



# COMPLIANCE MATTERS

97-1

*This issue of **Compliance Matters** features informative articles on a variety of topics including: a new policy for Flavored Malt Beverages, and changes in policy regarding Malt Beverage label approvals.*

*In addition, this issue describes ATF's Treasury Decisions published in the Federal Register since January 1996.*

This issue also contains the following Industry Circulars:

95-6: Use of Adjuncts by Brewers, 12/12/95

96-1: Flavors Containing Alcohol Added to Malt Beverages, 2/26/96

## MALT BEVERAGE

### NEW POLICY FOR FLAVORED MALT BEVERAGES

In response to the continued growth of flavored malt beverage products, ATF is revising the labeling policy regarding these products to better serve the needs of both the consumer and the malt beverage industry. The previous policy, as stated in **Compliance Matters 94-2**, required that, for flavored malt beverage products, any use of the terms "malt beverage", "beer", "lager beer", "lager", "ale", "porter", or "stout" as a part of the fanciful name must be preceded by the word "flavored" unless those products were produced only from the addition of juices, fruits, juice concentrates or other acceptable fermentable agricultural sources added prior to or during the fermentation process. For example, if cherry juice is added after fermentation, then the product would have had to have been labeled with a fanciful name such as "Cherry Flavored Beer."

The new policy eliminates this restriction and allows the use of these terms (beer, ale, porter, etc.) without the word "flavored" even in situations where the fermentable agricultural products are added after fermentation. Also, the word "flavored" will no longer be required to appear in conjunction with these terms when non-fermentable flavorings such as spices and flavors are added before, during or after fermentation. However, an important note at the end of this article discusses special cases in which use

of the word “flavored” is still required.

For example, a malt beverage produced with the addition of cherry juice and/or cherry flavor before, during and/or after fermentation may use any of the following fanciful names; Cherry Ale, Cherry Flavored Ale, Cherry Brew, or Cherry Red, among others. Under the previous labeling policy, only those malt beverages which were produced with cherry juice which had been added before or during fermentation could be referred to as Cherry Ale.

As required by the regulations, in addition to the fanciful name, the labels of all flavored malt beverage products must bear a “truthful and adequate statement of composition”. The following are examples of truthful and adequate statements of composition for various combinations of flavoring materials added at different stages in the production of a flavored malt beverage product.

- 1) The addition of fermentable and/or non-fermentable flavoring material before or during the fermentation process to produce a flavored beer.
  - a) Beer brewed (or fermented) with natural flavor(s).
  - b) Beer brewed (or fermented) with cherry juice and natural flavor.
  - c) Beer brewed (or fermented) with cherry juice.
- 2) The addition of fermentable and/or non-fermentable flavoring materials after the fermentation process to produce a flavored ale.
  - a) Ale with natural flavor(s).
  - b) Ale flavored with cherry juice and natural flavor.
  - c) Ale flavored with cherry juice.
- 3) The addition of fermentable and/or non-fermentable flavoring materials before, during and after the fermentation process to produce a flavored porter.
  - a) Porter brewed (or fermented) and flavored with natural flavor(s).
  - b) Porter brewed (or fermented) with natural flavor(s) and flavored with cherry juice.
  - c) Porter brewed (or fermented) and flavored with cherry juice.
  - d) Porter brewed (or fermented) with cherry juice and natural flavor(s) and flavored with cherry juice.
  - e) Porter brewed (or fermented) with cherry juice and natural flavor(s) with natural flavor(s) added.

**NOTE:** ATF will continue not approving the use of fanciful names for malt beverages which include recognized class and types of distilled spirits or wine products (e.g., “Whisky Beer”, “Whisky Flavored Beer”, “Pinot Noir Porter” or “Pinot Noir Flavored Porter”).

In addition, ATF will continue not approving, as part of the fanciful name, the unmodified use of terms such as “Piña Colada”, “Margarita”, or “Sangria”. Although these are not recognized as distinct class and types, they are understood by the consumer to be distilled spirits or wine based products. Flavored malt beverage products of this type must contain a margarita flavor, piña colada flavor, or sangria flavor and may only use these terms as a part of the fanciful name provided that the word “flavored” clearly appears as a part of the fanciful name (e.g., “Piña Colada Flavored Malt Beverage”, “Margarita Flavored Malt Beverage”, “Sangria Flavored Malt Beverage” etc.). This is in addition to the required statement of process.

For a related item, see the article on Rye Beer which appears on page 5 of this issue of **Compliance Matters**.

### TRUTHFUL AND ADEQUATE STATEMENT OF COMPOSITION

The truthful and adequate statement of composition required for any wine, beer or distilled spirits specialty product is an abbreviated list of ingredients. Generally, this list of ingredients must note a standard of identity (class and type designation) of the alcoholic beverage(s) used in the product, the presence of any flavor(s) and the presence of any color additives.

Example: A distilled spirits specialty formula consists of the following ingredients:

Grain neutral spirits	60.00%
Natural Cherry Flavor	1.30%
Natural Peach Flavor	0.20%
Caramel Color	0.10%
Water	38.40%

A truthful and adequate statement of composition for the above formulation would be “grain neutral spirits, natural flavors and artificial color”.

If the producer wished to emphasize the presence of one of the components, such as the natural cherry flavor, it would have to make a complete disclosure of any other similar component such as the natural peach flavor, in order not to mislead or deceive the consumer. The required statement of composition would be “grain neutral spirits, natural cherry and peach flavors, and artificial color”. Another acceptable statement of composition would be “grain neutral spirits, cherry and other natural flavor, and artificial color”.

An unacceptable statement of composition would be “grain neutral spirits, natural cherry flavor and artificial color”.

## POLICY CHANGE REGARDING MALT BEVERAGE LABELS

In recent years, the malt beverage industry has developed a number of products which are flavored to make them taste similar to distilled spirits products. For example, there are piña colada flavored malt beverage products. ATF has not approved labels for these types of products if the labels included pictures of glasses traditionally used to serve distilled spirits products; this policy was based on a concern that such depictions would be misleading to consumers.

ATF has reevaluated this policy in light of comments we have received from industry members and changes in the marketplace. We will no longer reject such labels provided (a) the labels clearly state in readily legible letters and in direct conjunction to the picture of the glass that the product is a flavored malt beverage and (b) there are no other factors which, when considered with the picture, make the labels misleading.

This policy change applies only to malt beverage products and does not apply to wine products. The prohibitions noted at 27 CFR 4.39(a)(7) prohibit such depictions for wine products. In addition, 27 CFR 4.39(a)(9) prohibits use of any brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates or creates the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spirits base. [See also the article “New Policy for Flavored Malt Beverages”, which appears on page 1 of this issue of **Compliance Matters**.]

## NUMBERS ON MALT BEVERAGE LABELS

Malt beverage labeling regulations (27 CFR 7.29(g)) limit the use of numerals on malt beverage labels where such numerals are likely to be considered as statements of alcohol content. Such numerals may appear on malt beverage labels only where they are required by state law or as permitted by 27 CFR 7.71.

The Supreme Court decision in the case *Rubin vs. Coors Brewing Company*, 115 S. Ct. 1585 (1995) allows industry members to provide consumers with truthful, verifiable numerical statements of the alcoholic strength of their products. However, it also recognizes a legitimate government role in preventing industry members from competing with each other on the basis of alcoholic strength. Current interim regulations (27 CFR 7.71) prescribe the ways in which numerical statements of alcoholic content may be depicted on malt beverage labels.

Use of numerals beyond a strictly informative statement of alcohol content (per §7.71) may go beyond the level of informing. ATF will look at each label individually and determine whether it violates or complies with §§ 7.29(g) and 7.71. We will determine whether a brand or fanciful name (or other numerals on a label) are likely to be taken as claims of alcohol content which are not permitted by §§ 7.29(g) and 7.71. Although we will consider each label individually, following are general guidelines which may assist industry members in designing labels.

- 1) We will continue to approve malt beverage labels which contain numbers in the brand name or fanciful name if those numbers are high enough so that they are not likely to be taken as alcoholic contents. Generally, if the number is over 30 and other material on the label does not work with the number to make a strength claim, we will approve the label.

- 2) If a number is under 30, we are concerned that consumers will be likely to take it as a statement of alcoholic strength. Where there is such a number, ATF will request information about the actual percentage of alcohol in the product. If the number does reflect the actual alcoholic strength or is close to the alcoholic strength, the label will not be approved. In this situation we consider the number to be either a statement of actual alcohol content not in compliance with the provisions of §7.71, or as a false representation of alcohol strength when it approximates an actual alcohol content.
- 3) Where a malt beverage label has a number which is lower than 30 and the number does not reflect or come close to the actual alcoholic strength, ATF will determine whether there is other material on the label which provides a context for the number which eliminates the likelihood that the number will be taken as a statement of alcoholic content. An example of a label we would be likely to approve is one for a product called "Lucky 7" which includes a picture of dice and other gambling information.
- 4) When a number is low (under 30), and there is no other clarifying information on the label, but there is also nothing on the label other than the number which could be seen as having strength implications, we will request advertising and point of sale information to see how the product is to be promoted. If these show no strength message, we may approve the label but will include the qualification noted in item 5, below, on the Certificate of Label Approval (COLA). If the advertising and point of sale materials have not yet been developed and are therefore not available, we will request a letter from the brewer or importer stating that there will be no strength message in their future advertising and point of sale materials, and, if it provides such a letter, we will qualify the COLA as discussed in item 5, below. The presence of the actual alcohol content on the label may help dispel the notion that a number is a strength claim if in fact the number is not the same as or close to the actual percentage of alcohol.
- 5) Whenever we approve a label which includes numbers in the name or fanciful name, we will include the following in the "Qualifications" section of the COLA: "ATF will evaluate advertising materials which promote this malt beverage product to ensure that the numbers in the brand or fanciful name are not being used to promote the product on the basis of alcohol strength."

## RYE BEER

ATF has determined that a malt beverage product may be labeled as rye beer if the fermentable base consists of 5% malted rye with or without the addition of unmalted or flaked rye before, during or after fermentation.

ATF will evaluate, on a case by case basis, whether products brewed with less than 5% malted rye grain, may be labeled as Rye Beer.

This evaluation will require the submission of samples (a six pack is preferred) and a statement of process to Product Compliance Branch.

**NOTE:** A statement of process must accompany all applications for COLA approval of a product labeled as Rye Beer.

## GENERAL LABELING ISSUES

### VENDOR CODES

When industry members submit applications for label approval to Product Compliance Branch, they must include the correct vendor code. Industry members who makes a submission with an incorrect code, will be advised of the error. If they repeatedly use incorrect codes, their submissions will be returned for correction. If you have a question about vendor codes, please call the specialist who handles your label applications at (202) 927-8140.

### WHEN YOU SUBMIT LABELS TO ATF

Please do not use staples to affix any material to "Application for and Certification/Exemption of Label Approval". Please use tape or glue.

Please be sure to include your permit or registration number in item 3 on the Certificate of Label Approval.

### ALCOHOLIC BEVERAGES IN OTHER THAN A LIQUID STATE

In recent years, we have encountered a number of alcoholic beverage products which are intended to be marketed or consumed in other than the traditional liquid state generally associated with alcoholic beverages. These products are subject to the same provisions that govern the production, packaging and labeling of traditional wines, distilled spirits and malt beverages. Generally, to ensure appropriate classification and labeling, non-liquid alcoholic beverages must be analyzed by the ATF laboratory before issuance of an approved formula, statement of process or certificate of label approval (COLA). Similarly, the proposed packaging and packaging materials must be reviewed prior to issuance of a COLA. Points of particular concern with non-liquid alcoholic beverages are:

- 1) Such products must be packaged in standards of fill which comply with the applicable regulations.
- 2) Labels must be firmly affixed to containers/packages so as to be removable only with solvent.
- 3) All packaging materials must be FDA-approved for the packaging of alcoholic beverages.
- 4) For non-liquid distilled spirits products, packaging must include tamper-evident closures.

### LABELING MANUAL

The Product Compliance Branch is in the process of developing a labeling manual which will provide guidance to industry members on a wide range of issues regarding the labeling of beverage alcohol and related topics. To provide the information to our customers as promptly as possible, we will issue the manual in parts, releasing sections as they are completed. The first section will deal with basic labeling requirements and prohibitions; we plan to release this in 1997. Future sections will deal with more

difficult, complex and unique issues. In addition to releasing hard copies of the manual, we plan to make it available on the Internet.

We welcome your input on topics we should include in the manual. What labeling issues have caused you problems or confusion in the past or are causing you problems or confusions at present? Please send your suggestions to:

Product Compliance Branch  
ATTN: Lynne Gittès, room 5240  
Bureau of Alcohol, Tobacco and Firearms  
650 Massachusetts Ave, NW  
Washington, DC 20226

## WINE

**\*ATTENTION: To Wine Importers, Taxpaid Wine Bottling Houses,  
and Others Concerned\***

### CHILEAN APPELLATIONS OF ORIGIN

The purpose of this letter is to advise you of recent and temporary changes affecting the use of Chilean appellations of origin on labels of Chilean wine imported in bulk and bottled in the United States. The Bureau of Alcohol, Tobacco and Firearms (ATF), in cooperation with the Government of Chile, has established temporary procedures to enable bottlers of bulk Chilean wine bottled in the United States to list certain Chilean appellations on their labels.

As background, the Federal Alcohol Administration (FAA) Act regulations state that an imported wine may claim a foreign appellation of origin if, among other things, it "... conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption in the country of origin ..." [See 27 CFR 4.25a(b)(2)(ii), (e)(1)(ii), and (e)(3)(iii).] Thus, an imported wine may have a foreign appellation if and only if it could legally carry that appellation when sold in the country the wine comes from.

On May 26, 1995, the Republic of Chile published regulations requiring that, to have a Chilean appellation of origin smaller than "Chile" (e.g., a viticultural area, state, region, etc.), the wine must be bottled in Chile. Therefore, Chilean wine imported in bulk and bottled in the U.S. may only be labeled with the national appellation of "Chile". This has led to some confusion on the part of U.S. importers and bottlers who have recently purchased bulk wine produced in Chile with the intention of bottling the wine in the United States and labeling the wine with a Chilean appellation smaller than a country.

Under the temporary procedures, the Chilean Government will provide certification to exporters who wish to use particular appellations. This certification, which attests to a variety of items including that the wine was produced from grapes from the designated area, will apply only to the following five regions of Chile: Aconcagua, Atacama, Coquimbo, Valle Central, and Sur. To list one of these regions

on the label, the wine must be entirely from that region. If labeled with a single grape varietal, the wine must be comprised of at least 75% of the labeled variety. Blending Chilean wine with other than Chilean wine eliminates the ability to label the wine with a Chilean appellation. Also, you should be aware that the bottling and blending of imported taxpaid wine, regardless of origin, must be completed at an authorized facility.

Chilean exporters and shippers should apply to the Chilean Agriculture Ministry for certification. Companies seeking certification should contact: Jefe, Subdepartamento Alcoholes y Vinas, Departamento de Proteccion Agricola, Servicio Agricola y Granadero (SAG), Avenida Bulnes 140, Santiago, Chile. This office can be reached by telephone on (56-2) 698-2244 or by fax on (56-2) 696-6480.

U.S. bottlers interested in obtaining temporary label approval to list one of the five regions mentioned above on Chilean wine bottled in the United States, should complete ATF Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval. The label application should be accompanied by a separate signed letter on company letterhead stating the number of cases to be bottled, the length of time necessary to complete the bottling, and that the wines to bear this label will be covered by an appropriate Chilean Government certificate. If granted, temporary label approval will be for a period sufficient to cover bottling once the wine is in the United States. The certificate issued by the Chilean Government (along with the English translation) should be retained by the bottler and be available for inspection by ATF for a period of at least 3 years. These certification procedures are scheduled to continue through December 31, 1997.

At this time, ATF does not expect to extend these temporary arrangements beyond December 31, 1997. If this is not permanently resolved, ATF will determine what action should be taken on previously approved labels which no longer conform to the pertinent regulations.

Please direct any questions regarding this matter to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Room 5200, Washington, DC 20226. This office can also be reached by telephone on (202) 927-8140 or by fax on (202) 927-8605.

## GRAPE VARIETY NAMES FOR AMERICAN WINES

The Bureau of Alcohol, Tobacco and Firearms (ATF) has issued a final rule containing a list of approved prime grape variety names which may be used as the designation for American wines.

The rule also contains two other lists of alternative names which may be used as grape wine designations until January 1, 1997 or January 1, 1999. ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms currently used for labeling. The regulations will enable consumers to be better informed about wines and the grape varieties used to produce them.

This final rule was effective on February 7, 1996.

For more information on the final rule, see the Monday, January 8, 1996, edition of the Federal Register (T.D. ATF-370, 61 FR 522) or contact Charlie Bacon at (202) 927-8230.



**MATERIALS AND PROCESSES AUTHORIZED FOR THE PRODUCTION OF WINE FOR THE TREATMENT OF JUICE, WINE AND DISTILLING MATERIAL**

ATF has amended the wine regulation, 27 CFR Part 24, to add the use of three new or modified wine treating processes and one new wine treating material.

The new or modified wine treating processes include the following:

- 1) Spinning cone column to reduce the ethyl alcohol content of wine or to produce dealcoholized wine;
- 2) Reverse osmosis and ion exchange used in combination in a closed system to remove excess volatile acidity from bulk wine; and
- 3) Ultrafiltration using transmembrane pressures of less than 200 pounds per square inch to the efficiency of this type of filtration process.

The new wine treating material added is urease enzyme which is used to lower the urea level in wine, thereby reducing the possibility of ethyl carbamate formation during wine storage.

Use of these three processes and one material will significantly benefit consumers and the wine industry by enabling industry members to exercise additional quality control in the production of their wine.

ATF determined that use of these new processes and materials will not alter the vinous character of the wine or pose any health, safety, or consumer deception problems.

ATF concluded that use of the new processes and materials complies with the statutory standard of good commercial practice and published a Treasury decision in the Thursday, May 9, 1996, edition of the Federal Register (T.D. ATF-371, 61 FR 21076) which authorizes the use of these processes and materials effective July 8, 1996.

**PASO ROBLES VITICULTURAL AREA**

The Bureau of Alcohol, Tobacco and Firearms has issued a Treasury decision extending the western border of the Paso Robles viticultural area in San Luis Obispo County, California. The current Paso Robles viticultural area was established on October 4, 1983, by the issuance of Treasury decision ATF -148 (48 FR 45241). This extension of the western border adds approximately 52,618 acres, of which 235 acres are being planted to vineyards.

For further information, see the June 13, 1996, edition of the Federal Register, (T.D. ATF-377, 61 FR 29952).

**MALIBU-NEWTON CANYON VITICULTURAL AREA**

The Bureau of Alcohol, Tobacco and Firearms announces a final rule establishing a viticultural area in the State of California to be known as "Malibu-Newton Canyon." The petition for this viticultural area

was filed by Mr. George Rosenthal, President of Rancho Escondido, Inc.

The "Malibu-Newton Canyon" viticultural area comprises approximately 850 acres within Newton Canyon, a bowl-shaped valley located on the south-facing side of the Santa Monica Mountains. Vineyards currently within the proposed viticultural area are located on the Rancho Escondido Estate. Rancho Escondido is comprised of approximately 157 acres, all of which lie within the proposed area. Approximately 14 of these acres are planted with premium wine-producing vineyards. Varietals include Cabernet Sauvignon, Merlot, Cabernet Franc, Chardonnay, and Petit Verdot. Currently, there are no wineries located within the proposed "Malibu-Newton Canyon" area.

ATF believes that the establishment of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

For further information, see the June 13, 1996, edition of the Federal Register (T.D. ATF 375, 61 FR 29949) or contact David Brokaw (202) 927-8230.

### 200 MILLILITER BOTTLES

In recent months, ATF has encountered several situations in which importers either imported wines in 200 milliliter bottles or had applied for approval of labels for 200 milliliter bottles. Importers should note that the only standard of fill authorized by 27 CFR 4.73 for wine bottled or packed on or after January 1, 1979, are:

3 liters	1.5 liters	1 liter
750 milliliters	500 milliliters	375 milliliters
187 milliliters	100 milliliters	50 milliliters

Wine may also be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.)

ATF will not approve labels for or importation of any wine in 200 milliliter containers. Importers are cautioned that industry members who import products in such containers will be cited for violations of the laws and regulations and may be subject to sanctions associated therewith.

### APPELLATIONS OF ORIGIN

ATF wishes to remind industry members that, among other requirements, to qualify for use of an appellation of origin, a wine must conform to the laws and regulations of such place or region governing the composition, method of manufacture and designation of wines for home consumption. (see 27 CFR 4.25).

Example: Federal regulations require that at least 75% of the wine's volume be derived from fruit or agricultural products grown in the place or region indicated by an appellation. However, if a state requires 100% fruit from that state for use of the state's appellation, the Federal requirement would also be 100%.

ATF PESTICIDE MONITORING PROGRAM

The Alcohol and Tobacco Laboratory presented a paper entitled "Pesticides in Wine: An ATF Perspective" at the 32nd Annual Pesticide Residue Workshop of the Florida Department of Agriculture and Consumer Services, held in St. Petersburg, FL - July 16-19, 1995. The ATF presentation was scheduled on the opening day along with Environmental Protection Agency and United States Department of Agriculture to present an overview of government pesticide programs. The ATF presentation was referenced throughout the meeting by other presenters for a well structured, innovative, and environmentally safe approach to pesticide monitoring in wine. For information on our methodology, please contact Dr. Sumer Dugar, (301) 413-5227.

ATF LABORATORY CERTIFICATION PROGRAM

Some foreign governments either routinely or randomly require chemical analyses performed by an ATF certified laboratory as a condition of entry of wine and/or distilled spirits. The Alcohol and Tobacco Laboratory and the Alcohol Import-Export Branch manage the ATF Certified Chemist Program. The following laboratories are currently certified. The list of laboratories are reviewed and updated biannually.

Laboratories Certified by ATF for the Analysis of Wine for Export:

Beaulieu Vineyard  
1960 South St. Helena Highway  
Rutherford, CA 94573

Fetzer Vineyards  
1150 Bel Arbres Road  
P.O. Box 227  
Redwood Valley, CA 95470

Brown-Forman Beverages Worldwide  
850 Dixie Highway (40210)  
P.O. Box 1080  
Louisville, KY 40201

Glen Ellen Winery-Carneros  
21468 8th Street  
Sonoma, CA 95476

Canandaigua Wine Co., Inc.  
116 Buffalo Street  
Canandaigua, NY 14424-1086

Golden State Vintners  
38558 Road 128  
P.O. Box 39  
Cutler, CA 93615

Canandaigua Wine Co., Inc.  
Mission Bell Winery  
12667 Road 24  
P.O. Box 99  
Madera, CA 93639

Heublein, Inc.  
430 New Park Avenue  
West Hartford, CT 06110-1142

ETS Laboratories  
899A Adams Street  
St. Helena, CA 94574

E & J Gallo Winery  
P.O. Box 1130  
Modesto, CA 95353

Northwest Wine Consultants  
509 Merclyn Lane  
Zillah, WA 98953

NYSSA Analytical Laboratories  
3850 Ramada Dr., Suite D5  
Paso Robles, CA 93446

Parducci Wine Cellars  
501 Parducci Road  
Ukiah, CA 95482

Robert Mondavi Winery  
P.O. Box 106  
Oakville, CA 94562

Scott Laboratories, Inc.  
P.O. Box 4559  
Petaluma, CA 94955-4559

Sebastiani Vineyards  
P.O. Box 1290  
Woodbridge, CA 95258

Silverado Vineyards  
6121 Silverado Trail  
Napa, CA 94558

Jos. E. Seagrams & Sons, Inc.  
Westchester Technical Center  
103 Corporate Park Drive  
White Plains, NY 10604-3877

Mogen David Wine Corporation  
85 Bourne Street  
Westfield, NY 14787

Mumm Napa Valley  
8445 Silverado Trail  
Napa, CA 94558

Stimson Lane Ltd./Columbia Crest  
Highway 221, 1 Mile North of Patterson  
P.O. Box 231  
Paterson, WA 99345-0231

Sutter Home Winery, Inc.  
P.O. Box 248  
St. Helena, CA 94574

Vintners International Co., Inc.  
A Division of Canandaigua Wine Co., Inc.  
800 South Alta Street  
P.O. Box 780  
Gonzales, CA 93926

Vinquiry  
P.O. Box 695  
16003 Healdsburg Avenue  
Healdsburg, CA 95448

The Wine Group, Inc.  
17000 East Highway 120  
P.O. Box 897  
Ripon, CA 95366

Wine World Estates  
2000 Main Street  
P.O. Box 111  
St. Helena, CA 94574

Laboratories Certified by the ATF for the Analysis of Distilled Spirits for Export:

Barton Brands, Ltd.  
P.O. Box 788  
Barton Road  
Bardstown, KY 40004

Jim Beam Brands Company  
Highway 245  
Clermont, KY 40110

Brown-Forman Beverages Worldwide  
850 Dixie Highway (40210)  
P.O. Box 1080  
Louisville, KY 40201

Jos. E. Seagrams & Sons, Inc.  
Westchester Technical Center  
103 Corporate Park Drive  
White Plains, NY 10604-3877

E & J Gallo Winery  
P.O. Box 1130  
Modesto, CA 95353

Leestown Company, Inc.  
1001 Wilkinson Blvd.  
Frankfort, KY 40601

Grain Processing Corporation  
1600 Oregon Street  
P.O. Box 349  
Muscatine, IA 52761-0349

United Distillers Production, Inc.  
3860 Fitzgerald Road  
P.O. Box 740010  
Louisville, KY 40201

Heublein, Inc.  
430 New Park Avenue  
West Hartford, CT 06110-1142

Vinquiry  
P.O. Box 695  
16003 Healdsburg Avenue  
Healdsburg, CA 95448

For assistance and/or additional information, contact Mr. John Colozzi, Alcohol Import-Export Branch (202) 927-8110 or Dr. Sumer Dugar, Alcohol and Tobacco Laboratory (301) 413-5227.

**ATF TO COMBINE TECHNICAL SERVICES OFFICES**

The Bureau of Alcohol, Tobacco and Firearms has announced its plan to combine its five technical services offices into one office. Technical services offices examine and process alcohol and tobacco permit applications, tax returns and deposits, and claims for businesses and individuals. The five offices are located in Philadelphia, Atlanta, Dallas, Cincinnati, and San Francisco.

The consolidated operation will realize cost savings and efficiencies over the present five locations. With the streamlined operation, ATF will continue to maintain a high level of service to businesses and individuals.

The plan transfers work from four of the technical services offices into the Cincinnati technical services office. ATF will transfer the work on a staggered schedule. All of the work transfers should be completed by September 2001. The transfer of work from Dallas technical services to Cincinnati was completed in January 1997. The Atlanta office will follow in December 1997. The transfer of the San Francisco and Philadelphia operations should occur no later than September 2001. This schedule will allow ATF to transfer the work in an orderly manner and with a minimum of inconvenience to industry

and the public.

Transfer of the technical service work from all four offices to the Cincinnati office has begun. The Cincinnati technical services office examines firearms and ammunition manufacturers excise tax returns and deposits from the entire country. Before any work is transferred, ATF will notify each permittee, claimant, or taxpayers affected by the change.

### FORM 1678 REPLACEMENT

ATF Form 1678 (5530.5), "Formula and Process for Nonbeverage Product," has been revised and superseded by ATF Form 5154.1. This new form may be obtained from the ATF Distribution Center; telephone (703) 455-7801. Form 5154.1 is similar to Form 1678 but requests some additional information. The new forms should be used for future submissions. Existing approvals on Form 1678 will remain in effect.

**PLEASE READ THE INSTRUCTIONS FOR ATF FORM 5154.1 CAREFULLY. THANK YOU.**

The introduction of the new Form 5154.1 will have no adverse effect on the "Partnership Formula Approval Process" (PFAP) program for alcoholic beverages. Users of PFAP will extract the same data for their "Flavor Ingredient Data Sheet" (FIDS) from form 5154.1 as they do from Form 1678. References in PFAP documentation will be amended to reflect this change at a future date.

### EXPANSION OF THE LIQUEUR PROGRAM FOR IMPORTED SPECIALTY PRODUCTS

The Liqueur Program, which provides for the pre-import approval of liqueurs without requiring a laboratory analysis, has been in effect for approximately 2 years. It is described in **Compliance Matters 94-2**. This program has reduced the use of laboratory resources and has significantly reduced the turnaround time for the processing of imported liqueurs.

As a result, ATF will expand this program to include imported wine, beer and distilled spirits specialty products. In addition to the information which is required for products under the liqueur program, the agricultural source and the proof at distillation of each of the spirits used in the wine and distilled spirits specialty products must be provided in the list of ingredients and method of manufacture.

Specialty products are those products which do not fall under prescribed standards of identity in 27 CFR Parts 4, 5 or 7. They require a fanciful name (distilled spirits and beer only) and a truthful and adequate statement of composition. These include cocktails, wine coolers, flavored malt beverages and other alcoholic beverages which are not designated as specific classes and/or types of alcoholic beverages. Whisky, White Table Wine and Porter are examples of specific classes and/or types which do not require statements of composition.

Importers who wish to submit specialty products for pre-import approval must provide a list of ingredients and method of manufacture on the producer's letterhead together with a request, on their own letterhead, to have the specialty product processed without laboratory analysis. The material should be submitted to the formula and processing section at Product Compliance Branch.

## INTERNET REMINDER

Internet users can access ATF through the NSFNET network which is managed by the National Science Foundation. The domain address [www.atf.treas.gov](http://www.atf.treas.gov) can be used to access this system.

If you have any questions regarding access to ATF issuances via Internet, please contact Michael Breen, Technology Planning Staff, at (202) 927-8388.

If you have any ideas or items of interest you would like to submit for consideration in a future issue of **COMPLIANCE MATTERS** or if you have any questions concerning articles contained in this publication please contact:

Bureau of Alcohol, Tobacco & Firearms  
**COMPLIANCE MATTERS** Coordinator  
Angela Shanks  
Room 5000  
650 Massachusetts Avenue, NW  
Washington, DC 20226  
(202) 927-8230



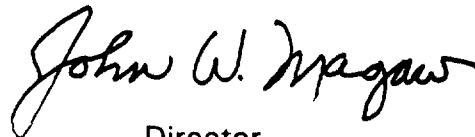


Requests for copies of the Adjunct Reference Manual. All requests for copies of the ARM should be sent to:

Beer Institute  
122 C Street, NW., Suite 750  
Washington, DC 20001

Inquiries. Inquiries regarding this circular should refer to its number and be addressed to:

Chief, Alcohol and Tobacco Programs Division  
Bureau of Alcohol, Tobacco and Firearms  
650 Massachusetts Avenue, NW.  
Washington, DC 20226

A handwritten signature in black ink that reads "John W. Magaw". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Director



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, DC 20226

Number: 96-1

Date: February 26, 1996

## ATF RULING ON FLAVORS CONTAINING ALCOHOL ADDED TO MALT BEVERAGES

Brewers and Others Concerned:

Purpose. The purpose of this circular is to advise you of a ruling to be published in the near future in the ATF Quarterly Bulletin. This ruling concerns the addition of flavoring materials containing alcohol to malt beverages at a brewery. It also announces that the Bureau of Alcohol, Tobacco and Firearms will commence rulemaking on the subject of flavoring materials containing alcohol in the near future.

Text of ruling. The text of the ruling to be published in the next issue of the ATF Quarterly Bulletin is as follows:

ATF Ruling 96-1

Background. The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked to clarify the application of the malt beverage definition of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 211(a)(7), to flavored fermented beverages being produced under a statement of process approved under the Internal Revenue Code of 1986, 26 U.S.C. § 5052, and its implementing regulations at 27 CFR § 25.67.

In recent years, statements of process have been submitted to ATF for malt beverage products which are produced with various flavoring materials and which have a wide range of alcoholic content. Some of these products are produced from a stripped malt beverage base and lack the traditional characteristics associated with a malt beverage, such as a lager, ale or stout.

The FAA Act and its implementing regulations, 27 U.S.C. § 211(a)(7) and 27 CFR § 7.10, define "malt beverage" as

"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 carbohydrate 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." (Emphasis added.)

The legislative history of the FAA Act simply explains that "(t)he definition of malt beverages is a technical one designed to cover the beverage products of the brewing industry and includes such products regardless of their alcoholic content." H.R. Rep. No. 1542, 74th Cong., 1st Sess. 16 (1935). It is apparent that Congress, in not setting parameters for the contribution of alcohol from other

sources as it did with respect to distilled spirits and wine, intended that malt beverages not contain such outside alcohol. The question remains as to whether a de minimis amount of alcohol derived from sources other than fermentation at the brewery would be consistent with the statutory definition.

Under a strict interpretation of the definition, the alcohol present in a malt beverage must be the result solely of fermentation at the brewery. This conclusion is consistent with the characteristics of malt beverages that were produced by the brewing industry at the time of the enactment of the technical definition pursuant to the FAA Act. This interpretation encompasses malt beverages containing alcohol derived from adjuncts such as fruits, berries, herbs, or vegetables as well as from the more traditional cereal grains, sugars and syrups when such adjuncts are added to the product prior to fermentation.

Unlike the law and regulations relating to distilled spirits and wines, regulations relating to malt beverages in 27 CFR Part 7 do not expressly authorize the addition of flavoring materials or other materials containing alcohol. The class and type regulation in § 7.24(a) authorizes the use of fanciful names and statements of composition for products which are not known to the trade under a particular designation; however, this section only applies to labeling and is not authorization for the use of flavorings or other materials in the production of a malt beverage.

While the malt beverage regulations do not authorize the use of flavoring materials containing alcohol, ATF has, in its approval of statements of process for fermented beverages under § 25.67 and in the approval of labels for malt beverages under § 7.20, recognized the use of such materials in the production of malt beverages. However, an increasing number of "flavored malt beverages" have varied and diverse characteristics which distinguish them from traditional malt beverages. Further, these characteristics are so diverse that the demarcations between "flavored malt beverages" and distilled spirits or wine products are becoming increasingly blurred and undefined.

In order to prevent the consumer deception that can arise from the lack of distinction between these "flavored malt beverages" and similar wine and distilled spirits products, and in order to determine the parameters of the use of flavoring materials containing alcohol, ATF has decided to undertake rulemaking in the near future. This rulemaking will consider the prohibition, restriction, or limitation on the use of such flavoring materials at any stage in the production of malt beverages.

ATF likewise recognizes that "flavored malt beverages" are currently produced and marketed where the alcohol content is not solely the result of fermentation at the brewery in accordance with the FAA Act definition. Pending the outcome of rulemaking on the use of such flavoring materials containing alcohol, a strict interpretation of the malt beverage definition would adversely impact these products or similar products that brewers plan to produce. ATF has reviewed these "flavored malt beverages" which are currently produced and which are currently marketed, and has identified the nature, character, and parameters of these products. ATF has determined that at the present time, the only "flavored malt beverages" containing a significant amount of alcohol derived from added flavoring materials, and for which statements of processes approved under § 25.67 explicitly indicate the source and quantity of added alcohol from flavors, are for products which contain six percent or less alcohol by volume in the finished product. Although ATF has approved statements of process under § 25.67 for "flavored malt beverages" containing in excess of six percent alcohol by volume, in no instance has the quantitative amount of alcoholic flavoring material used in such products contributed more than 1.5 percent alcohol by volume to the finished product.

As part of the pending rulemaking, ATF will consider the possibility that alcohol which is not solely the result of fermentation at the brewery is within the ambit of the FAA Act definition of a malt beverage when such alcohol is derived from wholesome products suitable for human food con-

sumption. However, it is possible that this portion of the definition authorizes only the addition of the types of adjuncts described above, and does not encompass the addition of flavoring materials which contain alcohol not derived from fermentation at the brewery. Prior to completion of rulemaking, ATF will permit production of "flavored malt beverages" of the types already existing in the marketplace, and we will approve statements of process for new "flavored malt beverages" which are comparable to existing products.

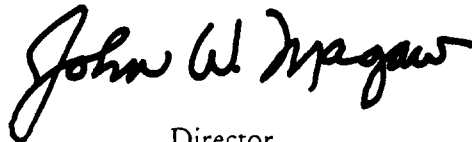
Held, a malt beverage under the FAA Act may only contain alcohol which is the result of alcoholic fermentation at the brewery.

Held further, pending completion of rulemaking, ATF will allow the continued production or importation of fermented beverages which contain alcohol not solely the result of alcoholic fermentation at the brewery if: (1) they are "flavored malt beverages" which contain not more than six percent alcohol by volume in the finished product; or (2) they are "flavored malt beverages" containing in excess of six percent alcohol by volume in the finished product and derive not more than 1.5 percent of their overall alcohol content from alcohol added through the use of alcoholic flavoring materials.

Pending the completion of rulemaking, ATF will continue to approve statements of process and applications for certificates of label approval for "flavored fermented beverages" meeting these criteria unless other grounds for disapproval are present. Statements of process submitted under § 25.67 for "flavored malt beverages" which include the use of any alcoholic flavoring materials shall explicitly indicate: the volume and alcoholic content of the malt beverage base; the maximum volumes of such flavoring materials proposed to be used; the alcoholic strength of such flavoring materials; the overall alcoholic contribution to the finished product provided by the addition of any alcoholic flavoring materials; and the final volume and alcoholic content of the finished product.

Effect of ruling. Any new or amended statements of process or formulas for a "fermented malt beverage" shall comply with the provisions of the ruling with respect to the amount of alcohol contributed through the use of alcoholic flavoring materials. ATF will further consider the addition of flavoring materials containing alcohol to fermented malt beverages by the issuance of a notice of proposed rulemaking in the near future.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Deputy Associate Director (Regulatory Enforcement Programs), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.



Director