

Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4, Labeling and Advertising of Wine, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

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

2. Section 4.25 is amended:

a. By revising paragraph (a)(2), the introductory text of paragraph (b)(2), and paragraph (d); and

b. In paragraph (e)(1)(ii), by removing the words “(other than an appellation defined in paragraph (a)(2)(i) or (a)(2)(ii))” and adding, in their place, the words “(other than an appellation defined in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii))”.

The revisions read as follows:

§ 4.25 Appellations of origin.

(a) * * *

(2) *Imported wine.* An appellation of origin for imported wine is:

(i) A country;

(ii) A state, province, territory, or similar political subdivision of a country equivalent to a State or county;

(iii) Two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous; or

(iv) A viticultural area (as defined in paragraph (e) of this section).

(b) * * *

(2) *Imported wine.* An imported wine is entitled to an appellation of origin other than a multistate appellation, or a viticultural area, if:

* * * * *

(d) *Multistate appellations.* (1) *American wine.* An appellation of origin comprising two or no more than three States which are all contiguous may be used, if:

(i) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label with a tolerance of plus or minus 2 percent;

(ii) The wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and

(iii) The wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(2) *Imported wine.* An appellation of origin comprising two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a State which are all contiguous may be used if:

(i) All of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a State indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or political subdivision equivalent to a State is shown on the label with a tolerance of plus or minus 2 percent; and

(ii) The wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

* * * * *

Signed: June 2, 2010.

John J. Manfreda,
Administrator.

Approved: June 30, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB-2010-0006; Notice No. 109]

RIN 1513-AB24

Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is considering amending the regulations concerning various winemaking terms commonly used on labels and in advertisements to provide consumers with information about the growing or bottling conditions of wine. We invite comments from industry members, consumers, and

other interested parties as to whether and to what extent we should propose specific regulatory amendments for further public comment.

DATES: We must receive written comments on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

• *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB-2010-0006 at “Regulations.gov,” the Federal e-rulemaking portal);

• *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

• *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB-2010-0006 at *http://www.regulations.gov*. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 109. You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; (301) 290-1460.

SUPPLEMENTARY INFORMATION:

I. Authority To Prescribe Labeling and Advertising Regulations for Wine

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of alcohol beverage products, including wine, as that term is defined in 27 U.S.C. 211. These provisions give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer with respect to such products, to provide the consumer with “adequate information” as to the identity and quality of the product, and to prohibit false or misleading statements. Additionally, these FAA Act provisions give the Secretary the authority to

prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the FAA Act and the regulations promulgated under it. The labeling and advertising regulations for wine are codified in title 27 of the Code of Federal Regulations (CFR), parts 4, 9, 12, 13, and 16.

II. The Current Regulations, the Use of Various Winemaking Terms on Labels and in Advertisements, and Request for Comments

A. Background

The TTB wine labeling and advertising regulations provide, among other things, definitions of various winemaking terms or usages that are indicative of specific processes used in the production of wine. When used on labels and in advertisements, these terms help consumers better identify the products they purchase by providing meaningful information about those products.

One of the terms defined by the regulations for use on wine labels is "Estate bottled." Section 4.26(a) of the TTB regulations (27 CFR 4.26(a)) provides that the term "Estate bottled" may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

- Is located in the labeled viticultural area;
- Grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; and
- Crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

In addition to prescribing mandatory label information and permitting bottlers to label their products with specifically defined terms, such as "Estate bottled," the TTB regulations in § 4.38(f) (27 CFR 4.38(f)) permit bottlers to label their wine with additional information, provided that the information is truthful, accurate, specific, not disparaging, and not misleading, and does not conflict with, nor in any manner qualify, statements required by the regulations. When bottlers provide such additional information on their labels, TTB relies on the general meaning of any terms used and approves their use if TTB

finds that the information is unlikely to mislead the consumer with respect to the products in question. Further, when a producer, bottler, or importer applies for a Certificate of Label Approval (COLA) on TTB Form 5100.31, that person signs a certification, under penalties of perjury, that "the representations on the labels * * * truly and correctly represent the content of the containers to which these labels will be applied." A wine that does not match the label description is not entitled to bear that label.

This advance notice addresses several winemaking terms for which the current regulations provide no definition. TTB has approved these terms for use on wine labels when they met the requirements of § 4.38(f). If TTB were to adopt new regulations governing the use of these terms, any previously approved non-compliant labels may be revoked by operation of the TTB regulations under 27 CFR part 13, subpart E.

Accordingly, as explained below, TTB is soliciting preliminary comments from industry members, consumers, and other interested parties on a number of issues involving the use of specific terms on labels and in advertisements, including the possible effect that any regulatory changes might have on approved labels, in order to assist TTB in determining whether to propose specific regulatory amendments for further public comment procedures. Any regulatory changes concerning wine labeling would similarly affect wine advertising pursuant to the provisions of 27 CFR 4.64, which prohibits statements that are false or untrue in any material particular or that are likely to mislead the consumer, and which provides certain other links to various labeling regulations through 27 CFR 4.64. Therefore, TTB is also soliciting preliminary comments on the use of such terms in advertisements.

B. Estate(s), Estate Grown, and Other Similar Terms

The terms "Estate" and "Estates" without any reference to "Estate bottled" have been used on labels of wine for many years. While the TTB regulations specifically address the use of the designation "Estate bottled" as indicated above, the regulations do not address or define the word "Estate" or "Estates" when used alone or with additional words other than "Estate bottled." In conjunction with the requirements in § 4.26(a), § 4.26(d) provides that no term other than "Estate bottled" may be used on a label to indicate combined growing and bottling conditions. Additionally, § 4.39(a)(8) of the TTB regulations (27

CFR 4.39(a)(8)) prohibits a label from containing:

Any *coined word* or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or *permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation* and is in fact so designated on its labels. [Emphasis added.]

It has been TTB's long-standing position that the appearance of the word "Estate" or "Estates" on labels of wine does not, in and of itself, create an "Estate bottled" representation and does not violate the prohibition in § 4.39(a)(8). Therefore, TTB has permitted, in certain circumstances, the use of the words "Estate" or "Estates" on labels as additional information under § 4.38(f).

Notwithstanding § 4.26(d) of the TTB regulations as referenced above, for over twenty years TTB and its predecessor agency have allowed the term "Estate grown" to be used as a synonym for the term "Estate bottled." Thus, if a product is labeled "Estate grown" it must meet the standard for use of "Estate bottled" as provided in § 4.26(a). TTB has not codified this position in the regulations. Recently, some industry members requested that TTB permit the use of the words "Estate grown" on labels of wines that do not meet the "Estate bottled" standards in § 4.26. One industry member contended that the term "Estate grown" does not convey information about the bottling conditions of the wine and that, therefore, wine labeled with that designation should not have to meet the "Estate bottled" requirements.

TTB is considering the possibility of amending the regulations to set forth a TTB position concerning the use of the terms "Estate," "Estates," "Estate Grown," and other similar terms on wine labels. Accordingly, TTB invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Does the use of the term "estate" or "estates" as part of a name or otherwise on wine labels convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the term "Estate" in the regulations when not used in the expression "Estate bottled"? If so, what should that definition be?

3. Do wine labels with the term "estate" or "estates" lead consumers to believe that the product is "Estate bottled" within the meaning of § 4.26?

4. Do wine labels that use the term “estate” or “estates,” in the brand name, when not referencing “Estate bottled,” lead consumers to believe that the product was produced primarily from winemaking material grown on the named estate? Should these products conform to the requirements outlined for use of a vineyard, orchard, farm or ranch name outlined in § 4.39(m)?

5. Should TTB consider proposing a separate standard for the use of the term “estate” or “estates” on wine labels and, if so, what should that standard be?

6. Should TTB propose to amend the regulations to reflect its current policy that “Estate grown” may be used on a label only if the wine meets the requirements for products labeled “Estate bottled” under § 4.26?

7. Should TTB propose a usage standard for “Estate grown” in the regulations that differs from that specified for “Estate bottled” and if so, what should that standard be?

8. Should TTB continue to permit the use of “Estate(s) vineyard(s),” “Vineyard estate(s),” or “Estate(s) wines” or other similar terms, whether or not preceded by the winery name, on product labels when the wine does not meet the “Estate bottled” standards in § 4.26? Why or why not?

9. Would the use of the terms described in paragraph 8 above lead consumers to believe that the product was “Estate bottled” in accordance with § 4.26? Should TTB set specific regulatory standards for the use of these terms and, if so, what should they be?

C. Proprietor Grown and Vintner Grown

Since 1982, TTB and its predecessor agency have had a policy regarding the use of the terms “Proprietor grown” and “Vintner grown” on wine labels and in advertisements. Under this policy, TTB considers the words “Proprietor grown” and “Vintner grown” to be acceptable on wine labels and in advertisements, provided that 100 percent of the grapes are grown on vineyards owned or controlled by the bottling winery. TTB believes that adherence to this standard is necessary in order for the label to meet the truthful, accurate, and not-misleading standards of § 4.38(f), and so that any advertisements conform to the prohibitions in § 4.64 concerning false and misleading statements. TTB is considering the possibility of amending the regulations to reflect this position and invites comments from industry members, consumers, and other interested parties on the following specific questions concerning the use of these terms:

1. Should TTB continue to permit, without amending the regulations, the

use of the terms “Proprietor grown” and “Vintner grown” on wine labels and in advertisements only if 100 percent of the grapes used to make the product are grown on vineyards owned or controlled by the bottling winery?

2. Should TTB propose to amend the regulations to reflect the “Proprietor grown” and “Vintner grown” standard as stated above?

3. Should TTB consider another standard for the use of these terms and, if so, what should it be?

D. Vineyard, Orchard, Farm, or Ranch and Other Similar Terms

Section 4.39(m) of the TTB regulations provides that the name of a vineyard, orchard, farm, or ranch shall not be used on a wine label unless 95 percent of the wine in the container was produced from “primary winemaking material grown on the named vineyard, orchard, farm or ranch.” The TTB regulations, do not, however, define these terms.

TTB has received and approved applications for COLAs for labels using the designation “Single vineyard.” TTB considers the term “single,” when used in conjunction with the term “vineyard” to be additional information covered by § 4.38(f) and therefore subject to the requirements of that section. It has been the position of TTB that the use of the designation “Single vineyard” on labels and in advertisements is appropriate only if 100 percent of the grapes used to make the wine come from one vineyard. Accordingly, TTB is considering the possibility of amending the regulations to define the terms “vineyard,” “orchard,” “farm,” and “ranch” and to incorporate the position concerning use of the designation “Single vineyard” described above. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Does the use of a vineyard, orchard, farm or ranch name on wine labels and in advertisements convey specific information about the product to the consumer and, if so, what information does it convey?

2. Should TTB propose to define the terms “vineyard,” “orchard,” “farm,” or “ranch” in the regulations? If so, what should the definitions be?

3. Should TTB propose to amend the regulations to provide a standard for use of the designation “Single vineyard” and, if so, should that standard be the 100 percent standard described above or some other standard? Should TTB propose to use the same standard for the designations “Single orchard,” “Single

farm,” and “Single ranch”? Why or why not?

E. Other Terms Used on Wine Labels and in Advertisements

TTB understands that there are a variety of other terms not listed above which are commonly used on wine labels and in advertisements to provide some meaningful information to consumers about the content of the particular product. These terms are not currently defined in the TTB regulations. These terms include but are not limited to “Proprietors Blend,” “Old Vine,” “Barrel Fermented,” “Old Clone,” “Reserve,” “Select Harvest,” “Bottle Aged,” and “Barrel Select.” TTB is seeking input from all interested persons regarding which of these terms, or additional terms not listed, if any, TTB should consider defining for the purposes of ensuring consumers are provided with truthful and non-misleading information about the wine. Therefore, TTB is soliciting comments from industry members, consumers, and other interested parties on the following specific questions:

1. Which terms currently used in wine labeling and advertising should TTB consider defining, if any, and what should those definitions be?

2. Why or why not should TTB consider defining such terms?

III. Public Participation

A. Comments Invited

We invite comments from industry members, consumers, and other interested parties on the questions outlined above concerning the use of various winemaking terms commonly used on wine labels and in wine advertisements.

B. Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form associated with this notice in Docket No. TTB-2010-0006 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to that docket is available under Notice No. 109 on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site’s Help or FAQ tabs.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division,

Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- *Hand Delivery/Courier*: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 109 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this notice and any electronic or mailed comments we receive about it. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 109. You may also reach the docket containing this notice and its related comments through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this notice and any electronic or mailed comments we receive on it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

IV. Drafting Information

Lisa M. Gesser and Joanne C. Brady of the Regulations and Rulings Division drafted this notice.

Signed: May 13, 2010.

John J. Manfreda,
Administrator.

Approved: June 22, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Docket No. TTB-2010-0008; Notice No. 111]

RIN 1513-AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is proposing to revise its regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. This proposed rule responds to a recent final rule issued by the Food and Drug Administration as well as reports of severe allergic reaction, including anaphylaxis, to cochineal extract and carmine-containing foods. This proposal would allow consumers who are allergic to cochineal extract or carmine to identify and thus avoid alcohol beverage products that contain these color additives.

DATES: Comments must be received on or before January 3, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov*: Use the online comment form for this notice as posted within Docket No. TTB-2010-0008 at "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

- *Mail*: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

- *Hand Delivery/Courier in Lieu of Mail*: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about it within Docket No. TTB-2010-0008 at <http://www.regulations.gov>. A direct link to this docket is posted under Notice No. 111 on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml. You also may view copies of this notice and the comments we receive about it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290-1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333-7050.

SUPPLEMENTARY INFORMATION:

I. TTB's Authority To Prescribe Alcohol Beverage Labeling Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), sets forth standards for regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages, generally referred to as "alcohol beverage products" throughout this notice. This section gives the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with "adequate information" as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product. Section 105(e) of the FAA Act also