(2) Does not contain allergenic protein derived from one of the foods identified in §5.32a(a)(1)(i), even though a major food allergen was used in production.

(b) Decision on petition. TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) Resubmission of a petition. After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) Availability of information—(1) General. TTB will promptly post to its public Web site, http://www.ttb.gov, all petitions received under this section as well as TTB’s responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) Requests for confidential treatment of business information. A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB–53, 71 FR 42268, July 26, 2006]

§ 5.33 Additional requirements.

(a) Contrasting background. Labels shall be so designed that the statements required by this subpart are readily legible under ordinary conditions, and such statements shall be on a contrasting background.

(b) Location of statements and size of type. (1) Statements required by this subpart, except brand names, shall appear generally parallel to the base on which the bottle rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) Statements required by this subpart, except brand names and the declaration of sulfites in §5.32(b)(7), shall be separate and apart from any other descriptive or explanatory matters.

(3) If not separate and apart from other descriptive or explanatory matter printed on the label, the statement...
§ 5.35 Class and type.

(a) Designation of product. The class and type of distilled spirits shall be stated in conformity with § 5.22 if defined therein. In all other instances the product shall be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (except as provided in paragraph (b)(2) of this

§ 5.34 Brand names.

(a) Misleading brand names. No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) Trade name of foreign origin. Paragraph (a) of this section does not prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the U.S. Patent Office on August 29, 1933, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: Provided, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

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