4(a)	27 CFR 7.4(a)	27 CFR 7.4(a)

Part 7 labeling rules generally apply only to fermented products made with both malted barley and hops that are sold in interstate commerce and into a state where similar law exists



Must it be Labeled in Compliance with FDA Food Labeling?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
No	No
← Unless made without both malted barley and hops →	
27 CFR 7.6(b)	27 CFR 7.6(b)

See [TTB Ruling 2008-3](#) and [FDA Guidance for Industry](#)



Must the Government Health Warning Appear on the Label?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
No	No	No	No

The Government Health Warning is required on all alcohol beverages with 0.5% or more ABV - 27 CFR 16.10



How Must it be Designated on the Label?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
Malt beverage, cereal beverage, or near beer <i>May not be designated beer, lager beer, lager, ale, porter, or stout</i>	Malt beverage, cereal beverage, near beer, or other distinctive name	Malt beverage, cereal beverage, or near beer <i>May not be designated beer, lager beer, lager, ale, porter, or stout</i>	Malt beverage, cereal beverage, near beer, or other distinctive name
27 CFR 7.145	27 CFR 25.242(a)	27 CFR 7.145	27 CFR 25.242(a)



Is an Alcohol Content Statement Mandatory?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
No May be required by state law, otherwise optional	No May be required by state law, otherwise optional	Yes if made with flavors or other nonbeverage ingredients containing alcohol (other than hops extract), otherwise optional 27 CFR 7.63(a)(3), 27 CFR 7.65	No May be required by state law, otherwise optional

Specific Labeling Terms





May it be Labeled “Alcohol Free”?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
<p>Mandatory if labeled 0.0% ABV, otherwise optional</p> <p>27 CFR 7.65(e)-(f)</p>	<p>TTB regs don't address this</p>	<p>No</p> <p>27 CFR 7.65(f)</p>	<p>TTB regs don't address this</p>

Pauling's Alcohol Free

NONTAXABLE
UNDER SECTION
5051 I.R.C.



An alcohol - free version of your
on - tap favorite!

0.0% alc./vol.

CRISP MALTY REFRESHING

12 fl. oz. | Brewed by Pauling Brewery Newark, NJ | Malt Beverage





May it be Labeled “Non-alcoholic”?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
<p>Optional, but if used, Contains less than 0.5 percent (or .5%) alcohol by volume must appear with it</p> <p>27 CFR 7.65(e)</p>	<p>TTB regs don't address this</p>	<p>Optional, but if used, Contains less than 0.5 percent (or .5%) alcohol by volume must appear with it</p> <p>27 CFR 7.65(e)</p>	<p>TTB regs don't address this</p>

Non-Alcoholic | Example

This product is domestically bottled, so **Nontaxable under section 5051 I.R.C.** must appear on the label

Non-Alcoholic is an optional statement, but if used, the label must also state immediately adjacent to it **Contains less than 0.5% alcohol by volume**

Since you can't use **Beer** you may describe the product as a **Brew** instead, but it is not acceptable as the class



This product cannot be labeled as **beer**. It must be labeled with a class designation of **malt beverage, cereal beverage, or near beer**, under 27 CFR 7.145



Certificates of Label Approval (COLA) and Certificates of Exemption



Is a Certificate of Label Approval (COLA) Required Under Part 7?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
Yes	No	Yes	No
27 CFR 7.21(b), TTB Ruling 2013-1	27 CFR 7.21(c), TTB Ruling 2013-1	27 CFR 7.21(b), TTB Ruling 2013-1	27 CFR 7.21(c), TTB Ruling 2013-1

Part 7 COLA requirements generally apply only to products made with both malted barley and hops that are sold in interstate commerce and into a state where the laws about labeling are identical to Federal law



Is a Certificate of Exemption Required Under Part 7?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
N/A	N/A	N/A	N/A
TTB Ruling 2013-1	TTB Ruling 2013-1	TTB Ruling 2013-1	TTB Ruling 2013-1

TTB regulations do not require a brewer to obtain either a COLA or a certificate of exemption for a domestically bottled malt beverage that will be sold exclusively in the state in which it was bottled

Advertising and Trade Practices





Do the Advertising Provisions of Part 7 Apply?

0.0% Alc/Vol		More than 0.0 and less than 0.5% Alc/Vol	
Sold Interstate	Intrastate Only	Sold Interstate	Intrastate Only
Yes 27 CFR 7.231	No	Yes 27 CFR 7.231	No

27 CFR part 7 advertising rules generally apply only to products made with both malted barley and hops that are sold in interstate commerce and into a state where similar law exists



Do TTB Trade Practice Rules Apply?

0.0% Alc/Vol	More than 0.0 and less than 0.5% Alc/Vol
Yes	Yes

27 CFR part 6, 8, 10, and 11 trade practice rules generally apply only to practices involving products made with both malted barley and hops



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“Hard Seltzers”

What are the TTB Rules?



Terms Not Defined by TTB

- TTB regulations do not define any of these terms:
 - Hard seltzer
 - Alcoholic seltzer
 - Spiked seltzer
 - Hard sparkling water



According to Trade Press

- Based on industry publications, hard seltzers are most commonly:
 - Carbonated water, flavoring, and alcohol
 - Made from fermented sugar or malted barley
 - About 4-6% alcohol by volume
 - Low in calories



How are They Regulated by TTB?

- Frequently, products sold as hard seltzer or similar names are classified as beer (vs. wine or distilled spirits)
 - If **made with both malted barley and hops** they are classified as beer under the Internal Revenue Code and malt beverages under the Federal Alcohol Administration Act
 - If **not made with both malted barley and hops** they are classified as beers that are not malt beverages
 - For example, products made from fermented sugar or from malted barley but not hops

[TTB Ruling 2008-3](#)



Formula Requirements

- Most brewery products sold as hard seltzer or similar names **require formula approval** due to the addition of flavoring or coloring materials
- Use our online tool to find out if yours does:

[Which Alcohol Beverages Require Formula Approval > Beer and Malt Beverages](#)

27 CFR 25.55 & 27 CFR 7.28



Labeling Requirements

Products w/o Both Malted Barley and Hops

- Brewery products must meet the Internal Revenue Code (IRC) labeling requirements of [27 CFR part 25](#):
 - Name or trade name of the brewer
 - Net contents (not required on kegs)
 - Kind, such as beer, ale, porter, stout, etc. (not required on kegs)
 - Note: “hard seltzer” or similar terms **DO NOT** meet this requirement and may only be used in addition to one of the terms above
 - Place of production (city and State)

27 CFR 25.141 & 27 CFR 25.142



Labeling Requirements

Products w/o Both Malted Barley and Hops (Cont.)

- Must be labeled with the **Government Health Warning Statement** ([27 CFR part 16](#))
- Also subject to **FDA food labeling** regulations under the Federal Food, Drug, and Cosmetic Act ([21 CFR part 101](#))
- Label approval (**COLA**) is not required by TTB



Labeling Requirements

Products with Both Malted Barley and Hops

- Generally, must meet the Federal Alcohol Administration Act (FAA Act) labeling requirements of [27 CFR part 7](#) including:
 - Brand name
 - Class such as malt beverage, beer, ale, porter, stout, etc.
 - Note: “hard seltzer” or similar terms **DO NOT** meet this requirement and may only be used in addition to one of the above terms
 - Name and address of the bottler
 - Net contents
 - Alcohol content (if made with flavors containing alcohol)
 - Declaration of certain ingredients such as FD&C yellow #5

27 CFR part 7 Subpart E



Labeling Requirements

Products with Both Malted Barley and Hops (Cont.)

- Must be labeled with the **Government Health Warning Statement** ([27 CFR part 16](#))
- Label approval (**COLA**) is generally required if the product will be sold across state lines

27 CFR Subpart B



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“Hard Kombuchas” What are the TTB Rules?



Terms Not Defined by TTB

- TTB regulations do not define these terms:
 - Kombucha
 - Hard kombucha



According to Trade Press

Kombucha:

- Generally refers to a fermented beverage produced from a mixture of steeped tea and sugar, combined with a culture of yeast strains and bacteria
- May contain fruit juice or other flavors added during production

Hard Kombucha:

- Generally refers to kombucha with a higher alcohol content than traditional kombucha



When Does TTB Regulate Kombucha?



Alcohol content may reach or exceed 0.5% by volume during fermentation.

TTB regulations APPLY to any kombucha that has $\geq 0.5\%$ alcohol by volume

- Any time during production,
- At bottling, or
- Any point afterwards as a result of continued fermentation in the bottle



How is Hard Kombucha Classified Under TTB Regulations?

- **Kombucha and hard kombucha are not defined classes**
- Depends on the ingredients and method
- Most hard kombucha produced with an ABV $\geq 0.5\%$ using sugar, tea, SCOBY, and water will **fall under the IRC definition of a beer**
- Hard kombuchas can be classified as wine or spirits respectively, if they are fermented from winemaking materials or are distilled



What Does 'Any Time During Production' Mean?

- If kombucha reaches $\geq 0.5\%$ alcohol by volume at any point, regardless of the alcohol content of finished product, it must be produced on TTB-qualified premises.
- Examples:
 - Fermented to $\geq 0.5\%$ alc/vol then dealcoholized by vacuum distillation
 - Fermented to $\geq 0.5\%$ alc/vol and finished with juices that bring alcohol below 0.5% alc/vol
 - Blending of kombuchas that would bring alcohol below 0.5% alc/vol



What About Continued Fermentation that Occurs When the Product is in the Marketplace?

TTB regulations **APPLY** to any kombucha that has **less than 0.5% alcohol by volume when bottled BUT the alcohol content increases to 0.5% or more alcohol by volume at any point afterwards** as a result of continued fermentation in the bottle

Producers bear the responsibility for their product in the marketplace.



Formula Requirements

- Most brewery products sold as hard kombucha **require formula approval** due to the addition of flavoring or coloring materials
- Use our online tool to find out if yours does:

[Which Alcohol Beverages Require Formula Approval > Beer and Malt Beverages](#)

27 CFR 25.55 & 27 CFR 7.28



Labeling Requirements

Products w/o Both Malted Barley and Hops

- Brewery products must meet the Internal Revenue Code (IRC) labeling requirements of [27 CFR part 25](#):
 - Name or trade name of the brewer
 - Net contents (not required on kegs)
 - Kind, such as beer, ale, porter, stout, etc. (not required on kegs)
 - Note: “hard kombucha” or similar terms **DO NOT** meet this requirement and may only be used in addition to one of the terms above
 - Place of production (city and state)

27 CFR 25.141 & 27 CFR 25.142



Labeling Requirements

Products w/o Both Malted Barley and Hops (Cont.)

- Must be labeled with the **Government Health Warning Statement** ([27 CFR part 16](#))
- Also subject to **FDA food labeling** regulations under the Federal Food, Drug, and Cosmetic Act ([21 CFR part 101](#))
- Label approval (**COLA**) is not required by TTB



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