



## **Advisory Opinion 19-02: Can hard seltzer water be produced under a small brewer's permit?**

### I. Background

The following questions were posed to the Alcohol and Tobacco Commission with regards to small brewers and hard seltzer:

1. Can hard seltzer water be produced under a small brewer's permit?
2. Can hard seltzer water be produced under a small brewer's permit if it is made from corn syrup as its fermentation basis?
3. Can hard seltzer water be produced under a small brewer's permit if it is made from corn syrup as its fermentation basis and hops are added?

### II. Analysis

The scope of a brewer's permit allows for the holder of a brewer's permit to "manufacture beer". In order for a brewer permitted under IC 7.1-3-2-7 to produce hard seltzer, the hard seltzer must fit the definition of beer. Indiana Code 7.1-1-3-6 defines beer as "an alcoholic beverage obtained by the fermentation of an infusion or decoction of barley malt *or other cereal* and hops in water." Emphasis added. According to the American Association of Cereal Chemists, "cereals are plants such as wheat, rice, corn, barley, rye, oats and millet."<sup>i</sup>

In order for a brewer to produce beer, they must first ferment barley malt or other cereal, such as wheat, rice, corn, rye, oats or millet. Corn syrup, although derived from a cereal, is not a cereal and therefore the fermentation of corn syrup is not adequate to meet the definition of beer, regardless if hops are added.

Brewers permitted under IC 7.1-3-2-7 are limited to the manufacturing beer. If the alcoholic beverage the brewer is producing does not fit the definition of beer, it is prohibited.

**DISCLAIMER:** Opinions expressed in this advisory opinion are fact-sensitive and based on the 2019 Indiana Code. Every advisory opinion is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.

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<sup>i</sup> AACC International, *What is Cereal Grain Science?*, <https://www.aaccnet.org/about/Pages/CerealGrainScience.aspx> (last visited Aug. 29, 2019).