

## Appendix B: “Low-Alcohol Spirits Products” Current Regulatory Scheme and Suggested Areas for Clarification

	Analysis of Existing Law	Suggested Areas for Clarification
<b>Definition</b>	<p>“Low alcohol spirits product” means a product containing spirits that has an alcohol content of 8% or less by volume. . . . §2(16-A) (exception omitted).</p> <ul style="list-style-type: none"> <li>• Excluded from definitions of “spirits,” §2(31), and “malt liquor,” §2(18)</li> <li>• Sometimes included in definition of “fortified wine” §2(11-B)—to qualify, the low-alcohol spirits product must be “wine to which spirits have been added.” If the product qualifies as “fortified wine” it is also deemed “wine.”</li> </ul>	<p><i>Note:</i> General definition of “liquor,” which is regulated under Title 28-A, <i>excludes</i> any product with &lt; 0.5% alcohol content, §2(16).</p> <ol style="list-style-type: none"> <li>1. Should products with &lt; 0.5% alcohol content be excluded from the definition of “low-alcohol spirits product?”</li> </ol>
<b>Manufacturing</b>	<p>It is not clear who may manufacture these products:</p> <ul style="list-style-type: none"> <li>• A “winery” produces “wine” (and “fortified wine”) which includes the subset of low-alcohol spirits made by adding spirits to wine (see above)</li> <li>• A “brewer” produces “malt liquor,” which is defined to exclude any product containing spirits—<i>i.e.</i>, all low-alcohol spirits products (see above)</li> <li>• A “distiller” produces “spirits,” which is defined to exclude all low-alcohol spirits products (see above)</li> <li>• A “rectifier” “produces <i>spirits</i> by combining spirits with other products,” but note that the final product is “spirits,” which is defined to exclude low-alcohol spirits products (see above). *</li> </ul> <p>*No statute provides for licensing of rectifiers, although a fee is listed in §1551.</p>	<ol style="list-style-type: none"> <li>2. Licensed wineries may produce all spirits that qualify as “fortified wine”, but which licensed entities may manufacture the subset of low-alcohol spirits products that do not qualify as fortified wine?</li> </ol>
<b>Wholesalers</b>	<p>It is not clear which wholesale licenses authorize the importation and resale of low-alcohol spirits products:</p> <ul style="list-style-type: none"> <li>• <i>The entity with a contract under §90 for “spirits”?</i> Not under current law.</li> <li>• <i>Wholesalers of malt liquor or wine under Chapter 55?</i> A “wine” wholesale license authorizes sale of products that qualify as “fortified wine”, but what about other low-alcohol spirits products? (Chapter 55 does not specify.)</li> </ul>	<ol style="list-style-type: none"> <li>3. Which licensed wholesalers may import or distribute low-alcohol spirits products that do not qualify as “fortified wine”?</li> </ol>
<b>Retail Sales</b>	<p>Sold by on- and off-premises retailers of wine. <i>See</i> §13.</p>	<p>None</p>
<b>Excise Taxes</b>	<p>All low-alcohol spirits products are subject to the following taxes:</p> <ul style="list-style-type: none"> <li>• 30¢/gallon tax under §1365, payable by any certificate of approval holder that sells low-alcohol spirits to a Maine wholesale licensee.</li> <li>• \$1.24/gallon excise tax under § 1652(1-A) payable by Maine manufacturer or importing wholesale licensee on low-alcohol spirits and fortified wine.*</li> </ul> <p>* Wine is subject to a 60¢/gallon excise tax under §1652(2).</p>	<ol style="list-style-type: none"> <li>4. If a low-alcohol spirits product fits the definition of “fortified wine”, do <u>both</u> the low-alcohol spirits product/fortified wine excise tax <u>and</u> the wine excise tax apply to that product?</li> </ol>

## Appendix B: “Hard Cider” Current Regulatory Scheme and Suggested Areas for Clarification

	Analysis of Existing Law	Suggested Areas for Clarification
<p><b>Definition</b></p>	<p>“Hard cider” means “liquor produced by fermentation of the juice of apples or pears” with 0.5% to 8.5% alcohol by volume. §2(12-A)</p> <ul style="list-style-type: none"> <li>Included in definition of “wine.” See §2(36) (“wine” means “any liquor containing not more than 24% alcohol by volume that is produced by fermentation of fruit or other agricultural products containing sugar . . .”).</li> </ul>	<ol style="list-style-type: none"> <li>Should fact that “hard cider” is necessarily included in definition of “wine” be made explicit? <i>Compare:</i> 1st sentence of “wine” definition necessarily includes all “fortified wine” but fact that “fortified wine” is included is also explicitly stated in the 2nd sentence.</li> <li>Alternatively, should hard cider be excluded from the definition of wine and separately listed in each statute affecting hard cider?</li> </ol>
<p><b>Manufacturing</b></p>	<p>“Winery” is defined in §2(37) as “a facility that ferments, ages and bottles wine and hard cider” and “small winery” is similarly defined in §2(29-A) as a facility that produces both wine and hard cider.</p> <ul style="list-style-type: none"> <li>Because “wine” as defined includes “hard cider,” it is not necessary to state that a “winery” or “small winery” produces both wine and hard cider.</li> </ul>	<p>None.</p>
<p><b>Retail Sales</b></p>	<p>Sold by on- and off-premises retailers of malt liquor. See §14:</p> <p>“Notwithstanding any other provision of this Title, a person licensed to sell malt liquor for consumption on or off premises may also sell hard cider. All provisions of this Title applicable to malt liquor apply to hard cider when hard cider is sold by persons licensed to sell malt liquor for consumption on or off the premises.”</p>	<ol style="list-style-type: none"> <li>Is §14 intended to be restrictive—only licensed malt liquor retailers may sell hard cider—or permissive—in addition to licensed wine retailers, licensed malt liquor retailers may also sell hard cider? For example, are retailers with Class III, VII and VII-A wine-only licenses authorized to sell hard cider?</li> </ol>
<p><b>Wholesalers</b></p>	<p>Under the definitions in §2, a wholesaler with authority to sell “wine” may sell hard cider, but a wholesaler with authority to only sell “malt liquor” may not sell hard cider (even though retailers have different treatment above).</p>	<ol style="list-style-type: none"> <li>Is this the intent: that only wholesalers of wine may sell hard cider? If not, need to amend §14 and/or §1401 (wholesalers) to clarify which wholesale licenses sell hard cider.</li> </ol>
<p><b>Excise Taxes</b></p>	<p>Maine manufacturers or importing wholesalers must pay the following:</p> <ul style="list-style-type: none"> <li>35¢/gallon excise tax on hard cider under §1652(2).</li> <li>60¢/gallon excise tax on “wine other than sparkling wine” under §1652(2).</li> </ul>	<ol style="list-style-type: none"> <li>Because hard cider is “wine”, must the Maine manufacturer or importing wholesale licensee pay <u>both</u> the wine and the hard cider excise taxes on hard cider products?</li> </ol>