

## Report on the Cider Manufacturing Industry Study

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# Cider Manufacturing Industry Study

## **2142(1), Wineries**

## **2121, Breweries – including bottling or canning**

### **Introduction**

In 2018, WCIRB staff reviewed Classifications 2142(1), *Wineries*, and 2121, *Breweries – including bottling or canning*, to clarify their intended application and provide direction as to how related operations should be classified. In the course of that study, staff noted that the alcoholic cider production industry had recently experienced significant growth in California and this raised questions as to the appropriate classification for employers in this industry. Currently, the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) does not specifically direct how to classify the production of alcoholic cider. The objective of this study is to provide clear direction for the classification of these operations.

### **Classification History**

A chronological summary of the history of Classifications 2142(1), *Wineries*, and 2121, *Breweries*, as well as other relevant regulations and legislation is in Appendix I of this study.

### **Operations**

Alcoholic cider is primarily produced from apples that are pressed to extract juice and pulp. Yeast is added and the juice pulp mixture is fermented in barrels to produce an alcoholic beverage made from the fermented apple juice. The cider making process typically involves three stages, including mechanically crushing the fruit, extracting the juice and allowing it to ferment. Some employers specialize in the entire production process while others purchase pressed apple juice from separate concerns and then ferment and blend the juice to produce alcoholic cider.

### **Classification Analysis**

Currently, the USRP does not contain a directive for the assignment of alcoholic cider production, but it has been the WCIRB's practice to assign these operations *by analogy* to Classification 2142(1), *Wineries*. The rationale for this assignment is that the processes and hazards involved in the production of alcoholic cider are similar to those for the operations assigned to Classification 2142(1). This practice is also consistent with the inclusion of cider manufacturing in National Council of Compensation Insurance, Inc. (NCCI) Classification 2143, *Fruit Juice Mfg. & Drivers*, which is cross-referenced with NCCI Classification 2143, *Winery & Drivers*.

While the WCIRB's practice has been to assign the production of alcoholic cider to Classification 2142(1), of the 16 alcoholic cider manufacturers with a record of workers' compensation coverage, 11 have payroll reported under Classification 2121, *Breweries*, and only five have payroll reported under Classification 2142(1). With the continued growth of alcoholic cider production in California, staff recommends adding specific direction to the USRP about how these operations should be classified to ensure consistent data reporting.

In view the above, staff evaluated the operations within Classifications 2142(1) and 2121 to determine the most appropriate classification for the production of alcoholic cider.

### Classification 2142(1), Wineries

This classification applies to the production of wine. The core operations described by Classification 2142(1) include the mechanical crushing and pressing of fruit, most often grapes, to produce juice and the subsequent fermentation of the fruit juice to produce an alcoholic beverage. Typically, the process of making wine involves passing grapes through crushers where they are crushed and de-stemmed, after which the resulting juices are further processed, mixed with yeast and then stored in fermentation tanks for a required length of time. The juice is then further processed through filters and allowed to ferment. The wine is then removed from the fermentation tanks and placed into holding tanks, and then it is

transferred into bottles that are corked and labeled. Classification 2142(1) has footnotes directing that restaurants or taverns and the preparation and serving of hot food are to be separately classified as 9079(1), *Restaurants or Taverns*, and that tasting room facilities are to be separately classified as 8060, *Stores – wine, beer or spirits – retail*.

#### Classification 2121, *Breweries*

This classification applies to the production of beer, including but not limited to ale, lager, porter, stout and malt liquor. This classification also includes the production of sake and the sale of brewing by-products, including but not limited to wet or dry feed grains and brewer's yeast. The raw materials used to produce beer and similarly brewed beverages include grains, such as wheat, corn, rice, rye, oats and barley, as well as hops, malt, yeast and similar ingredients that are mixed together according to a recipe. The process of making brewed beverages typically begins with receiving grains from separate concerns, weighing the grain and placing it in a hopper where it is milled and the malt is pulverized. The cracked grain is then mixed with hot water at a specific temperature and the liquid is separated from the solids and put into a kettle to boil. Hops are added during the boiling process, and after boiling, the liquid extract is cooled and mixed with yeast for primary fermentation, and sometimes a secondary fermentation (conditioning) is involved. When the fermentation is complete, the yeast is removed and the finished beer is filtered, stored and eventually transferred into kegs, cans or bottles.

In comparing the production of alcoholic cider with the operations performed by wineries and breweries, staff determined there is significant overlap between the production of alcoholic cider and wine, namely the crushing and pressing of fruit and the extraction and fermenting of the fruit juice to produce an alcoholic beverage. In addition, like wineries, employers that produce alcoholic cider may also have, as ancillary operations, restaurants or taverns, the preparation and serving of hot food, or tasting room facilities. Accordingly, staff affirmed the propriety of assigning the production of alcoholic ciders by analogy to Classification 2142(1) and determined that the ancillary operations performed in connection with alcoholic cider production should be classified in the same manner as those for wineries.

#### **Other Jurisdictions**

Below is a comparison between WCIRB current classification procedures and those maintained by NCCI jurisdictions for the following select classifications applicable to the production of wine, alcoholic cider, fruit juice, vinegar and beer or similarly brewed beverages:

<b>Product</b>	<b>WCIRB Classification</b>	<b>NCCI Classification</b>
Beer and similarly brewed beverages	2121, <i>Breweries</i>	2121, <i>Brewery &amp; Drivers</i>
Wine	2142(1), <i>Wineries</i>	2143, <i>Winery &amp; Drivers</i>
Alcoholic Cider	2142(1), <i>Wineries</i>	2143, <i>Fruit Juice Mfg. &amp; Drivers</i>
Fruit Juice	2116, <i>Fruit or Vegetable Juice Concentrate Mfg.</i>	2143, <i>Fruit Juice Mfg. &amp; Drivers</i>
Vinegar	2142(3), <i>Vinegar Mfg.</i>	2143, <i>Fruit Juice Mfg. &amp; Drivers</i>

Like the WCIRB, the NCCI retains classifications for brewery, winery and juice manufacturing operations. For brewery operations, the NCCI and the WCIRB use similar classification phraseology and appear to administer the classification similarly. For alcoholic cider manufacturing, both the NCCI and WCIRB assign these operations to the classification applicable to wine production, although the NCCI uses an alternate classification phraseology.

In addition, the NCCI and WCIRB also assign vinegar manufacturing to the classification applicable to wine production; whereas, in contrast to the NCCI classification procedures, the WCIRB has a separate classification for fruit juice manufacturing: Classification 2116, *Fruit or Vegetable Juice Concentrate Mfg.*

### **Impact Analysis**

Due to a limited amount of available data, the WCIRB is unable to perform a meaningful analysis showing the statistical impact of assigning cider production to 2142(1), *Wineries*. Of the 16 cider manufacturers with a record of workers' compensation coverage, many have only one or two years of reported data. However, based on the small number of cider manufacturers and the similarity in operations and exposure, staff does not anticipate a substantial impact on Classification 2142(1) resulting from the inclusion of cider production operations in 2142(1).

### **Findings**

Based on staff's review, the WCIRB determined:

1. The alcoholic cider production industry is growing and there is a demonstrated need to provide specific direction with respect to how these operations should be classified.
2. The operations and general hazards involved in the production of alcoholic cider are analogous to those contemplated by Classification 2142(1), *Wineries*.

### **Recommendations**

Based on the findings, the WCIRB recommends the following

1. Amend Classification 2142(1), *Wineries*, to direct that it applies to the production of alcoholic cider, clarify its intended application and provide direction as to how related operations should be classified.
2. Amend Classification 2121, *Breweries*, to clarify its intended application and provide direction as to how related operations, including the production of alcoholic cider, should be classified.
3. Amend Classifications 2163, *Bottling*, 8041, *Stores – wine or spirits – wholesale*, 2142(2), *Distilling*, 2142(3), *Vinegar Mfg.*, 2116, *Fruit or Vegetable Juice or Concentrate Mfg.*, and 8060, *Stores – wine, beer or spirits – retail*, for consistency with the recommended changes, to clarify their intended application and provide direction as to how related operations should be classified.

## Appendix I

1915: Classifications 2121, *Breweries*, and 2142, *Wine Manufacturing*, were established.

1919: Classification 2121, *Breweries*, was amended to include bottling operations at locations that previously operated as breweries.

1924: Rule 4 under Payroll Rules in the *California Compensation Manual* was established directing that payroll for the manufacture of containers (such as bags, barrels, bottles, cans, paper boxes, wooden packing cases, etc.) used exclusively by the employer in distributing his product shall be included in the governing classification unless specifically excluded in the classification phraseology.

1950: Classification 2142, *Wine Manufacturing*, was changed to Classification 2142, *Wineries*.

1969: Classification 2130, *Distilling – N.O.C.*, was eliminated and all distilling operations are assigned to Classification 2142, *Wineries*, and Classification 2142 was amended to direct that bottle manufacturing be separately classified following a study finding that it is not normal or usual for wineries to manufacture bottles.

1972: Classification 2142, *Wineries*, was amended to separately classify bottle manufacturing for distilling operations.

1982: California Assembly Bill 3610 allows beer to be sold at on-site brewery locations.

1985: Classification 2116, *Fruit or Vegetable Juice or Concentrate Mfg.*, was established and directed that can manufacturing be separately classified; the constituents of Classification 2116 had previously been classified as 2111, *Canneries*, which since its establishment in 1915 also directed that can manufacturing be separately classified.

1988: Classifications 2142(1), *Wineries*, 2142(2), *Distilling*, and 2142(3), *Vinegar Mfg.*, were established when the WCIRB adopts alternate phraseologies for wineries, distilleries and vinegar manufacturing to codify the separate operations that are assigned to Classification 2142.

2015: California Assembly Bill No. 933 allows tasting rooms for distilled spirits, and Assembly Bill No. 1295 allows direct-to-consumer sales of distilled spirits in tasting rooms.

2016: Classifications 2121, 2142(1) and 2142(2) were amended to their current phraseologies as part of the multi-year classification enhancement project.

2018: Classifications 2121 and 2142(1) were amended to include the provision of product tasting samples in connection with facility tours, to specify that retail stores are to be separately classified, and that restaurants or taverns and the preparation and serving of hot food are to be separately classified as 9079(1), *Restaurants or Taverns*. Classification 2121 was amended to specify that taprooms are to be separately classified as 9079(1). Classification 2142(1) is amended to direct that tasting room facilities are to be separately classified as 8060, *Stores – wine, beer or spirits – retail*.

## Recommendation

Amend Classification 2142(1), *Wineries*, which is part of the *Food Packaging and Processing* Industry Group, to direct that it applies to the production of alcoholic cider, clarify its intended application and provide direction as to how related operations should be classified.

## PROPOSED

### FOOD PACKAGING AND PROCESSING

#### WINERIES

2142(1)

This classification applies to the production of wine, ~~or champagne~~ sparkling wine or alcoholic cider.

This classification includes employees who provide tours of the ~~winery~~ production operations, including tours where product tasting samples are provided to customers not in connection with tasting room, retail store, or restaurant or tavern operations.

Tasting rooms shall be separately classified as 8060, Stores – wine, beer or spirits – retail.

Restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), Restaurants or Taverns.

The production of beer or similarly brewed beverages shall be classified as 2121, Breweries.

The production of distilled spirits shall be classified as 2142(2), *Distilling*.

The manufacture of vinegar shall be classified as 2142(3), *Vinegar Mfg.*

The production of nonalcoholic fruit juice or cider shall be classified as 2116, Fruit or Vegetable Juice or Concentrate Mfg.

Blending and bottling of purchased wines or distilled spirits shall be classified as 8041, *Stores – wine or spirits – wholesale*.

~~Tasting rooms shall be separately classified as 8060, Stores – wine, beer or spirits – retail.~~

~~Restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), Restaurants or Taverns.~~

Bottle manufacturing shall be separately classified.

Retail stores shall be separately classified.

Growing or harvesting, including field packing, of crops shall be assigned to the applicable *Farms* Industry Group classification.

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## Recommendation

Amend Classification 2121, *Breweries*, which is part of the *Food Packaging and Processing* Industry Group, to clarify its intended application and provide direction as to how related operations should be classified.

## PROPOSED

### FOOD PACKAGING AND PROCESSING

#### **BREWERIES —including bottling or canning**

**2121**

This classification applies to the production ~~and bottling or canning~~ of beer or similarly brewed beverages, including but not limited to ale, lager, porter, stout and malt liquor. ~~This classification includes product storage facilities and distribution stations and the manufacture of containers, including but not limited to cans and bottles in support of the employer's production operations.~~ This classification ~~also~~ includes the production ~~and bottling or canning~~ of sake, and the sale of brewing by-products, including but not limited to wet or dry feed grains and brewer's yeast, and the distribution of beer or similarly brewed beverages in connection with the employer's production operations.

This classification also includes employees who provide tours of the ~~brewery~~ production operations, including tours where product tasting samples are provided to customers not in connection with taproom, tasting room, retail store, or restaurant or tavern operations.

The manufacture of containers, including but not limited to cans and bottles in connection with the employer's production operations shall be classified in accordance with Section III, Rule 5, General Inclusions.

Taprooms, tasting rooms, restaurants, taverns or the preparation and serving of hot food, shall be separately classified as 9079(1), Restaurants or Taverns.

Beer brewing operations at restaurants where the beer brewed on-site is primarily (over 50% of gross receipts) sold to restaurant customers for on-site consumption shall be classified as 9079(1), Restaurants or Taverns.

The distribution of beer or similarly brewed beverages that were not produced by the employer to retailers or commercial users shall be classified as 7392, Beer Dealers.

The production of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), *Wineries*.

The production of distilled spirits shall be classified as 2142(2), *Distilling*.

~~Taprooms, tasting rooms, restaurants, taverns or the preparation and serving of hot food, shall be separately classified as 9079(1), Restaurants or Taverns.~~

~~Beer brewing operations at restaurants where the beer brewed on-site is primarily sold to restaurant customers for on-site consumption shall be classified as 9079(1), Restaurants or Taverns.~~

Retail stores shall be separately classified.

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## Recommendation

Amend Classification 2163, *Bottling*, which is part of the *Food Packaging and Processing* Industry Group, to clarify its intended application and for consistency with other proposed changes.

## PROPOSED

### FOOD PACKAGING AND PROCESSING

#### BOTTLING – beverages – no spirituous liquors, wine or beer

2163

This classification applies to the bottling or packaging of non-alcoholic beverages, including but not limited to soft drinks, sports drinks, coffee, tea and water. This classification includes the blending of purchased fruit concentrates with water and flavorings to produce fruit-flavored drinks. ~~This classification also includes the manufacture of containers, including but not limited to cans, bottles and paperboard boxes when performed in support of the employer's bottling or packaging operations.~~

The manufacture of containers, including but not limited to cans, bottles and boxes in connection with the employer's beverage bottling or packaging operations shall be classified in accordance with Section III, Rule 5, General Inclusions.

The production and bottling or canning of non-alcoholic fruit or vegetable juice, cider or juice concentrate shall be classified as 2116, *Fruit or Vegetable Juice or Concentrate Mfg.*

The production and bottling of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), *Wineries*.

The production and bottling of distilled spirits shall be classified as 2142(2), *Distilling*.

The production and bottling or canning of beer or similarly brewed beverages shall be classified as 2121, *Breweries*.

The production and bottling or canning of milk or dairy products shall be classified as 2063, ~~*Creameries and Dairy Products*~~ or Ice Mfg.

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## Recommendation

Amend Classification 8060, *Stores – wine or spirits – retail*, which is part of the *Stores* Industry Group, to clarify its application and for consistency with other proposed changes.

## PROPOSED

### STORES

#### STORES – wine, beer or spirits – retail

8060

This classification applies to retail stores operating under “off-sale” licenses issued by the California Department of Alcoholic Beverage Control and primarily (over 50% of gross receipts) engaged in the sale of alcoholic beverages to the general public for consumption away from the store premises, including product tastings in connection therewith.

For purposes of determining gross receipts, only the portion of lottery ticket sales identified by the California State Lottery as commission shall be included in the calculation. See Section IV, Rule 6, *Stores*.

This classification also applies to ~~winery~~ winery-tasting rooms in connection with wine or alcoholic cider production.

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## Recommendation

Amend Classification 8041, *Stores – wine or spirits – wholesale*, which is part of the *Stores* Industry Group, to clarify its intended application and for consistency with other proposed changes.

## PROPOSED

### STORES

#### **STORES – wine or spirits – wholesale – including blending, rectifying or bottling 8041**

This classification applies to stores engaged in the sale of wine or liquor on a wholesale basis. This classification also applies to employers engaged in blending and bottling purchased wine or distilled spirits, including but not limited to vodka, rum, whiskey, brandy, tequila and liqueurs.

~~The production of spirituous liquors, including but not limited to rum, gin, vodka, brandy and whiskey, using distillation processes~~ distilled spirits shall be classified as 2142(2), *Distilling*.

The production of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), *Wineries*.

The production of beer, ~~ale, malt liquor and/or~~ similarly brewed beverages shall be classified as 2121, *Breweries*.

The bottling or packaging of non-alcoholic beverages, including but not limited to soft drinks, sports drinks, coffee, tea and water shall be classified as 2163, *Bottling*.

~~The wholesale distribution of beer, ale, malt liquor and/or~~ similarly brewed beverages that were not produced by the employer to retailers or commercial users shall be classified as 7392, *Beer Dealers*.

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## Recommendation

Amend Classification 2142(2), *Distilling*, which is part of the *Food Packaging and Processing* Industry Group, to clarify its intended application, provide direction as to how related operations should be classified and for consistency with other proposed changes.

## PROPOSED

### FOOD PACKAGING AND PROCESSING

#### DISTILLING – N.O.C.

2142(2)

This classification applies to the production of distilled spirits, including but not limited to vodka, rum, whiskey, brandy, tequila and liqueurs.

This classification includes employees who provide tours of the production operations, including tours where product tasting samples are provided to customers not in connection with tasting room, retail store, or restaurant or tavern operations.

Tasting rooms, restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), *Restaurants or Taverns*.

The production of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), *Wineries*.

The production of vinegar shall be classified as 2142(3), *Vinegar Mfg.*

The production of beer or ~~sakes~~ similarly brewed beverages shall be classified as 2121, *Breweries*.

Blending and bottling purchased wine or distilled spirits shall be classified as 8041, *Stores – wine or spirits – wholesale*.

~~Tasting rooms, restaurants, taverns or the preparation and serving of hot food shall be separately classified as 9079(1), *Restaurants or Taverns*.~~

Bottle manufacturing shall be separately classified.

Retail stores shall be separately classified.

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### Recommendation

Amend Classification 2142(3), *Vinegar Mfg.*, which is part of the *Food Packaging and Processing* Industry Group, to clarify its intended application, provide direction as to how related operations should be classified and for consistency with other proposed changes.

### PROPOSED

#### FOOD PACKAGING AND PROCESSING

##### VINEGAR MFG.

2142(3)

This classification applies to the manufacture of various types of vinegar, including but not limited to ~~white distilled~~, cider, malt, balsamic, rice and ~~red~~-wine vinegar.

The production of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), *Wineries*.

The production of distilled spirits shall be classified as 2142(2), *Distilling*.

Bottle manufacturing shall be separately classified.

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### Recommendation

Amend Classification 2116, *Fruit or Vegetable Juice or Concentrate Mfg.*, which is part of the *Food Packaging and Processing* Industry Group, to clarify its intended application, provide direction as to how related operations should be classified and for consistency with other proposed changes. Incidental packaging is part of every classification in the *Food Packaging and Processing* Industry Group.

### PROPOSED

#### FOOD PACKAGING AND PROCESSING

##### FRUIT OR VEGETABLE JUICE OR CONCENTRATE MFG.

2116

This classification applies to the manufacture of non-alcoholic fruit or vegetable juice, cider or juice concentrate from fresh fruit or vegetables ~~and incidental packaging in containers, including but not limited to bottles, metal and paper cans, and plastic containers.~~

~~Employers that only blend~~ Blending purchased fruit concentrates with water and flavorings to produce non-alcoholic fruit-flavored drinks shall be classified as 2163, *Bottling*.

The production of wine, sparkling wine or alcoholic cider shall be classified as 2142(1), Wineries.

Bottle or Can manufacturing shall be separately classified.

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