

Executive Order 12866

Agency organization matters such as this are exempt from Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: August 23, 1995.

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

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Bureau of Alcohol, Tobacco and Firearms**27 CFR Parts 4, 5, 7, 13, and 19**

[Notice No. 815]

RIN 1512-AB34

Procedures for the Issuance, Denial, and Revocation of Certificates of Label Approval, Certificates of Exemption From Label Approval, and Distinctive Liquor Bottle Approvals (93F-029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to issue regulations specifically setting forth the procedures for the issuance, denial, and revocation of certificates of label approval (COLAs), certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, or distinctive liquor bottle approvals.

DATES: Written comments to this proposed rule must be received by December 12, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 815).

Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Robert White, Coordinator, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:**Background**

The Federal Alcohol Administration (FAA) Act, 27 U.S.C. § 205(e), provides ATF, as the delegate of the Secretary of the Treasury, with authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages in order to prohibit deception of the consumer, and provide the consumer with adequate information as to the identity and quality of the product.

In order to carry out such requirements, domestic bottlers and producers are prohibited from bottling distilled spirits, wines, or malt beverages, and importers are prohibited from removing bottled distilled spirits, wines, or malt beverages from Customs custody, unless they have in their possession a certificate of label approval covering such products, "issued by the Secretary in such manner and form as he shall by regulations prescribe." 27 U.S.C. § 205(e). The law provides an exemption from these requirements for products which are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce.

The regulations implementing these statutory provisions provide that no person shall bottle or pack wine, distilled spirits, or malt beverages unless application is made to the Director and an approved certificate of label approval, ATF Form 5100.31, is issued. 27 CFR §§ 4.50(a), 5.55(a), and 7.41. The regulations also provide that no bottled wines, distilled spirits, or malt beverages shall be released from Customs custody for consumption unless an approved certificate of label approval, ATF Form 5100.31, is deposited with the appropriate Customs officer at the port of entry. 27 CFR §§ 4.40(a), 5.51(a), and 7.31(a).

A bottler of wine or distilled spirits who can show to the satisfaction of the Director that the product is not to be sold, offered for sale, or shipped or

delivered for shipment or otherwise introduced in interstate or foreign commerce, must make application for exemption from the labeling requirements of the FAA Act on ATF Form 5100.31 in accordance with the instructions on the form. If the application is approved, a certificate of exemption from label approval will be issued on the same form. 27 CFR §§ 4.50(b) and 5.55(b). Certificates of exemption from label approval are not issued for malt beverages.

Finally, the ATF Form 5100.31 is also used to obtain approval for distinctive liquor bottles, pursuant to the regulations appearing at 27 CFR § 19.633(a). ATF's authority to regulate liquor bottles is derived from section 5301 of the Internal Revenue Code of 1986, 26 U.S.C. § 5301. However, the approval of a distinctive liquor bottle also includes the approval of the label on that bottle, pursuant to the FAA Act.

Revocation of COLAs

ATF reviews over 60,000 applications for certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals every year. There is no doubt that errors will occasionally occur in the approval process. Thus, there is clearly a necessity for some type of revocation procedure.

Since the enactment of the FAA Act in 1935, ATF and its predecessor agencies have taken the position that the statutory authority to issue certificates of label approval also included an implied statutory authority to cancel or revoke such certificates in the event that such certificates were approved in error. There have never been formal procedures in the regulations for denial or revocation of certificates of label approval. However, ATF has utilized informal procedures for denials and revocations, where applicants or certificate holders who wished to contest a denial or revocation were given an opportunity to do so in writing, or through informal meetings with Bureau officials.

The certificate of label approval was never intended to convey any type of proprietary interest to the certificate holder. On the contrary, Paragraph III(1)(c) of Form 5100.31 provides that "[t]his certificate is issued for Bureau of Alcohol, Tobacco and Firearms use only and does not constitute trademark protection, or relieve any person from liability for violations of the FAA Act and related regulations and rulings." The certificate of label approval is a statutorily mandated tool used to help ATF in its enforcement of the labeling requirements of the FAA Act.

Recently, however, ATF's procedures for revocation of COLAs were subject to challenge in the Federal District Court for the Northern District of California. In *Cabo Distributing Co. v. Brady*, 821 F. Supp. 601 (N.D. Cal. 1992), the court set aside ATF's revocation of labels for "Black Death" vodka on several grounds. The court held that there was no express statutory or regulatory authority for the Bureau to cancel certificates of label approval, and that the Bureau had implied authority to reverse its actions only in limited circumstances. The court thus concluded that "[w]ithout statutory authority or regulatory authority, the BATF [sic] cannot cancel a certificate of label approval." 821 F. Supp. at 612. The court also held that the Bureau's informal procedures for revoking the "Black Death" certificates of label approval had not afforded the certificate holders their constitutional right to procedural due process. 821 F. Supp. at 612.

ATF does not agree with the court's decision on either of these two holdings. ATF believes that a right to cancel certificates of label approval is implied from the statute's delegation to the Secretary of the authority to issue certificates of label approval "in such manner and form as he shall by regulations prescribe* * *" The statute thus explicitly authorizes ATF, as a delegate of the Secretary, to issue regulations governing the procedure for the issuance of certificates of label approval. There is also implicit statutory authority to issue regulations governing the procedures for denying and revoking certificates of label approval.

ATF believes that the procedures which it has been using for revoking certificates of label approval, although not codified in the regulations, have provided certificate holders with due process of law. However, in order to clarify its authority and procedures for revocation of label approvals, ATF is proposing to adopt new regulations in a new Part 13 which will set forth procedures for revoking such approvals and for appealing such revocations. The procedures will also provide applicants with the opportunity to administratively appeal the denial of applications for label approval. Finally, the procedures will also cover certificates of exemption from label approval and distinctive liquor bottle approvals, since these are issued on the same form as certificates of label approval.

Proposed Procedures

ATF is proposing to issue regulations specifically setting forth the procedures

for the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. ATF believes that the proposed regulations would afford applicants and certificate holders with more than adequate due process of law. ATF also believes that the codification of these procedures in regulations will eliminate any questions as to its authority to revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals.

Under current regulations, the authority to approve certificates of label approval, exemptions from label approval, and distinctive liquor bottle applications rests with the Director. When an application for label approval, exemption from label approval, or distinctive liquor bottle approval is approved, the signature of the Director is affixed to the form, with the date, and any qualifications are marked in the appropriate space on the form. The approved ATF Form 5100.31 is then sent to the applicant. If an application is denied for any reason, the applicant is sent an ATF Form 5190.1, "ATF F 5100.31 Correction Sheet," with the reasons for the denial briefly noted on the form. The proposed regulations will codify this practice.

The proposed regulations afford the applicant an opportunity to file a written appeal of the denial of an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the denial was erroneous, and that the subject label or bottle is in compliance with all applicable laws and regulations. After considering all relevant facts and issues presented in writing by the applicant, the Chief, Labeling Section, shall issue a final decision on the denial of the application.

With respect to revocations of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, the

proposed regulations provide that the Chief, Product Compliance Branch, shall provide the certificate holder with a notice of proposed revocation prior to taking any action with respect to the label or distinctive liquor bottle. The certificate holder shall have 45 days from the date of the notice in which to present written arguments as to why the revocation should not occur. After considering any arguments or facts presented during this 45-day period, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the label or distinctive liquor bottle approval, the certificate holder shall then have 45 days from the date of the decision of the Chief, Product Compliance Branch, to file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The written appeal should include all pertinent arguments and evidence which the certificate holder wishes to present. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

The proposed regulations authorize applicants or certificate holders to request informal conferences at each stage of the administrative appeal process. The decision whether to grant such requests lies entirely within the discretion of the official considering the administrative appeal. It should be noted that the issue of informal conferences arose during the litigation over the "Black Death" labels. To avoid any possible misunderstandings which might arise out of inconsistent recollections by meeting participants, the proposed regulations will clarify that informal conferences are not on the record. To the extent that an applicant or certificate holder wishes to rely on arguments or evidence presented at an informal conference, he or she must present such arguments or evidence in writing to the decision maker within 10 days after the date of the conference.

Exception to Notice of Proposed Revocation Requirement

The proposed regulations provide that where there is a change in labeling requirements by operation of law or regulation, there is no requirement to issue a notice of proposed revocation prior to notifying a certificate holder of the revocation of a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. In these cases, the burden of ensuring that affected labels are in compliance with the new requirements imposed by statute or regulation should be on the certificate holder, not ATF. If ATF determines that a label or bottle which is not in

compliance with the new statutory or regulatory requirements is still being used, the Chief, Product Compliance Branch, will issue a letter notifying the certificate holder that the certificate has been revoked by operation of law or regulation. If the certificate holder wishes to challenge the application of the law or regulation to the particular label or bottle, he or she may appeal the decision, in writing, to the Chief, Alcohol and Tobacco Programs Division.

If the proposals in this notice are adopted, regulations in Parts 4, 5, 7, and 19 will be amended to cross reference the procedures enumerated in Part 13.

Public Participation

ATF requests all interested parties to submit written comments concerning the issuance, denial, revocation, and appeal procedures proposed in this notice of proposed rulemaking. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will give ATF specific regulatory authority to issue, deny or revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. The regulation will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the

reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Applications, Certificates of label approval, Certificates of exemption from label approval, Denials, Distinctive liquor bottle approvals, Informal conferences, Labeling, Revocations.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Chapter I of Title 27, Code of Federal Regulations, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.40 is amended to add paragraph (d) to read as follows:

§ 4.40 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see Part 13 of this chapter.

Par. 3. Section 4.50 is amended to add paragraph (c) to read as follows:

§ 4.50 Certificates of label approval.

* * * * *

(c) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Par. 5. Section 5.46 is amended to revise paragraph (d) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(d) *Exceptions—(1) Distinctive Liquor Bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles which are specifically exempted by the Director, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see Part 13 of this chapter.

Par. 6. Section 5.51 is amended to add paragraph (e) to read as follows:

§ 5.51 Label approval and release.

* * * * *

(e) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 7. Section 5.55 is amended to add paragraph (d) to read as follows:

§ 5.55 Certificates of label approval.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 8. The authority citation for Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 9. Section 7.31 is amended to add paragraph (d) to read as follows:

§ 7.31 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 10. Section 7.41 is revised to read as follows:

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person shall bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless application is made to the Director, and an approved certificate of label approval, ATF Form 5100.31, is issued by the Director.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 11. Part 13 is added to read as follows:

PART 13—LABELING PROCEEDINGS

Subpart A—Scope and Construction of Regulations

Sec.
13.1 Scope of part.

Subpart B—Definitions

13.5 Meaning of terms.

Subpart C—Applications

13.11 Application for certificate.
13.12 Notice of denial.
13.13 Appeal of denials.
13.14 Final decision after appeal of denial.

Subpart D—Revocations

13.20 Revocation of certificates.
13.21 Notice of proposed revocation.
13.22 Decision after notice of proposed revocation.
13.23 Appeal of revocation.
13.24 Final decision after appeal.

Subpart E—Revocation by Operation of Law or Regulation

13.35 Revocation by operation of law or regulation.
13.36 Notice of revocation.
13.37 Appeal of notice of revocation.
13.38 Decision after appeal.

Subpart F—Miscellaneous

13.40 Informal conferences.
13.45 Effective dates of revocations.
13.50 Effect of revocations.
13.55 Service on applicant or certificate holder.
13.60 Representation before the Bureau.
13.65 Computation of time.
13.70 Extensions.

Authority: 270 U.S.C. 205(e) and 26 U.S.C. 5301.

Subpart A—Scope and Construction of Regulations

§ 13.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals under 27 U.S.C. 205(e) and 26 U.S.C. 5301. The regulations in this part also provide for appeal procedures when applications for label approval, exemptions from label approval, or distinctive liquor bottle approvals are denied, or when these applications are approved and then subsequently revoked.

Subpart B—Definitions

§ 13.5 Meaning of terms.

Where used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “include” and “including” do not exclude things not enumerated which are in the same general class.

Act. The Federal Alcohol Administration Act.

Applicant. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an unapproved ATF F 5100.31, application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

ATF. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

Brewer. Any person who brews beer (except a person who produces only

beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an approved ATF F 5100.31, certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Certificate of exemption from label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling or packing of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from Customs custody for introduction into commerce, as long as the product bears labels identical to the labels affixed to the face of the certificate, or labels with changes authorized by the certificate.

Chief, Alcohol and Tobacco Programs Division. The ATF official responsible under this part for deciding appeals of revocations of:

- (1) Certificates of label approval;
- (2) Certificates of exemption from label approval; and
- (3) Distinctive liquor bottle approvals.

Chief, Labeling Section, Product Compliance Branch.

The ATF official responsible under this part for deciding appeals of denials of applications for:

- (1) Certificates of label approval;
- (2) Certificates of exemption from label approval; and
- (3) Distinctive liquor bottle approvals.

Chief, Product Compliance Branch. The ATF official responsible under this part for issuing revocations of

- (1) Certificates of label approval;
- (2) Certificates of exemption from label approval; and
- (3) Distinctive liquor bottle approvals.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use. The term “distilled spirits” shall not include mixtures containing wine,

bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Distinctive liquor bottle. A liquor bottle of distinctive shape or design.

Distinctive liquor bottle approval. Approval issued on ATF F 5100.31 which authorizes the bottling of distilled spirits, or the removal of bottled distilled spirits from Customs custody for introduction into commerce, as long as the bottle is identical to the photograph affixed to the face of the form.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to protect the revenue adequately.

Malt beverage. 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 carbohydrates, 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.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof.

Product Compliance Branch Specialist. An ATF official—

(1) Responsible under this part for reviewing initial applications for:

- (i) Certificates of label approval;
- (ii) Certificates of Exemption from label approval; and
- (iii) Distinctive liquor bottle approvals; and

(2) With authority to affix the Director's signature to approved certificates and to issue an "ATF F 5100.31 Correction Sheet" along with any denial of an application.

United States. The several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means the Commonwealth of Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. (1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Subpart C—Applications

§ 13.11 Application for certificate.

An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, shall send signed duplicate copies of ATF Form 5100.31, "Application for and Certification/Exemption of Label/Bottle Approval" to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. If the application evidences compliance with all applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval shall be issued, and the Director's signature shall be affixed to the form. If the approval is qualified in any manner, such qualifications shall be set forth in the appropriate space on the form.

§ 13.12 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, a Product Compliance Branch Specialist shall issue to the applicant a notice of denial on ATF Form 5190.1, entitled "ATF F 5100.31 Correction Sheet," briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

§ 13.13 Appeal of denials.

If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the denial of an application, he or she may file a written appeal with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the subject label or bottle is in compliance with the applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of denial, such notice of denial shall be the final decision of the Bureau.

§ 13.14 Final decision after appeal of denial.

After considering any written arguments or evidence presented by the applicant or his or her representative, the Chief, Labeling Section, Product Compliance Branch, shall issue a written decision to the applicant. If the decision is that the denial should stand, a copy of the application, marked "appeal denied," shall be returned to the applicant, along with a brief explanation of the basis for the denial and the specific laws or regulations relied upon in denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved, ATF Form 5100.31 shall be issued in accordance with usual procedures. The decision of the Chief, Labeling Section, Product Compliance Branch, shall be the final decision of the Bureau.

Subpart D—Revocations

§ 13.20 Revocation of certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the Chief, Product Compliance Branch, upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.21 Notice of proposed revocation.

Except as provided in § 13.35, when the Chief, Product Compliance Branch, determines that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle which is not in compliance with the laws or regulations, he or she shall issue to the certificate holder a notice of proposed

revocation which shall set forth the basis for the proposed revocation and shall provide the certificate holder with 45 days from the date of the notice in which to present written arguments or evidence as to why the revocation should not occur.

§ 13.22 Decision after notice of proposed revocation.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the certificate, a letter shall be issued explaining the basis for the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be issued.

§ 13.23 Appeal of revocation.

A certificate holder who wishes to appeal the decision of the Chief, Product Compliance Branch, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal with the Chief, Alcohol and Tobacco Programs Division, setting forth the grounds on which he or she believes that the decision of the Chief, Product Compliance Branch, was erroneous. Such appeal must be filed with the Chief, Alcohol and Tobacco Programs Division, within 45 days after the date of the decision of the Chief, Product Compliance Branch.

§ 13.24 Final decision after appeal.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Alcohol and Tobacco Programs Division, shall issue a written decision to the certificate holder. If the decision is to revoke the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart E—Revocation by Operation of Law or Regulation

§ 13.35 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, that such approvals have been revoked in situations where such revocation occurs by operation of law or regulation.

Where changes in labeling or other requirements are made as a result of amendments or revisions to the law or regulations, it is the responsibility of the certificate holder to voluntarily surrender all certificates which are no longer in compliance, and to submit applications for new certificates in compliance with the new requirements; *Provided*, that in certain circumstances, ATF may announce that the submission of new applications for label approval is not necessary in order to implement a new requirement in the law or regulations. In such circumstances, it is the responsibility of the certificate holder to ensure that labels are in compliance with the requirements of the new regulations or law, notwithstanding the fact that new applications for label approval were not required.

§ 13.36 Notice of revocation.

If ATF determines that a certificate holder is still using a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval which is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the certificate holder in writing that the subject certificate has been revoked by operation of law or regulations, with a brief description of the grounds for such revocation.

§ 13.37 Appeal of notice of revocation.

Within 45 days after the date of a notice of revocation by operation of law or regulations, the certificate holder may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the certificate holder believes that the regulation or law at issue does not require the revocation of the certificate.

§ 13.38 Decision after appeal.

After considering all written arguments and evidence submitted by the certificate holder, the Chief, Alcohol and Tobacco Programs Division, shall issue a final decision regarding the revocation by operation of law or

regulation of the certificate. If the decision is that the law or regulation at issue requires the revocation of the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and citing the specific laws or regulations which required the revocation of the certificate. If the decision is that the law or regulation at issue does not require the revocation of such certificate, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart F—Miscellaneous

§ 13.40 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision of the Chief, Product Compliance Branch, to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the ATF official deciding the appeal. However, the decision whether to hold an informal conference is at the sole discretion of the deciding official.

(b) *Informal conference procedures.* If the deciding official determines that the holding of an informal conference would be beneficial, he or she shall inform the applicant or certificate holder, and a date shall be agreed upon. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the deciding official.

§ 13.45 Effective dates of revocations.

With the exception of revocations occurring pursuant to § 13.35, ATF shall allow at least 45 days between the issuance of a decision to revoke a certificate, and the actual revocation of the certificate. The deciding official may, at his or her discretion, allow the certificate holder a longer period of time in which to use up the existing stock of labels or distinctive liquor bottles. The decision to allow such a "use-up" period, and the length of the "use-up" period allowed, are matters committed entirely to the discretion of the deciding official, based on the circumstances of the case.

§ 13.50 Effect of revocations.

(a) *General.* On the effective date of a final decision which has been issued by the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, the certificate holder shall be asked to surrender the original of such certificate to ATF for manual cancellation. Regardless of whether the original certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been manually cancelled or not, the certificate shall be null and void after the effective date of the certificate's revocation. It shall be a violation of this section for any certificate holder to present a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval to an official of the United States Government as a valid certificate, after the effective date of the revocation of the certificate, if the certificate holder has been previously notified that such certificate has been revoked by ATF.

(b) *Use of certificate during period of appeal.* If a certificate holder files a timely appeal after receipt of a notice of revocation from the Chief, Product Compliance Branch pursuant to section 13.22, he or she may continue to use the certificate at issue until the effective date of a final decision issued by the Chief, Alcohol and Tobacco Programs Division. However, the effective date of a notice of revocation by operation of law or regulations, issued pursuant to § 13.36, is not stayed during the pendency of an appeal.

§ 13.55 Service on applicant or certificate holder.

Notices of denial, notices of proposed revocation, and notices of revocation shall be served on an applicant or a certificate holder by first class mail, or by personal delivery. When service is by mail, a signed duplicate original copy of the document shall be mailed to the applicant or certificate holder at the address stated in the application for a certificate of label approval, or at the last known address. If authorized by the applicant or certificate holder, the signed duplicate original copy of the document may be mailed to a designated representative. Where service is by personal delivery, a signed duplicate original copy of the document shall be delivered to the certificate holder or to a designated representative, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or

general agent thereof, or to its attorney of record.

§ 13.60 Representation before the Bureau.

An applicant or certificate holder may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms), if he or she has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).

§ 13.65 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, or legal holiday. Papers or documents which are required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 13.70 Extensions.

For good cause shown, the Chief, Labeling Section, Product Compliance Branch, the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, may grant extensions as to any time limits prescribed by the regulations in this part.

PART 19—DISTILLED SPIRITS PLANTS

Par. 12. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 13. Section 19.633 is amended to add paragraph (c) to read as follows:

§ 19.633 Distinctive liquor bottles.

* * * * *

(c) *Cross reference.* For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

Par. 14. Section 19.641 is revised to read as follows:

§ 19.641 Certificate of label approval or exemption.

(a) *Requirement.* Proprietors are required by 27 CFR part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Signed: July 26, 1995.

Daniel R. Black,

Acting Director.

Approved: August 17, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22577 Filed 9–12–95; 8:45 am]

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DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1926****Steel Erection Negotiated Rulemaking Advisory Committee**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of cancellation of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), the Occupational Safety and Health Administration (OSHA) is announcing the cancellation of a Steel Erection Negotiated Rulemaking Advisory Committee (SENAC) meeting scheduled for September 19–21, 1995 in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document announces the cancellation of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENAC) that was