

Bureau of Alcohol, Tobacco, and Firearms**27 CFR Part 5**

[Notice No. 826]

RIN 1512-AB46

Labeling of Unaged Grape Brandy (95R-018P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to permit the optional use of the word "unaged", instead of "immature", to describe grape brandy which has never been stored in oak containers. ATF believes that the proposed regulations provide industry members with greater flexibility in labeling their unaged grape brandy, while ensuring that the consumer is adequately informed as to the identity of the product.

The proposed amendment is part of the Administration's Reinventing Government effort to reduce regulatory burdens and streamline requirements.

DATES: Written comments must be received on or before September 11, 1996.

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. 826.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, 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**

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e), as they relate to distilled spirits, are set forth in Title 27, Code of Federal Regulations (CFR), Part 5. Subpart C of Part 5 sets forth the standards of identity for distilled spirits for labeling and

advertising purposes. Section 5.22(d)(1) provides, in part, that "fruit brandy" is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine. Fruit brandy, derived from grapes, must be designated as "grape brandy" or "brandy". This section further provides that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy, or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers (i.e., "aged") for less than 2 years, the statement of class and type must be immediately preceded, in the same size and kind of type, by the word "immature" (e.g., "immature grape brandy", "immature brandy", "immature residue brandy"). As a result of this section, brandy which has never been aged in oak containers is also labeled as "immature."

Petition

ATF has received a petition, dated July 10, 1995, filed on behalf of a domestic brandy producer, requesting an amendment of the regulations concerning the labeling of grape brandy which has never been stored in oak containers. The petitioner wishes to produce and market a clear, unaged grape distillate which the petitioner states will have distinct varietal characteristics without the influence of wood extracts. According to the petitioner, aging such a distillate in oak containers for 2 years would remove most, if not all, of the varietal character. The petitioner states that an amendment of the regulations is needed "so this style of brandy can be made and labeled in a manner that will not cause consumer deception or rejection based on the negative use of the word 'immature' as now required." Therefore, the petitioner has requested an amendment of section 5.22(d)(1) that would add a new sentence that states:

Grape brandy which has not been aged in wood and does not have added coloring may use the statement 'unaged' in lieu of 'immature'.

Discussion

The requirement to label grape brandy which has not been stored in oak containers for a minimum of 2 years as "immature" dates back to May 25, 1956, with the publication in the Federal Register of T.D. 6174 (21 FR 3535). The need for such rulemaking was brought out in the December 1, 1955, hearing which preceded T.D. 6174. In his opening remarks at that hearing the Director of the Alcohol and Tobacco Tax

Division, Internal Revenue Service, Department of the Treasury, stated:

The single proposal contained in the notice has as its objective an improvement in the existing quality standards for grape brandy. Heretofore no minimum age has been specified for this product, the only requirement contained in the regulations with respect to young brandy being that an age statement must appear upon the brand label of any brandy which has not been aged for at least two years.

The proposal precluded the use of the unqualified term "brandy" or "grape brandy" on the label of any grape brandy stored in wood containers less than 2 years.

According to a trade association representing the California wine and brandy industry, the amendment of the regulations was necessary "to advise the consumer more adequately as to the difference between a proper standard brandy and a product that is only potentially a brandy because of the inadequacy of its age."

Several alternative proposals were offered in the Notice of Hearing (November 19, 1955; 20 FR 8574) to describe grape brandy not aged a minimum of 2 years, including "young brandy", "substandard brandy", and "immature brandy". The last designation was adopted in the final rule.

ATF and its predecessor agencies have historically taken the position that the material from which a spirit is distilled is the determining factor insofar as the designation of the product is concerned. Since 1936, with the issuance of the first distilled spirits regulations promulgated under the FAA Act, brandy has generally been defined in the standards of identity as an alcoholic distillate obtained from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product. A newly distilled brandy has a characteristic taste and aroma, and aging does not change these basic properties. Although traditionally described as harsh, raw, etc., a newly distilled brandy still has brandy character. Likewise, a newly distilled brandy will have the same congeners (e.g., esters, aldehydes, furfurals, etc.) as an aged brandy, although there will be a difference in the amount present. Aging in wood generally serves to reduce or remove the harsh, burning taste and generally unpleasant character of a brandy distillate obtained directly from the still. This results in a smoother tasting and less harsh product.

Although the material from which the spirits are distilled is the determining factor in designating the product, ATF and its predecessors have required modifiers on the label to further describe the final product. For example, section 5.22(b)(1)(iii) provides that whisky which has been aged in oak containers for a minimum of 2 years must be further designated as "straight." In the matter at hand, a review of the earlier rulemaking record indicates that the designation "immature brandy" for newly distilled spirits aged less than 2 years in wood correctly describes the product, since the record shows that it takes at least 2 years of aging to remove the rawness from the brandy.

Proposed Regulatory Amendments

ATF believes that a distinction should be made in the labeling of "mature" grape brandy, i.e., brandy which has been aged for at least 2 years, and "immature" grape brandy, i.e., brandy which has either never been aged or has been aged for some period of time less than 2 years. These distinctions are necessary, pursuant to the Bureau's responsibilities under the FAA Act, to provide the consumer with adequate information as to the identity and quality of the product. On the other hand, the Bureau believes in reducing the regulatory burden placed upon the industry and providing industry members with greater flexibility in the labeling of their products. This is consistent with the Administration's Reinventing Government effort to reduce regulatory burdens and streamline requirements.

ATF also believes that the word "unaged" accurately describes a grape brandy which has never been stored in oak containers and, as such, is equally as informative to consumers than the designation "immature." Therefore, the Bureau is proposing to require grape brandy that has never been aged in wood to be labeled either "immature" or "unaged". ATF believes that either word on the label will provide consumers with adequate information as to the identity of the product. Nevertheless, ATF is interested in comments on whether the continued use of "immature" to describe brandy that has never been aged and brandy that has been aged for some time but less than 2 years could lead to consumer confusion. Furthermore, brandy producers will have greater choices in labeling their products.

The proposal applies to grape brandy (other than neutral brandy, pomace brandy, marc brandy, or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue

thereof. Grape brandy stored in oak containers for any amount of time less than 2 years must still be designated as "immature".

Finally, the petitioner asked that ATF prohibit the addition of coloring to an "unaged brandy". Under the current regulations, § 5.23, harmless flavoring, blending, or coloring materials (including caramel) may be added to any class and type of distilled spirits, within certain limitations, without altering the class or type of the distilled spirits. While ATF is not proposing to amend § 5.23, the Bureau is soliciting comments on whether there should be any restrictions on the addition of harmless coloring, flavoring, or blending materials in the case of unaged grape brandy.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is liberalizing in nature in that brandy producers will have greater choices in labeling their products. Accordingly, a regulatory flexibility analysis is not required.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. 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 in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information: The author of this document is James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

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

Authority and Issuance

ATF is proposing to amend Part 5 in Title 27 of the Code of Federal Regulations as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 1. The authority citation for 27 CFR Part 5 continues to read as follows:
Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 2. Section 5.22(d)(1) is amended by revising the third sentence to read as follows:

§ 5.22 The standards of identity.

* * * * *

(d) * * *

(1) * * * Fruit brandy, derived from grapes, shall be designated as "grape brandy" or "brandy", except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof: which has been stored in oak containers for some period of time less than 2 years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word "immature"; or which has never been stored in oak containers, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word "immature" or "unaged". * * *

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Par. 3. Section 5.40 is amended by revising the first sentence in paragraph (b) and the second proviso in paragraph (e)(2) to read as follows:

§ 5.40 Statements of age and percentage.

* * * * *

(b) *Statements of age for rum, brandy, and Tequila.* Age may, but need not, be stated on labels of rums, brandies, and

Tequila, except that an appropriate statement with respect to age shall appear on the brand label in the case of brandy (other than immature or unaged brandies, as provided in § 5.22(d)(1), and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. * * *

* * * * *

(e) * * *

(2) * * * *And provided further*, That the labels of whiskies and brandies (except immature or unaged brandies, as provided in § 5.22(d)(1)) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label bearing an age statement.

Par. 4. Section 5.65(c) is amended by revising the last sentence to read as follows:

§ 5.65 Prohibited practices.

* * * * *

(c) *Statement of age.* * * * An advertisement for any whisky or brandy (except immature or unaged brandies, as provided in § 5.22(d)(1)) which is not required to bear a statement of age on the label or an advertisement for any rum or Tequila, which has been aged for not less than 4 years may, however, contain inconspicuous, general representations as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

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Signed: April 25, 1996.

Bradley A. Buckles,
Acting Director.

Approved: May 15, 1996.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary,
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 96-14859 Filed 6-12-96; 8:45 am]

BILLING CODE 4810-31-U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 18

[Notice No. 823]

RIN 1512-AB59

Production of Volatile Fruit-Flavor Concentrate (95R-026P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the President's regulatory reform initiative, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations in 27 CFR Part 18. The proposed amendment would specifically authorize the transfer of volatile fruit-flavor concentrate (VFFC) unfit for beverage use from one VFFC plant to another for further processing. The proposed amendment would clarify the regulations in order to allow greater flexibility in the production processes of VFFC plants.

DATES: Written comments must be received on or before August 12, 1996.

ADDRESSES: Submit 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. 823.

FOR FURTHER INFORMATION CONTACT:

Mary A. Wood, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, ca a13jn2.071, Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those which are obsolete or burdensome and those whose goals could be better achieved through the private sector, self-regulation or state and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency would, as soon as possible, propose administrative changes to its regulations.

The page by page review of all regulations was completed as directed by the President. In addition, on April 13, 1995, the Bureau published Notice No. 809 (60 FR 18783) in the Federal Register requesting comments from the public regarding which ATF regulations could be improved or eliminated. No comments were received regarding 27 CFR part 18, Production of Volatile Fruit-Flavor Concentrate; however, ATF is proposing a clarifying amendment to this part based on a variance request received from a volatile fruit-flavor concentrate (VFCC) producer.

The Internal Revenue Code of 1986, 26 U.S.C. 5511, authorizes the manufacture of volatile fruit-flavor concentrate by any process which includes evaporations from the mash or

juice of any fruit. Section 5511 also places certain restrictions on the manufacture of volatile fruit-flavor concentrate. Pursuant to section 5511(1), the concentrate, and the mash or juice from which it is produced, must contain no more alcohol than is reasonably unavoidable in the manufacture of such concentrate. Section 5511(2) provides that the concentrate must be rendered unfit for use as a beverage before removal from the place of manufacture; however, concentrate which is fit for beverage use and which does not exceed 24 percent alcohol by volume may be transferred to a bonded wine cellar for use in production of natural wine. Finally, section 5511(3) authorizes the Secretary to prescribe such regulations as are necessary for the protection of the revenue regarding applications, records, reports, bonds, and other requirements with respect to the production, removal, sale, transportation, and use of concentrate and the mash or juice from which the concentrate is produced.

Volatile fruit-flavor concentrate which is produced in accordance with the requirements of the regulations is not subject to the distilled spirits or wine excise tax. However, section 5001(a)(6) provides for the imposition of tax on any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, and is then sold, transported, or used by any person in violation of Chapter 51 or the regulations promulgated thereunder.

Proposed Amendment

The current regulations in 27 CFR 18.54(a) allow the transfer of volatile fruit-flavor concentrate ("concentrate") which is unfit for beverage use for any purpose authorized by law. However, ATF recently received a request from a VFFC producer as to whether a concentrate unfit for beverage use could be transferred from one VFFC plant to another for further processing. Apparently it was more cost-effective for the second VFFC plant to conduct the processing operation at issue. While the transfer of the concentrate was clearly authorized by current regulations, since the concentrate was unfit for beverage use, there was nothing in the current regulations which specifically authorized the second VFFC plant to receive concentrate for further processing.

The existing regulations in section 18.51 allow proprietors to receive processing material which is produced elsewhere, subject to certain restrictions