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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, and 19

[Docket No. TTB–2018–0007; T.D. TTB–158; Ref: Notice Nos. 176 and 176A]

RIN: 1513–AB54

Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages

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

ACTION: Final rule.; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending certain of its regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages to address comments it received in response to a notice of proposed rulemaking, Notice No. 176, published on November 26, 2018. In this document, TTB is finalizing certain liberalizing and clarifying changes that were proposed, and that could be implemented quickly and provide industry members greater flexibility. TTB is also identifying certain other proposals that will not be adopted, including the proposal to define an “oak barrel” for purposes of aging distilled spirits, the proposal to require that statements of composition for distilled spirits specialty products list components in “intermediate” products and list distilled spirits and wines used in distilled spirits specialty products in order of predominance, and the proposal to adopt new policies on the use of cross-commodity terms. TTB continues to consider

the remaining issues raised by comments it received that are not addressed in this document. TTB plans to address those issues in subsequent rulemaking documents. The regulatory amendments in this document will not require industry members to make changes to alcohol beverage labels or advertisements and instead will afford them additional flexibility to make certain changes if they wish.

DATES: This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

A. TTB's Statutory Authority

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of wine, distilled spirits, and malt beverages (referred to elsewhere in this document as “alcohol beverages”).

Chapter 51 of the Internal Revenue Code of 1986 (IRC), (26 U.S.C. 5001 et seq.), sets forth, among other things, certain provisions relating to the taxation of, and production, marking, and labeling requirements applicable to, distilled spirits, wine, and beer.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act and IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary of the Treasury (the Secretary) has delegated to the TTB Administrator various functions and duties in the administration and enforcement of these laws through Treasury Department Order 120-01. For a more in-depth discussion of TTB's authority under the FAA Act and the IRC regarding labeling, see Notice No. 176.

B. Notice of Proposed Rulemaking on Modernization of the Labeling and Advertising Regulations for Alcohol Beverages

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), “Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.” The principal goals of that proposed rule were to:

- Make the regulations governing the labeling of alcohol beverages easier to understand and easier to navigate. This included clarifying requirements, as well as reorganizing the regulations in 27 CFR parts 4, 5, and 7 and consolidating TTB’s alcohol beverage advertising regulations in a new part, 27 CFR part 14.
- Incorporate into the regulations TTB guidance documents and current TTB policy, as well as changes in labeling standards that have come about through statutory changes and international agreements.
- Provide notice and the opportunity to comment on potential new labeling policies and standards, and on certain internal policies that had developed through the day-to-day practical application of the regulations to the approximately 200,000 label applications that TTB receives each year.

The comment period for Notice No. 176 originally closed on March 26, 2019, but was reopened and extended at the request of commenters (see Notice No. 176A, 84 FR 9990). The extended comment period ended June 26, 2019. TTB received and posted 1,143 comments in response to Notice No. 176. Commenters included trade associations, consumer interest groups, foreign

entities, a Federally-recognized tribe, State legislators and members of Congress, industry members and related companies, and members of the public.

TTB is also taking into consideration for purposes of this rulemaking earlier comments that were submitted to the Department of the Treasury in response to a Request for Information (RFI) published in the **Federal Register** (82 FR 27212) on June 14, 2017. The RFI invited members of the public to submit views and recommendations for Treasury Department regulations that could be eliminated, modified, or streamlined, in order to reduce burdens. The comment period for the RFI closed on October 31, 2017.

Eight comments on the FAA Act labeling regulations, which included 28 specific recommendations, were submitted in response to the RFI. For ease of reference, TTB has posted these comments in the docket for this rulemaking. TTB is considering all of the relevant recommendations submitted in response to the RFI either as comments to Notice No. 176 or as suggestions for separate agency action, as appropriate.

C. Scope of This Final Rule

The comments TTB received in response to Notice No. 176 provided thorough, substantive, and thoughtful information on a diverse array of issues. Determining the appropriate course of action on all those issues will require further consideration by the Bureau. However, there are some issues that TTB has decided to address now, while it considers the remaining issues. In this final rule, TTB is amending certain regulations, identifying certain proposals it will not move forward with, and identifying certain other issues raised by commenters

that TTB has determined are outside the scope of this rulemaking or otherwise require separate, further rulemaking.

1. Liberalizing and Clarifying Changes That Are Being Implemented in This Final Rule

The issues that TTB has decided to integrate into the regulations through this final rule were well supported by commenters, can be implemented relatively quickly, and would either give more flexibility to industry members or help industry members understand existing requirements, while not requiring any current labels or advertisements to be changed. Liberalizing measures that TTB is finalizing in this document include: Implementing an increase (to plus or minus 0.3 percentage points) in the tolerance applicable to the alcohol content statements on distilled spirits labels, removing the current prohibition against age statements on several classes and types of distilled spirits, removing outdated prohibitions against the use of the term “strong” and other indications of alcohol strength on malt beverage labels, and removing a limitation on the way distilled spirits producers may count the distillations when making optional “multiple distillation” claims on their labels. See Section VI below for a description of all of the changes, both liberalizing and clarifying, that TTB is incorporating into its regulations.

Although TTB received positive comments with regard to its proposed reorganization and recodification of 27 CFR parts 4, 5, and 7, and the establishment of a separate part 14 to address advertising, TTB is not incorporating those organizational changes in this document, but intends to incorporate them at a later date. At this stage, TTB is only addressing a small

subset of the issues raised by commenters in response to Notice No. 176, and is therefore incorporating the amendments into its current regulatory organization. The reorganization will be incorporated at a later date, as more issues are resolved.

2. Proposed Changes That TTB Will Not Adopt

Some changes proposed in Notice No. 176 were opposed by commenters who provided substantive statements about the proposed policies requiring changes to existing labels, requiring industry members to incur substantial costs, or not having the intended result within the purpose of the FAA Act. As a result, TTB is not finalizing certain of the proposals in Notice No. 176. One such proposal is TTB's proposed definition of an "oak barrel" for purposes of aging distilled spirits. TTB received nearly 700 comments on this issue, almost all of which raised specific concerns in opposition to the proposed definition.

In addition to not adopting its proposed definition of an "oak barrel," TTB has decided not to finalize:

- A proposed restriction on the use of certain types of cross-commodity terms (for example, imposing restrictions on the use of various types of distilled spirits terms, including homophones of distilled spirits classes on wine or malt beverage labels).
- Proposed changes to statements of composition for distilled spirits labels, including changes that would have required disclosure of components of intermediate products, required distilled spirits and wines used in a finished

product to be listed in order of predominance, and removed the flexibility to use an abbreviated statement of composition for cocktails.

- A policy that would have limited “age” statements on distilled spirits labels to include only the time the product is aged in the first barrel, and not aging that occurs in subsequent barrels.

- A proposal that would have required that whisky that meets the standards for a specific type designation be labeled with that type designation.

These proposals are described more fully in Section II of this document.

TTB also is not finalizing its proposal to incorporate in its regulations the jurisdictional interaction between U.S. Food and Drug Administration (FDA) determinations that a product is “adulterated” and TTB’s position that such products are “misabeled.” Commenters appeared to misunderstand this proposal, and believed that TTB was proposing to take on a new role of interpreting FDA requirements. TTB is explaining its proposals and clarifying its position with regard to its policy position in this document, but is not moving forward with finalizing the proposed text.

3. Proposals That Will be Considered for Further Rulemaking

TTB recognizes that industry members have an interest in regulatory certainty, particularly with regard to policies that may affect the labeling of their products. Some commenters have asked that TTB complete its rulemaking without multiple final rules. TTB has weighed the benefit of waiting until it has completed review of all of the issues raised by commenters in response to Notice No. 176 against the potential benefit of providing some more immediate flexibility

in identified areas and certainty in others. TTB has decided to promulgate a final rule for a subset of the proposals in Notice No. 176. TTB plans to address the remaining proposals from Notice No. 176 in subsequent **Federal Register** publications, whether by finalizing other proposed changes from Notice No. 176, announcing that such changes will not be adopted, or initiating further rulemaking proceedings on certain issues to obtain the benefit of further public comment. The fact that TTB will address those issues in future rulemaking documents rather than in this final rule does not in any way indicate whether the proposed changes will or will not ultimately be adopted.

II. Discussion of Specific Comments Received and TTB Responses

For ease of navigation, TTB is setting forth the issues and comments it is addressing in this document in the following order: Issues affecting multiple commodities, wine-related issues, distilled spirits-related issues, and malt beverage-related issues. Within each part, the order reflects generally the order the sections appear in the regulations, which will aid readers in comparing the explanations in the preamble with the subsequent section setting forth the regulatory text. TTB is not adopting in this document the reorganization of labeling regulations proposed by Notice No.176, but may at a later date.

A. Issues Affecting Multiple Commodities

1. Incorporating a Definition of “Certificate of Label Approval (COLA)”

In Notice No. 176, TTB proposed to add in parts 4, 5, and 7 a definition of “Certificate of Label Approval.” Under the proposal, the certificate of label approval is defined as a certificate issued on TTB Form 5100.31 that authorizes

the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise. The proposed definition was largely consistent with the definition included in existing § 13.11 and recognizes that TTB authorizes certain revisions to an approved label without requiring the certificate holder to obtain a new COLA. These allowable changes are set forth in Section V of the COLA Form, “Allowable Revisions to Approved Labels.” However, the proposed definition also specifically recognizes that TTB may authorize revisions in other ways, such as through guidance issued on the TTB website.

TTB received two comments in response to the proposed definition of “certificates of label approval.” The National Association of Beverage Importers (NABI) supported the proposed definition but requested that TTB clarify what is meant by “on the certificate or otherwise,” specifically whether the scope of the phrase “or otherwise” includes an authorized “use up” of a label. The Distilled Spirits Council of the United States (DISCUS) also supported the proposed definition.

TTB Response

TTB is incorporating the definition of “certificate of label approval” as proposed into existing §§ 4.10, 5.11, and 7.10, with minor grammatical changes and clarifying language. With regard to the phrase “changes authorized by TTB on the certificate or otherwise,” TTB is intending to reference methods of

authorizing allowable changes other than listing those allowable changes on the COLA form. For example, TTB may announce additional allowable changes through public guidance published on its website at www.ttb.gov. In this way, TTB is able to authorize additional allowable changes, and thereby provide more flexibility to industry members, more quickly while it is in the process of updating the listing of “allowable revisions” that appears as supplemental information along with the instructions for the approved form. Accordingly, TTB has added a parenthetical to the end of the definition to clarify that the phrase “changes authorized by TTB on the certificate or otherwise” includes a TTB authorization of allowable changes through the issuance of public guidance available on the TTB website at www.ttb.gov.

2. Compliance with Federal and State Requirements, Including FDA Requirements

In Notice No. 176, TTB proposed new regulatory text that specifically stated that compliance with the requirements in parts 4, 5, and 7 relating to the labeling and bottling of alcohol beverages does not relieve industry members from responsibility for complying with other applicable Federal and State requirements. Proposed §§ 4.3(d), 5.3(d), and 7.3(d) also set out for the first time in the regulations TTB’s position that to be labeled in accordance with the regulations in these parts, the wine, distilled spirit, or malt beverage may not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

The proposed language was intended to codify for the first time TTB’s longstanding position on these issues, as reflected in current TTB label and formula forms, and recent and older public guidance documents. The proposed

regulatory language was also consistent with the 1987 Memorandum of Understanding (MOU) between FDA and TTB's predecessor agency, ATF, which remains in effect between FDA and TTB. See 52 FR 45502. The MOU specifically refers to ATF's authority over "voluntary recalls of alcoholic beverages that are adulterated under FDA law *or mislabeled under the FAA Act by reason of being adulterated.*" [Emphasis added.]

The MOU thus reflects the longstanding position of TTB and its predecessors that if FDA has determined that an alcohol beverage product is adulterated, then the product is mislabeled within the meaning of the FAA Act, even if the bottler or importer of the product in question has obtained a COLA or formula approval from TTB. See Industry Circular 2010–8, dated November 23, 2010, entitled "Alcohol Beverages Containing Added Caffeine." Subject to the jurisdictional requirements of the FAA Act, mislabeled distilled spirits, wines, and malt beverages, including such adulterated products, may not be sold or shipped, delivered for sale or shipment, or otherwise introduced or received in interstate or foreign commerce, or removed from customs custody for consumption, by a producer, importer, or wholesaler, or other industry member subject to 27 U.S.C. 205(e).

Furthermore, proposed §§ 4.9(b), 5.9(b), and 7.9(b) provided that it remains the responsibility of the industry member to ensure that any ingredient used in the production of alcohol beverages complies fully with all applicable FDA regulations pertaining to the safety of food ingredients and additives and that TTB may at any time request documentation to establish such compliance.

In addition, proposed §§ 4.9(c), 5.9(c), and 7.9(c) provided that it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of alcohol beverages for consumption and that TTB may at any time request documentation to establish such compliance.

Current regulations allow TTB to request information about the contents of a wine, distilled spirits product, or malt beverage through formula submissions or otherwise. See, for example, 27 CFR 4.38(h), 5.33(g), and 7.31(d), as well as the formula requirements in 27 parts 5, 19, 24, and 25. As part of its formula review, TTB may ask for substantiation that an ingredient complies with FDA ingredient safety rules. See Industry Circular 2019-1, dated April 25, 2019, entitled “Hemp Ingredients in Alcohol Beverage Formulas.” (“TTB also consults with FDA on ingredient safety issues where appropriate. In some cases, TTB may require formula applicants to obtain documentation from FDA indicating that the proposed use of an ingredient in an alcohol beverage would not violate the FD&C Act.”) See also Industry Circular 62–33, dated October 26, 1962, entitled “Need for Review of Approved Formulas Covering Distilled Spirits Products,” in which our predecessor agency, the Internal Revenue Service, advised industry members that “they should be prepared to submit proof that all ingredients in their products are acceptable under the Federal Food and Drug regulations.”

TTB received a number of comments on these proposals. TTB received two comments opposing the proposed changes in §§ 4.3(d), 5.3(d), and 7.3(d), which appear to reflect an erroneous belief that the proposed language would

result in TTB, rather than FDA, enforcing the substantive provisions of the FD&C Act and making decisions as to whether alcohol beverages are adulterated within the meaning of that Act. The Brewers Association and American Distilled Spirits Association both suggested that TTB eliminate this provision and leave adulteration determinations under the FD&C Act to FDA. Both comments urged TTB to follow the 1987 Memorandum of Understanding (MOU) between TTB's predecessor agency and FDA, which remains in effect between TTB and FDA.

TTB also received approximately 20 comments on the general issue of FDA and TTB roles in enforcing these requirements, stating that the proposed rule appears to indicate that TTB will attempt to interpret FDA policy. These comments similarly urge TTB to instead "honor the TTB's longstanding Memorandum of Understanding with FDA in which TTB can freely refer matters to FDA where questions of ingredient safety, food contact material safety, or adulteration arise. The TTB has expertise in many arenas, but these topics are the purview of the FDA."

While a few commenters supported the proposals in §§ 4.9, 5.9 and 7.9 relating to compliance with other Federal requirements, many commenters opposed finalizing these proposals. For example, DISCUS commented that the regulations were unnecessary because "industry members fully recognize that complying with TTB's Part 5 rules does not relieve them from compliance with other applicable federal and state requirements." The Beer Institute commented that language about compliance with FDA requirements created unnecessary

confusion about which FDA requirements were being referenced, and recommended that the language be deleted.

Some commenters, including the Wine Institute, the American Distilled Spirits Association, the United States Association of Cider Makers, and Heaven Hill Brands, commented in opposition to the provisions authorizing the appropriate TTB officer to request documentation to establish compliance with applicable FDA regulations regarding the safety of ingredients and packaging materials. These comments made points similar to the following statement made by the United States Association of Cider Makers:

USACM believes the provisions above would invite a diversion of TTB resources into a subject area with which TTB has little-to-no expertise and possesses no legal basis for asserting jurisdiction. Moreover, USACM believes it would be fundamentally unfair for TTB to request information on an ingredient's compliance with FD&C Act standards, subsequently approve the product, but later charge that the approval of that product did not signify compliance with FD&C Act standards. Such a position would violate basic notions of due process.

TTB Response

TTB wishes to clarify that the proposed regulatory text was not meant to indicate that TTB was proposing to change how enforcement responsibilities for ingredient safety, food contact material safety, or adulteration issues are allocated between FDA and TTB. See Memorandum of Understanding between the Food and Drug Administration (FDA) and the Bureau of Alcohol, Tobacco and Firearms (ATF), 52 FR 45502 (1987). The MOU was entered into by TTB's predecessor agency, ATF, and remains in effect between FDA and TTB. With regard to adulterated alcohol beverage products, the MOU provides as follows:

ATF, as the agency with a system of specific statutory and regulatory controls over alcoholic beverages, will have primary responsibility for issuing recall notices and monitoring voluntary recalls of alcoholic beverages that are adulterated under FDA law *or mislabeled under the FAA Act by reason of being adulterated*. This agreement does not affect or otherwise attempt to restrict the seizure or other statutory and regulatory authorities of the respective agencies. [Emphasis added.]

Thus, the 1987 MOU specifically recognizes the position that adulterated alcohol beverages are mislabeled under the FAA Act. This position was reiterated in Industry Circular 2010–8, in which TTB advised that FDA’s determination that certain alcohol beverages were adulterated under the FD&C Act “would have consequences under the FAA Act, because of TTB’s position that adulterated alcohol beverages are mislabeled within the meaning of the FAA Act.”

The proposed regulation was not meant to suggest that TTB would abandon its position that it defers to FDA on issues of ingredient safety, food contact material safety, and adulteration under the FD&C Act. TTB continues to work with FDA, within our respective authorities, on these issues, and will continue to rely upon FDA to make determinations about the safety of ingredients and whether the use of certain ingredients renders an alcohol beverage adulterated under the FD&C Act.

It is TTB’s position that its review of labels and formulas does not relieve industry members from their responsibility to ensure compliance with applicable FDA regulations. See, for example, Industry Circular 2010–8, in which TTB reminded industry members as follows:

* * * each producer and importer of alcohol beverages is responsible for ensuring that the ingredients in its products comply with the laws and regulations that FDA administers. TTB’s approval

of a COLA or formula does not imply or otherwise constitute a determination that the product complies with the [Federal Food, Drug, and Cosmetic Act], including a determination as to whether the product is adulterated because it contains an unapproved food additive.

The instructions on the forms for formula approval (TTB F 5100.51, TTB F 5110.38, and TTB F 5120.29) contain similar language. For example, TTB F 5100.51 states:

This approval is granted under 27 CFR Parts 4, 5, 7, 19, 24, 25, and 26 and does not in any way provide exemption from or waiver of the provisions of the Food and Drug Administration regulations relating to the use of food and color additives in food products.

Accordingly, the proposed regulations about requesting documentation with regard to ingredient safety issues did not represent a change from current policy.

TTB has decided not to move forward with the proposed amendments on this issue. The commenters generally supported TTB's current policy, but misunderstood the intent of the proposed revisions. After considering the comments and reexamining the issues, TTB has determined that the proposed clarification would not meet its intended purpose.

3. Alcohol Beverage Products That Do Not Meet the Definition of a Wine, Distilled Spirits, or Malt Beverage Under the FAA Act

In the proposed rule, TTB set forth regulations to clarify which alcohol beverage products meet the statutory definition of a wine or malt beverage under the FAA Act, and which do not. Products not meeting these definitions are not subject to the requirements of parts 4 or 7 of the TTB regulations and, instead, are subject to FDA labeling regulations (and may be subject to the labeling

requirements of the IRC, which are codified in the TTB regulations at parts 24 and 25). For example, wine that is under 7 percent alcohol by volume does not fall under the jurisdiction of the FAA Act. Proposed §§ 4.5 and 4.6 related to wine products not subject to TTB labeling requirements, and proposed § 7.6 related to brewery products. Proposed § 7.6 also explicitly referred readers to the regulations in part 4 for saké and similar products that meet the definition of “wine” under the FAA Act (but that are “beer” under the Internal Revenue Code). TTB did not propose a similar section for distilled spirits because there are no distilled spirits products that would be subject to the FDA food labeling regulations rather than TTB regulations. Products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are considered to be distilled spirits; thus, they are subject to the distilled spirits labeling regulations in part 5 of the TTB regulations. These clarifications did not represent any change in TTB policy, and are based on statutory provisions.

TTB received no comments in response to proposed §§ 4.5 and 4.6. TTB also did not receive any comments in direct response to proposed § 7.6. However, the Confederated Tribes of the Chehalis Reservation did submit a comment requesting TTB to clarify that unmalted grains can be used to produce “fermented beer products.”

TTB Response

TTB is finalizing the provisions of proposed §§ 4.5, 4.6, and 7.6, except that §§ 4.5 and 4.6 are being incorporated into the existing regulations as §§ 4.6

and 4.7, respectively. In response to the comment from the Confederated Tribes of the Chehalis Reservation, TTB notes that the FAA Act allows malt beverages to be made from unmalted cereals in addition to malted barley and hops. However, pursuant to the statutory definition of a “malt beverage” found in 27 U.S.C. 211(a)(7), a beer made without any malted barley would not be considered a “malt beverage” and would not be subject to the labeling requirements of the FAA Act or part 7 of the TTB regulations. Such a product (other than saké and similar products) would generally be considered either a “beer” or a “cereal beverage,” depending on the alcohol content, and would be subject to the labeling requirements of the IRC, which are codified in the TTB regulations at part 25, and may also be subject to FDA labeling regulations. See TTB Ruling 2008–3, Classification of Brewed Products as “Beer” Under the Internal Revenue Code of 1986 and as “Malt Beverages” under the Federal Alcohol Administration Act, for more information.

4. Exportation in Bond and Labeling Requirements

The current regulations exempting products for export from the labeling regulations under the FAA Act are stated in an inconsistent manner. In existing §§ 4.80 and 7.60, wine and malt beverages “exported in bond” are exempted from the requirements of those respective parts. However, current § 5.1, which is entitled “General,” provides that part 5 “does not apply to distilled spirits for export.” In Notice No. 176, TTB proposed to clarify its position that these three provisions all mean the same thing—i.e., that products exported in bond directly from a bonded wine premises, distilled spirits plant, or brewery, or from customs

custody, are not subject to the FAA Act regulations under parts 4, 5, or 7 of the TTB regulations. However, if products that are removed for consumption or sale in the United States (which are subject to the FAA Act regulatory provisions in parts 4, 5, and 7) are subsequently exported after being removed for consumption or sale, they are not “exported in bond,” and are accordingly subject to the FAA Act provisions when the removal for consumption or sale occurs. This proposal was only a clarifying change to existing §§ 4.80 and 7.60. With regard to part 5, TTB sought comments on whether the proposed change to the current regulations in § 5.1 would be viewed as impacting existing practices, and if so, what the impact would be.

Six commenters responded to the proposals. Wine Institute supported the proposed amendment to part 4. NABI stated that the exemption for exported products should not be restricted to alcohol beverage products exported in bond.

DISCUS urged revision of the proposal, stating as follows:

We urge the Bureau to revise this proposal to clarify that products may be sent to a different distribution center prior to exportation. Some industry members would be required to change their distribution processes if this proposal is adopted as some companies utilize an internal central distribution point in the United States to gather products prior to international shipment. To effectuate this change, we propose adding the words “or between” after the words “directly from” in the rule.

The Oregon Winegrowers Association, the Willamette Valley Wineries Association, and the Mexican Chamber of the Tequila Industry all suggested that, even though the regulations exempt exported products from COLA requirements, the regulations should still require any statement on the labels of exported products to be truthful, accurate, and not misleading.

TTB Response

TTB is not moving forward with its proposed changes in parts 4 and 7. Upon additional consideration, TTB believes that the current regulatory text is sufficiently clear that the FAA Act regulations do not apply to wine and malt beverages exported in bond. Instead, in this document, TTB is incorporating the existing text from parts 4 and 7 (at §§ 4.80 and 7.60) into part 5 (at § 5.1), to ensure consistency and promote clarity.

It is TTB's long-held position that products removed from industry member premises for consumption or sale in the United States must be labeled in accordance with the FAA Act. Accordingly, TTB disagrees with NABI's comment that exemption from label approval for exported products should not be restricted to products exported in bond.

To the extent that the DISCUS comment reflects a concern about the meaning of exportation "directly" from a distilled spirits plant, TTB's only intent was to clarify the current requirements, and not to create distinctions between various types of exportations without payment of tax. Accordingly, TTB is removing references to whether the products are exported "directly" from the bonded premises, to clarify that there is no intent to create distinctions based on the various types of exportations without payment of tax that are allowed under the IRC.

In response to the comments from the Oregon Winegrowers Association, the Willamette Valley Wineries Association, and the Mexican Chamber of the Tequila Industry that TTB regulations should require any statement on the labels

of exported products to be truthful, accurate, and not misleading, TTB notes that the regulations implementing the FAA Act have always included some sort of exemption for exported products, and TTB knows of no basis to limit that exemption now.

5. Personalized Labels

In Notice No. 176, TTB proposed, at new §§ 4.29, 5.29, and 7.29, to set forth the process for importers and bottlers to make certain changes to approved labels in order to personalize the labels without having to resubmit the labels for TTB approval. Personalized labels are labels that contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a producer may offer custom labels to individuals or businesses that commemorate an event such as a wedding or grand opening.

The proposed regulations reflect current policy as set forth in TTB public guidance documents (see, for example, TTB G 2017–2 and TTB G 2011–5) and provide for a process whereby applicants submit a template as part of the application for label approval, with a description of the specific personalized information that may change. If the application complies with the regulations, TTB will issue the COLA with a qualification that will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates, without applying for a new COLA. The proposed regulations provided examples of situations where personalized labels would be permitted.

WineAmerica, Beverly Brewery Consultants, the New York Farm Bureau, the Beer Institute, and DISCUS all explicitly supported the proposed regulations. DISCUS also requested that additional examples be provided in the regulation to specifically recognize that personalized labels may include “elements such as bottle engravings, signatures, medallions, bottle bags, and barrel program information.” The Wine Institute and the Mexican Chamber of the Tequila Industry did not specifically express support or opposition for the proposal but did each make recommendations. The Wine Institute noted that TTB had not included a definition of “personalized label” in each of the proposed sections and provided suggested language to clarify the meaning of the term. The Wine Institute also suggested removing the examples of types of personalized labels from the proposed regulations, as they “are better conveyed in written guidance.”

The Mexican Chamber of the Tequila Industry requested that TTB include a specific prohibition on information that is misleading.

TTB Response

After reviewing the comments, TTB is incorporating the proposed provisions into the existing regulations as new §§ 4.54, 5.57, and 7.43. In response to the Wine Institute’s comment, TTB is including a definition of “personalized label” into each of the new sections. The definition is drawn from (and is an abbreviated version of) current TTB guidance on personalized labels (TTB G 2017–2, Personalized Labels, dated September 5, 2017), and reads in the new regulatory text as follows: “A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized

for customers.” With regard to Wine Institute’s suggested clarifying language, TTB believes that the examples in the proposed regulations provided important context and served a clarifying purpose, and thus those examples remain in the final rule.

With regard to the comment from The Mexican Chamber of the Tequila Industry, TTB believes that it is not necessary to include a specific prohibition on misleading information on personalized labels, as the revised regulations provide that approval of an application for a personalized label does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage, or that is inconsistent with or in violation of the regulations.

With regard to the DISCUS comment about including additional examples to cover bottle engravings, signatures, medallions, bottle bags, and barrel program information, TTB does not believe it is appropriate or helpful to include these examples. In some cases, the types of information that would be added through these examples may be covered by TTB’s allowable revision policy, which is not specific to personalized labels; in other cases, they may be covered by the personalized label rules.

TTB notes that industry members may offer personalized labels without going through this process, by obtaining individual COLAs for each personalized label. Similarly, if the information to be added to a personalized label is already covered by an allowable revision to an approved label, the industry member may make changes to the approved label without obtaining TTB approval.

6. Country of Origin References

Current TTB regulations require a country of origin statement on labels of imported distilled spirits, but include no such requirement for imported wine or malt beverages. Nonetheless, U.S. Customs and Border Protection (CBP) regulations in 19 CFR parts 102 and 134 require a country of origin statement to appear on containers of all imported alcohol beverages, including alcohol beverages that are imported in bulk and then subjected to certain production activities or bottling in the United States if, pursuant to CBP regulations, the beverage is the product of a country other than the United States. In ATF Ruling 2001–2, TTB’s predecessor agency clarified that the country of origin requirements under part 5 would be interpreted in a manner consistent with CBP’s rules of origin, to avoid inconsistencies between CBP and ATF rules and confusion for the industries affected by those rules.

For part 5, TTB proposed replacing the existing requirements setting out how the country of origin statement must appear on a label with a cross-reference to existing CBP country of origin regulations; this cross-reference was also proposed for parts 4 and 7. This would have the effect of removing the substantive requirement from the TTB distilled spirits regulations in part 5 and having a consistent cross reference to the CBP regulations in parts 4, 5, and 7. TTB also proposed including information on requirements for alcohol beverages that are further processed in the United States after importation.

TTB received three comments in response to this proposal. NABI expressly supported the addition of a cross reference to the CBP’s country of

origin requirements, stating that country of origin marking requirements “should be governed solely by CBP regulations rather than separate TTB regulations.” An attorney also commented in favor of the general concept that TTB should defer to CBP with respect to country of origin marking requirements. DISCUS opposed the proposed amendment, and commented in favor of retaining the current country of origin requirement for distilled spirits.

TTB Response

TTB is proceeding with its proposal to remove the substantive requirement for country of origin labeling for distilled spirits. It has been the longstanding policy of TTB and its predecessor that this requirement should be interpreted in a manner that is consistent with the CBP requirements. As noted by NABI, which is the trade association representing importers, “country of origin information should be governed solely by CBP regulations rather than separate TTB regulations.”

TTB is also incorporating a cross-reference to CBP regulations into existing §§ 4.35, 5.36, and 7.25 because the provisions are a clarifying change that alerts industry members of their obligation to comply with CBP requirements. TTB is simplifying the proposed language to instead simply refer readers to the CBP regulations for those requirements.

7. Misleading Representations as to Commodity

In Notice No. 176, TTB proposed to adopt a new prohibition on types of cross-commodity terms that TTB considered to be misleading (see proposed §§ 4.128, 5.128, and 7.128). TTB proposed this prohibition in response to the

fact that more and more frequently TTB receives applications for approval of a label for one commodity bearing a term normally associated with a different commodity, including terms that are specific classes and types for other commodities. TTB was concerned that this had the potential to confuse consumers as to the identity of the product.

Some uses of cross-commodity terms are restricted under the current labeling regulations because they are considered misleading; for example, current regulations at 27 CFR 7.29(a)(7) prohibit a malt beverage label from containing information (a statement, representation, etc.) that tends to create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product. The regulation includes certain types of labeling statements that would not be considered misleading.

The text of the proposed regulations would have also established a new prohibition on the use of the name of a class or type designation (or a homophone or coined word that simulated or imitated a class or type designation) for one commodity on the label of a different commodity, if the representation created a misleading impression about the identity of the product.

Consistent with past practice and/or current regulations, the proposed regulation clarified that the proposal would not prohibit various non-misleading labeling statements, including statements of alcohol content, the use of the same brand name for different commodities, the use of cocktail names for wines and malt beverages, or the use of truthful and non-misleading statements such as “aged in whisky barrels” for a malt beverage or wine.

TTB solicited comments on whether the proposed prohibition and the proposed exceptions to the prohibition would adequately prevent consumer deception and whether the proposed regulations would require changes to existing labels. TTB particularly solicited comments on whether the use of coined terms and homophones in brand names and elsewhere on the labels is misleading to consumers when those terms imply similarity to class and type designations to which a product is not entitled.

Eleven commenters responded to these proposed provisions. The New York Farm Bureau and WineAmerica expressed support for this proposal without offering further explanation. The Mexican Chamber of the Tequila Industry expressed support for more restrictive provisions that would prohibit any use of a term associated with one commodity from appearing on the label of another commodity.

Sazerac, DISCUS, the American Craft Spirits Association, and the American Distilled Spirits Association, however, expressed opposition to the proposal related to distilled spirits labels (proposed § 5.128), and the Beer Institute opposed the similar proposal related to malt beverage labels (proposed § 7.128). Wine Institute opposed the proposal related to wine labels (proposed § 4.128). Williams Compliance and Consulting opposed the proposal for all three commodities. The common theme among these comments is that the proposed regulations would not meet the intent of, or were unnecessary for, preventing consumer deception and would also inhibit future innovations. For instance, the American Distilled Spirits Association stated that TTB's general rules can

address distilled spirits labeling that falsely or deceptively suggests that a distilled spirit is or contains a different commodity. Furthermore, Senator John Kennedy of Louisiana noted that the proposal “may require the relabeling of certain products that are marketed using terms associated with different commodities.”

TTB Response

Based on the feedback provided by commenters regarding the ambiguity of the proposed text, TTB is not finalizing the proposal. Instead, TTB will continue to rely on its current regulations (in §§ 4.39(a)(1), 5.42(a)(1) and 7.29(a)(1)) to address specific circumstances where it finds that a representation on a label is misleading, and will not move forward with a blanket approach to cross-commodity terms that could unnecessarily restrict creativity in the use of truthful and non-misleading representations on labels.

8. Alternate Contact Information for Advertisements

Current regulations in §§ 4.62, 5.63, and 7.52 require advertisements to include the name and address (city and state) of the industry member responsible for the advertisement. TTB proposed to amend the regulations to allow alternative contact information for the permittee to be shown instead of the city and State. These new options included the advertiser’s phone number, website, or email address.

TTB received two comments on this issue. Diageo and DISCUS both commented in support of the proposed liberalization of the mandatory information requirements for the responsible advertiser. However, both commenters also

believe mandatory statements on advertisements are no longer necessary and should be removed from TTB's regulations.

TTB Response

TTB is adopting the proposed amendment to allow additional options for displaying contact information for responsible advertisers. This amendment will allow the advertiser to display its phone number, website, or e-mail address rather than the city and State where it is located. TTB is incorporating these amendments into the existing regulations in §§ 4.62, 5.63, and 7.52. The comments concerning the elimination of mandatory statements on advertisements are outside the scope of this rulemaking. Accordingly, TTB will consider these comments as suggestions for future rulemaking.

B. Wine Issues

1. Citrus Wine

The standards of identity currently provide for two different classes of fruit wine—the standards of identity for citrus wine are found in § 4.21(d) and the standards of identity for fruit wine are found in § 4.21(e). The production standards for the “citrus wine” and “fruit wine” classes are the same in the part 4 standards of identity. Furthermore, the ways in which fruit wine and citrus wine may be designated are consistent.

In Notice No. 176, TTB proposed to eliminate the class “citrus wine” and include any wines made from citrus fruits in the existing fruit wine class. TTB proposed this regulatory change in part because distinguishing between citrus fruits and other fruits seemed to add an unnecessary complexity to the

regulations and also in part because the Bureau does not receive many applications for COLAs for wines designated as “citrus wine” (as opposed to applications for COLAs for citrus wines derived wholly from one kind of citrus fruit, such as “orange wine” or “grapefruit wine” and designated as such on the label).

For these reasons and because citrus is a type of fruit, TTB proposed to eliminate the class of “citrus wine” and to include any wines made from citrus fruits in the fruit wine class. TTB solicited comments on whether this change (in proposed § 4.145) would require changes to existing labels.

TTB received one comment in response to this proposed change.

WineAmerica supported the proposal without additional explanation.

TTB Response

The intent of the original proposal was to streamline the regulations. TTB sees no reason to continue to distinguish between citrus wine and fruit wine. TTB is eliminating the class designation “citrus wine,” and amending § 4.21(e) to include citrus wines in the fruit wine class. The final rule also adds language to clarify that wines previously designated as “citrus wine” or “citrus fruit wine” may continue to use that term on the label instead of “fruit wine.” Thus, labels will not have to be revised as a result of this amendment.

2. Vintage Dates for Wine Imported in Bulk

In proposed § 4.95, TTB proposed to remove a prohibition (that currently appears in § 4.27) that restricts the use of vintage dates on imported wine. Under current regulations, imported wine may bear a vintage date only if, among other

things, it is imported in containers of 5 liters or less, or it is bottled in the United States from the original container that shows a vintage date. In the preamble to Notice No. 176, TTB noted that this liberalizing measure would allow the use of vintage dates on wine imported in bulk containers and bottled in the United States, as long as bottlers have the appropriate documentation substantiating that the wine is entitled to be labeled with a vintage date. TTB received one comment on this issue from an industry representative supporting the proposal.

TTB Response

TTB is incorporating the proposal in existing § 4.27. TTB believes the amendment will provide additional labeling flexibility to bottlers who import vintage wine in bulk for bottling in the United States. As long as the bottler has the appropriate documentation substantiating that the wine is entitled to be labeled with a vintage date, it should not be disqualifying that the wine was imported in a bulk container that did not bear a vintage date.

3. Natural Wine

In Notice No. 176, TTB set out provisions that would update existing references to certain IRC provisions and provide that grape wine (including sparkling grape wine and carbonated grape wine), fruit wine, and citrus wine must meet the standards for “natural wine” under the IRC. The proposal would align the part 4 regulations with the current requirements (pertaining to sweetening, amelioration, and the addition of wine spirits for natural wine) in the IRC, which includes wine treating practices for imported wines acceptable to the United States under an international agreement or treaty. TTB did not receive

any comments opposing the proposal or indicating that the proposed amendments would require changes to any existing labels.

TTB Response

TTB is incorporating the proposed provisions into current § 4.21. TTB had identified this proposal as potentially restrictive in Notice No. 176 out of an abundance of caution. TTB, however, did not receive comments indicating that the proposed amendments would require changes to any existing labels. TTB believes that the alignment of the regulations under the FAA Act and the IRC will facilitate compliance with the production standards specified under the IRC for “natural wine.”

C. Distilled Spirits Issues

1. Definition of “Distilled Spirits”

In Notice No. 176, TTB proposed to amend the existing definition of “distilled spirits,” as it currently appears in § 5.11, to reflect TTB’s longstanding policy that products containing less than 0.5 percent alcohol by volume are not regulated as “distilled spirits” under the FAA Act. TTB did not receive any comments on this proposal.

TTB Response

TTB is adopting the proposed amendment by amending the definition of “distilled spirits” in existing § 5.11.

2. Definition of “Oak Barrel”

In Notice No. 176, TTB proposed to incorporate into its regulations in part 5 a definition of an “oak barrel” as a “cylindrical oak drum of approximately 50

gallons capacity used to age bulk spirits,” and specifically sought comments “on whether smaller barrels or non-cylindrical shaped barrels should be acceptable for storing distilled spirits where the standard of identity requires storage in oak barrels.”

TTB received almost 700 comments in opposition to the proposed definition, including comments from individuals, distillers, trade associations, and a United States Senator. These comments generally opposed the proposed size restriction, and many also opposed the proposed restriction on shape. Only a handful of individual comments supported the proposed definition. The trade associations that commented on this issue (such as DISCUS, the American Distillers Institute, the American Distilled Spirits Association, the American Craft Spirits Association, the American Single Malt Whiskey Commission, the Kentucky Distillers’ Association, the Texas Whiskey Association, and the Missouri Craft Distillers Guild) all opposed the proposed definition.

Most of the commenters asserted that this proposal conflicted with innovative industry practices where oak containers of various sizes and/or shapes are used to develop and age bulk spirits. Several stated that the proposed definition would economically burden distillers who age bulk spirits in oak containers other than cylindrical oak drums of approximately fifty gallons capacity. Many commenters suggested the proposed definition would impose an undue burden on small distillers, who use small or square barrels due to limited storage space or for other reasons. The consensus was that the proposed definition would stifle innovation and did not adequately reflect industry practices

or consumer expectations regarding the aging of whisky and other distilled spirits whose standards of identity require storage in oak barrels.

As discussed further under “Regulatory Flexibility Act” in Section III below, the Office of Advocacy for the Small Business Administration also commented on this issue, challenging the factual basis for TTB’s certification that this proposal would not have a significant economic impact on a substantial number of small entities, and suggesting that the proposal be revised or that TTB publish a supplemental initial regulatory flexibility analysis (IRFA) to propose alternatives to the rule.

Finally, TTB received a few comments on oak barrels that went beyond the issues on which TTB specifically sought comment. For example, a few commenters supported regulatory amendments that would allow aging in barrels made of wood other than oak, and one comment supported the use of a metal container with oak staves.

TTB Response

After careful review of the comments received on this issue, TTB has determined that it will not move forward with the proposal to define an “oak barrel” as a “cylindrical oak drum of approximately 50 gallons used to age bulk spirits” or otherwise define the term in the regulations. After analysis of the comments, TTB has concluded that current industry practice and consumer expectations for aging whisky (and other spirits aged in oak barrels) do not support limiting the size and shape of the oak barrel in the manner proposed in Notice No. 176. Under the standard of identity for whisky in the TTB regulations

at 27 CFR 5.22(b), among other things, a product labeled as whisky “possesses the taste, aroma, and characteristics generally attributed to whisky,” and is “stored in oak containers.” TTB’s intent was to define oak containers within objective parameters that would be consistent with a product possessing the taste, aroma, and characteristics generally attributed to whisky, not to unnecessarily limit innovation. TTB believes the current regulatory text can be interpreted to allow different sizes and shapes of oak containers as long as the product meets the other criteria for the standard. In the absence of a regulatory definition for “oak barrel” or “oak container,” it will be TTB’s policy that these terms include oak containers of varying shapes and sizes.

To the extent that a few commenters addressed other issues pertaining to the proposed definition, such as the acceptability of other types of wood and of metal containers with oak staves, TTB will consider these issues for future rulemaking efforts.

3. Certificates of Age and Origin

In Notice No. 176, TTB proposed to maintain without substantive change the current requirements related to imported distilled spirits that must be covered by certificates as to the age and the origin of the spirits. TTB proposed an organizational change, to divide the existing paragraph on brandy, Cognac, and rum into one paragraph on brandy and Cognac and a separate paragraph for rum. That proposal would not result in any substantive change to the requirements for these three spirits, but would provide greater ease of readability.

TTB received eight comments on this proposal. Privateer Rum, a distiller, stated that it applauds and supports the proposal. Spirits Canada recommended changing the existing regulations by removing references to the Immature Spirits Act for Canadian whisky products. Spirits Canada also requested that TTB allow aging in barrels made from any species of tree, not just oak. The Tequila Regulatory Council (CRT), the Mexican Chamber of the Tequila Industry, and NABI each commented in support of the requirements, but also suggested an edit to the requirements for imported Tequila. These three commenters noted that the authority in Mexico for issuing certificates is delegated to a conformity assessment body, the CRT, rather than a person or government official. Additionally, Tequila exports from Mexico are not accompanied by a certificate of age and origin, but rather by a Certificate of Tequila Export. Consequently, the commenters asked TTB to amend the regulations for Tequila to take these facts into account. Finally, DISCUS and the Beverage Alcohol Coalition each requested that TTB no longer require certificates for whisky to indicate the type of barrel (new or reused) if the standard of identity for that whisky does not require the use of a new barrel. They also suggested that TTB retain the certificates indefinitely, instead of requiring the importer to retain the certificate for five years, as required currently by 27 CFR 5.52(f).

TTB Response

TTB is finalizing the proposed reorganization of the paragraph relating to brandy, Cognac, and rum to make the related provisions easier to read. In response to the comment from Spirits Canada, TTB is also removing references

to the Immature Spirits Act for Canadian whisky, and also for Scotch and Irish whiskies. The current reference to compliance with the laws of the applicable foreign countries would cover any aging requirements of those foreign governments, and there is no need to specify the particular laws of those countries, which are subject to change. Finally, TTB is amending the paragraph on Tequila to incorporate the correct terminology relating to the certification process. These minor amendments are being incorporated into existing § 5.52.

With respect to the comments from DISCUS and the Beverage Alcohol Coalition that suggest that TTB should retain certificates instead of requiring importers to retain them for 5 years, TTB notes that current regulations do not require that importers submit the certificates to TTB or CBP on a routine basis. Rather, importers are only required to maintain such certificates in their own possession and make them available to TTB or CBP upon request; thus, were TTB to take the action suggested, it would create a new requirement that importers submit such certificates, which is beyond the scope and intent of Notice No. 176. With regard to the suggestion that certificates should not be required to indicate whether the barrels in which all types of whiskies were aged are new or reused, this suggestion also goes beyond the scope of Notice No. 176, but will be considered for future rulemaking.

4. Statements of Composition

Current regulations at § 5.35(a) provide that the class and type of distilled spirits must be stated on the label if defined in current § 5.22. Otherwise, the product must be designated in accordance with trade and consumer

understanding or with a distinctive or fanciful name; in either case, the designation must be followed by a “truthful and adequate statement of composition.” The regulations do not provide general guidelines on what suffices as a truthful and adequate statement of composition. However, the regulations in § 5.35(b) provide that in the case of highballs, cocktails, and similar prepared specialties, a statement of the classes and types of distilled spirits used in the manufacture of the product is a sufficient statement of composition, when the designation adequately indicates to the consumer the general character of the product.

TTB proposed to set forth standards for what should be included in statements of composition, including incorporation of current TTB policies on how to identify distilled spirits, wines, flavors, coloring materials, and non-nutritive sweeteners that are added to a specialty product. The proposed rule also proposed three changes to the rules on statements of composition. The first required the listing of the separate components of an “intermediate” flavoring product; the second required that distilled spirits and wines used in the production of the finished product be listed in order of predominance; and the third required a full statement of composition for cocktails rather than the abbreviated statement provided for by current regulations.

As explained in more detail below, after evaluating the comments received on these issues, TTB has decided not to move forward on any of these proposals. For the sake of clarity, TTB will address the comments received on each of these three proposals separately, and then provide a single TTB

response, as the issues are related. At this time, TTB is merely making a typographical correction in the heading of § 5.35(b).

i. Intermediates.

In Notice No. 176, TTB proposed to treat components such as distilled spirits and wines that are blended together by a distilled spirits plant in an intermediate product and then added to a distilled spirits product the same as if the components of the intermediate had been added separately for purposes of determining the standard of identity of the finished product, such as a flavored distilled spirits product. (See proposed §§ 5.141 and 5.166.) Additionally, TTB proposed to change its policy with regard to statements of composition for specialty products to require the disclosure of the components of the intermediate product, including spirits, wines, and flavoring materials, as part of the statement of composition. In the case of distilled spirits specialty products, TTB currently treats intermediate products as “natural flavoring materials” when they are blended into a product, for the purpose of disclosure as part of a truthful and adequate statement of composition. TTB has seen changes in the alcohol beverage industry and in various formulas and put forward the proposed changes in the belief that treating intermediate products as natural flavoring materials does not provide adequate information to consumers, as required by the FAA Act.

TTB received seven comments in response to its proposal with regard to “intermediate products.” The comments, all in opposition to TTB’s proposed policy, came from trade associations (DISCUS, the American Distilled Spirits

Association, and the Kentucky Distillers Association), distillers (Diageo, Sazerac, and Heaven Hill Brands), and Senator John Kennedy. These comments urged TTB to retain its current policy of treating intermediate products as “natural flavoring materials” when they are blended into a product, for the purpose of both compliance with standards of identity and disclosure as part of a truthful and adequate statement of composition.

Many commenters pointed to the proposal as a change in policy that would require changes in the labeling and formulation of several products. For example, Heaven Hill Brands commented that the proposal was “a significant departure from existing labeling practices” that will “create consumer confusion, and will create the need to develop otherwise unnecessary reformulations and relabeling for numerous products.” Diageo stated that many specialty products currently contain wine added via intermediates, and the “proposed rule upsets decades of reliance by the industry in crafting products that use wine for blending purposes.”

Several commenters also suggested that requiring labeling disclosure of the specific components in the intermediate product would actually mislead consumers. For example, Sazerac commented that “a requirement to disclose intermediate products in the statement of composition for a distilled spirits specialty product, particularly where the intermediates do not impart any characterizing flavor or qualities to the finished product, would be misleading to consumers.” Diageo, DISCUS, the Kentucky Distillers’ Association, and the American Distilled Spirits Association all raised similar objections. Some of the

commenters perceived the proposal as a partial form of ingredient labeling, and suggested that until and unless TTB actually implemented ingredient labeling requirements, this type of partial disclosure requirement would mislead consumers.

ii. Order of predominance.

In new § 5.166(a)(1), TTB proposed to require distilled spirits and wines in the statement of composition to be listed in order of predominance, which was intended to provide consumers with more clear information about the composition of distilled spirits specialty products.

TTB received comments from Heaven Hill Brands and the American Distilled Spirits Association in favor of clarifying TTB's policies regarding statements of composition. However, these comments emphasized that TTB should clarify that it is not changing its longstanding administrative policies, on which the industry has relied. For example, Heaven Hill Brands requested that "TTB not make significant changes in existing policy and interpretation that the spirits industry has relied upon for decades." DISCUS commented in opposition to any changes to the regulations on statements of composition, and included a suggested revision that reverted back to TTB's current regulations. Senator Kennedy also commented in opposition to the proposal.

iii. Cocktails.

In Notice No. 176, TTB proposed to amend its policies with regard to the use of cocktail names in statements of composition on distilled spirits labels. Under current regulations at 27 CFR 5.35(b)(1), and in guidance issued by TTB's

predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (see Compliance Matters 94-1, issued in 1994), distilled spirits cocktails with names recognized by consumers may be labeled with the cocktail name and an abbreviated, rather than a full, statement of composition. This abbreviated statement is a declaration of the spirits components of the cocktail, for example, “Screwdriver made with vodka.” In Notice No. 176, TTB proposed to require a full statement of composition in such instances because, over the years, TTB has seen an increase in the number of cocktails recognized in bartenders’ recipe books as the industry continued to innovate. TTB was concerned about whether consumers are fully informed when a label has only a cocktail name and the component spirit(s) because of the vast array of cocktails. Accordingly, TTB proposed to require a full statement of composition on such specialty products, and those products could continue to be designated with the name of a cocktail.

TTB received several comments regarding its proposal. DISCUS, Sazerac, the Kentucky Distillers’ Association, and the American Distilled Spirits Association opposed the proposal on the grounds that it would impose costs as a result of labeling and formulation changes without benefiting consumers, who might be confused by statements of composition that differed from what they were used to seeing on cocktail labels. Sazerac also stated that a full statement of composition would amount to an unnecessary labeling requirement for cocktails that are well recognized and understood by consumers.

Some of the commenters also addressed TTB’s current policy of including a list of “recognized cocktails” in the Beverage Alcohol Manual for Distilled Spirits

(Distilled Spirits BAM; TTB P 5110.7) for purposes of administering this provision. The American Distilled Spirits Association commented that the regulation “should establish a framework for TTB to periodically publish, after seeking input from the industry and other sources, lists of cocktails it recognizes and the ingredients required for such cocktails.” On the other hand, Sazerac commented that TTB should eliminate the list of recognized cocktails in the BAM, as the list is “outdated and not particularly relevant to consumers.”

TTB Response

TTB is not finalizing its proposal to require statements of composition to include the elements of an intermediate. TTB is persuaded that the proposed changes could require changes in the labeling (or, alternatively, lead to reformulation) of many distilled spirits products, and that benefit to consumers would be speculative. In addition, a number of comments TTB received in response to Notice No. 176 proposed that TTB consider proposing ingredient labeling, which would obviate the need for the types of information TTB proposed to require. TTB agrees that ingredient labeling is worth consideration, and is reviewing such comments to determine next steps to obtain additional comment through further rulemaking.

TTB is also not moving forward with a reference to intermediates in the standard for flavored spirits and for standards of identity in general. Current policies and regulatory text regarding intermediates and statements of composition will remain in effect, which includes the longstanding policy that class 9 flavored spirits must derive all of their spirits content from the base

spirit of the product, in contrast with those products that are labeled with statements of composition in lieu of a class or type. See, for example, T.D. ATF–37, 41 FR 48120, 48121 (1976) (“standards of identity for flavored products adopted in 1968 require them to contain a spirits base of 100 percent gin, rum, vodka, etc.”). Furthermore, the current regulations expressly provide that class 9 flavored spirits may not contain more than 2.5 percent wine by volume (15 percent for certain flavored brandy products) without label disclosure. See 27 CFR 5.22(i).

Additionally, TTB has decided it will not move forward with the order of predominance requirement for distilled spirits and wines included in the final product in the statement of composition and will retain current regulatory text. Current policy, which requires that the base distilled spirit is listed first (for example, “vodka with red wine and natural flavors”), remains in effect.

Finally, based on the comments, TTB is not moving forward with the proposal to require a full statement of composition for cocktails. We agree that consumers are used to seeing the abbreviated statement of composition on cocktail labels. We also agree that a full statement of composition is not necessary in cases where the cocktail name is well recognized and understood by consumers

Accordingly, the existing regulations and policies on abbreviated statements of composition for cocktails will continue in effect. TTB notes that in addition to the cocktails that are recognized in the Distilled Spirits BAM, TTB evaluates applications for label approval that include new cocktail names on a

case-by-case basis to determine if the cocktails are recognized in bartender's guides or other publications that reflect a widespread consensus on the composition of a cocktail (such as trade magazines). This review will, in turn, determine whether the designation adequately indicates to the consumer the general character of the product. TTB will consider the comments on updating the list of recognized cocktails as suggestions for future action.

5. Use of Term "Bottled in Bond"

In Notice No. 176, TTB proposed to maintain the rules for the use of the terms "bottled in bond," "bond," "bonded," or "aged in bond," or other phrases containing these or synonymous terms. The use of these terms was originally restricted to certain products under the Bottled in Bond Act of 1897 (29 Stat. 626), which was repealed in 1979 (see Distilled Spirits Tax Revision Act of 1979, Public Law 96-39, 93 Stat. 273, title VIII, subtitle A). The Bottled in Bond Act was intended to provide standards for certain spirits that would inform consumers that the spirits were not adulterated. Treasury Department officers monitored bonded distilled spirits plants.

TTB's predecessor agency, ATF, decided to maintain the labeling rules concerning "bottled in bond" and similar terms, because consumers continued to place value on these terms on labels. Imported spirits may use "bottled in bond" and similar terms on labels when, among other conditions, the imported spirits are produced under the same rules that would apply to domestic spirits.

One of the conditions for use of these terms is that the distilled spirits must be stored in wooden containers for at least four years. To maintain parity

between whisky that is aged and vodka and gin, which do not undergo traditional aging, vodka and gin are required to be stored in wooden containers to use “bond” or similar terms, but the wood containers must be coated or lined with paraffin or another substance to prevent the vodka or gin from coming into contact with the wood. TTB specifically requested comment on whether TTB should maintain the “bottled in bond” standards, including those relating to gin and vodka.

TTB received 14 comments in response to the request for comment. The majority of the comments were in favor of maintaining “bottled in bond” as a term related to quality. Only two commenters recommended removing the term as confusing and irrelevant. Four of the supporting comments also responded directly to TTB’s request for comments on whether TTB should maintain the requirement that vodka and gin be stored in lined wooden containers if they are labeled as “bottled in bond.”

Roulaizon Distilling Co., the American Distilling Institute, and DISCUS each supported retaining the bottled in bond standards and also recommended removing the related requirement concerning paraffin-lining of barrels for storing gin. The Kentucky Distillers’ Association recommended the expansion of the term for gin, but recommended that TTB no longer allow for vodka to be bottled in bond.

TTB Response

Consistent with the comments, TTB is maintaining the regulatory standards for “bottled in bond” with an amendment to allow gin to be stored in

either paraffin-lined or unlined barrels. This amendment is a conforming amendment to account for changes made in this final rule that would allow for the aging of gin. (See Section 8, Age Statements, below.) TTB is not changing the provisions allowing vodka to be labeled “bottled in bond”.

6. Brand Labels

In Notice No. 176, TTB proposed to revise regulations relating to the placement of mandatory information on distilled spirits containers, in order to increase flexibility. Current § 5.32(a) requires that the following appear on the “brand label”: the brand name, the class and type of the distilled spirits, the alcohol content, and, on containers that do not meet a standard of fill, net contents. The term “brand label” is defined in current § 5.11 generally as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal retail display conditions, as well as any other label appearing on the same side of the bottle as the principal display panel. Further, the definition states that “[t]he principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.”

TTB believes that the information that currently must appear together on the brand label (or “principal display panel”) is closely related information that, taken together, conveys important facts to consumers about the identity of the product. Proposed § 5.63(a) would allow this mandatory information to appear anywhere on the labels, as long as it is within the same field of vision, which

means a single side of a container (which for a cylindrical container is 40 percent of the circumference) where all pieces of information can be viewed simultaneously without the need to turn the container. TTB believes that requiring that this information appear in the same field of vision, rather than on the display panel “most likely to be displayed, presented, shown, or examined” at retail, is a more objective and understandable standard, particularly as applied to cylindrical bottles.

TTB received five comments related to this proposal. A distiller and an industry group each supported the change to a “single field of vision” concept. Another distiller noted that it would like the alcohol content to be permitted on the front label or the back label. Diageo said that it supports a provision that would allow all national mandatory information to appear on a single label. DISCUS noted that it supports the increased flexibility that the proposal would allow, bringing distilled spirits more in line with current requirements for wine. However, DISCUS also recommended that TTB liberalize placement rules further, allowing mandatory information to appear anywhere on distilled spirits labels.

TTB Response

TTB is moving forward with liberalizing the placement rules as proposed, by allowing the brand name, class and type designation, and alcohol content to appear anywhere on the label as long as those three pieces of information are in the same field of vision. TTB is not adopting the DISCUS comment to eliminate all placement standards for mandatory information, because TTB believes that it is important to keep together on the label these three closely related elements of

information that, taken together, convey important facts to consumers about the identity of the product.

TTB is making a conforming change to existing § 5.32 so that the net contents statement may appear on any label. TTB is also amending the definition of “brand label” in existing § 5.11 to remove the requirement that the brand label be the principal display panel. To clarify, this means that the brand label may be on any side of distilled spirits bottles, but must show the brand name, class and type designation, and alcohol content within the same field of vision.

7. Alcohol Content Tolerance for Distilled Spirits

TTB received 24 comments in response to proposed § 5.65(c), which would expand the tolerance for the labeled alcohol content to plus or minus 0.3 percentage points for distilled spirits. Twenty-three of the commenters expressed support for expanding the tolerance, and one distillery commenter requested that the tolerance be increased further to 0.99 proof for liqueurs. One commenter, DISCUS, requested that TTB amend also 27 CFR 19.353, which sets out requirements for gauging product in the bottling tank at a distilled spirits premises, to be consistent with the 0.3 percentage point tolerance allowed for labeling statements.

TTB Response

TTB is finalizing the expanded alcohol content tolerance as proposed, to plus or minus 0.3 percentage points. This final rule amends §§ 5.37(b) and 19.356(c) and (d) to incorporate the language of the proposal. Regarding the

comment requesting a 0.99 proof tolerance for liqueurs, TTB sees no basis for allowing liqueurs to have a higher tolerance than all other classes. Finally, TTB agrees with the comment made by DISCUS regarding the need for a conforming amendment to § 19.353, and is amending that section to provide that the gauge must be made at labeling proof, subject to the tolerances set forth in section 19.356(c).

8. Age Statements

In Notice No. 176, TTB proposed to incorporate its current policy that only the time in a first oak barrel counts towards the “age” of a distilled spirit. That is, if spirits are aged in more than one oak barrel (for example, if a whisky is aged 2 years in a new charred oak barrel and then placed into a second new charred oak barrel for an additional 6 months), only the time spent in the first barrel is counted in the “age” statement on the label. (See proposed § 5.74(a)(3).)

TTB received approximately 50 comments in opposition to the proposal. For example, St. George Spirits stated, “We believe that all time spent in a barrel should be counted towards the spirit’s age statement—regardless of movement between barrels.” The Beverage Alcohol Coalition, a coalition of domestic and international distilled spirits industry groups, stated, “It is a common practice for many distilled spirits products, including Scotch Whisky, to mature in more than one type of cask. As proposed, the rule would mean whiskies matured in more than one cask, could not state the full time the product spent maturing, even if the second cask complies with class/type requirements.” Five commenters

suggested that if multiple barrels are used, the label should contain an optional or mandatory disclosure of that fact.

TTB also received 17 comments supportive of the provision in proposed § 5.74 to eliminate the prohibition on age statements on many classes of distilled spirits, including gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties. Some of the comments specifically noted that they are supportive of expanding the permissibility of an age statement to gin. Three commenters stated that age statements should be permitted on all distilled spirits, including vodka.

TTB Response

After reviewing the comments, TTB agrees that all the time spent in all oak containers should count towards the age statement. TTB notes that where a standard of identity requires aging in a particular kind of barrel, such as straight whisky, which requires aging two years in a new charred oak container, that aging must take place in that specified container type before being transferred to another vessel. TTB is amending existing § 5.40(a)(1) regarding statements of age for whisky that does not contain neutral spirits to provide that multiple barrels may be used and to provide that the label may optionally include information about the types of oak containers used. This does not affect current requirements to disclose aging in reused cooperage under 27 CFR 5.40(a)(4).

TTB believes that the contemporary consumer understands the meaning of age statements and that there is consumer interest for innovative products

such as aged gin. As a result, TTB is amending the regulations in current § 5.40(d) to allow age statements on all distilled spirits except for neutral spirits (other than grain spirits). Because neutral spirits and vodka are intended to be neutral, spirits that are aged would not meet the standard to be labeled as neutral spirits or vodka. A spirit that would otherwise be a neutral spirit but is aged would qualify for the designation “grain spirits,” which may bear age statements as provided in current § 5.40(c).

9. Multiple Distillation Claims

Proposed § 5.89 would have defined a distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still. The proposal also would have maintained the current rule that only additional distillations beyond those required to meet the product’s production standards may be counted as additional distillations.

TTB received nine comments in support of this definition. Commenters included distillers and industry groups. For example, a distiller stated that “consumers would reasonably expect that a distillation means a single pass through an alembic or column still and not, for instance, a count of plates in a column.” The American Distilling Institute stated that “[w]e believe that [the proposed] definition is clear and readily understood by consumers.” However, some commenters sought a more scientific or technical definition of distillations.

Many commenters opposed the provision that would not count the distillations necessary to meet the standard of identity towards multiple distillation claims, even though that provision has been in the current TTB regulations. For

example, the American Distilling Institute said that the provision “flies in the face of standard industry convention, is highly dependent on the type of still being used and would require a significant amount of relabeling.” DISCUS said that the provision would mean that “brands cannot truthfully articulate the number of distillations a spirits undergoes.” Spirits Europe also commented that not allowing the distillations necessary to the production process would be “contrary to long standing labelling conventions.”

TTB Response

After review and consideration of the comments, TTB has determined that allowing distillers to count all distillations, including those required to meet a specific standard of identity when making labeling claims, provides the consumer with truthful and adequate information. TTB is liberalizing the provision found in current § 5.42(b)(6) accordingly.

TTB is also incorporating the proposed definition of a distillation (for purposes of multiple distillation claims) into existing § 5.42, as well as the clarification that distillations may be understated but not overstated. Multiple distillation claims will remain optional, not mandatory. TTB is making conforming changes to the advertising regulations in § 5.65(a)(9).

10. Standard of Identity for Vodka

In Notice No. 176, TTB proposed to amend the standard of identity for vodka, a type of neutral spirit, to codify the holdings in several past rulings: Revenue Ruling 55–552 and Revenue Ruling 55–740 (vodka may not be stored in wood); ATF Ruling 76–3 (vodka treated with charcoal or activated carbon may

be labeled as “charcoal filtered” under certain parameters); and Revenue Ruling 56–98 and ATF Ruling 97–1 (allowing treatment with up to 2 grams per liter of sugar and trace amounts (1 gram per liter) of citric acid). In addition, TTB specifically sought comment on whether the current requirement that vodka be without distinctive character, aroma, taste, or color should be retained and, if this requirement is no longer appropriate, what the appropriate standards should be for distinguishing vodka from other neutral spirits.

TTB received twelve comments in response to the proposed changes to the standard of identity for vodka. TTB did not receive any comments relating to the proposal to incorporate several past rulings related to treatment of vodka with sugar, citric acid, and charcoal.

TTB requested comments on whether the requirement that vodka be without distinctive character, aroma, taste, or color should be retained and, if this requirement is no longer appropriate, what the standards should be for distinguishing vodka from other neutral spirits. Ten commenters suggested that the requirement should be eliminated. For example, Altitude Spirits stated that “[t]he requirement that vodka be without distinctive character, aroma, taste, or color should NOT be retained and is no longer appropriate given the variety in base ingredients, flavors, and flavor profiles found in the diverse vodka category.” Within this group of comments, two commenters stated that they believe that TTB should reverse its longstanding policy and allow vodka to be aged in wood.

Two individual commenters recommended – without explanation – that the standard be kept unchanged.

TTB Response

Based on its review of the comments, TTB agrees that the requirement that vodka be without distinctive character, aroma, taste, or color no longer reflects consumer expectations and should be eliminated. Vodka will continue to be distinguished by its specific production standards: vodka may not be labeled as aged, and unlike other neutral spirits, it may contain limited amounts of sugar and citric acid.

Accordingly, TTB is amending the existing regulations at § 5.22(a)(1) to remove the requirement that vodka be without distinctive character, aroma, taste, or color, and to incorporate in the regulations the standards set forth in the rulings discussed above, obviating the need for those rulings which will be canceled. TTB will also make a conforming change to existing § 5.23(a)(3)(iii), which discusses the addition of harmless coloring, flavoring, or blending materials to neutral spirits, to reflect the allowed additions to vodka in amended § 5.22(a)(1).

11. Whisky Labeling

In Notice No. 176, TTB proposed to require that, where a whisky meets the standard for one of the types of whiskies, it must be designated with that type name, with an exception provided for Tennessee Whisky. TTB solicited comments on this proposal as a potentially restrictive change to the regulations, because in the current regulations, when a whisky meets the standard for a type of whisky, it is unclear whether the label must use that type designation or may use the general class “whisky” on the label. However, historical documents

indicate that TTB's predecessor agencies classified whiskies with the type designation that applied, and required that type to be the label designation. For example, in January 1937, the Federal Alcohol Administration stated that "[w]here a product conforms to the standard of identity for 'Straight Bourbon Whiskey' it must be so designated and it may not be designated simply as 'Whiskey.'" See FA-91, "A Digest of Interpretations of Regulations No. 5 Relating to Labeling and Advertising of Distilled Spirits," p. 5.

Accordingly, proposed § 5.143 provided that where a whisky meets the standards for one of the type designations, it must be designated with that type name, with an exception for Tennessee Whisky. The current TTB regulations at § 5.35(a) state, in part, that the class and type of distilled spirits shall be stated in conformity with current § 5.22 if defined therein.

Two industry associations (DISCUS and the Kentucky Distillers' Association) opposed the proposed change, stating that it would require a large number of revisions to labels for products currently on the market. The American Craft Spirits Association commented in general support of the proposed § 5.143 without addressing this specific issue.

In § 5.143, TTB also proposed to specifically provide that the designation "straight" was an optional labeling designation for whiskies. Currently, TTB labeling policy requires whiskies that are aged more than two years to be designated as "straight." DISCUS commented in support of making "straight" an optional designation, stating this would provide labeling flexibility.

TTB Response

After review of the comments, TTB believes that the proposed amendment does not necessarily reflect current industry practice or consumer expectations. We also recognize that requiring distillers to use a specific type designation for whiskies would require a number of labeling changes. Therefore, TTB will maintain its policy that distillers have the option of using the general class “whisky” as the designation or one of the type designations that applies. TTB also will liberalize its policy on the term “straight” and is amending current § 5.22(b)(2)(iii) to make it an optional labeling designation for whiskies that qualify for the designation, but will not expand the use of the term to other classes of distilled spirits. TTB will cancel and supersede Revenue Ruling 55–399, “Straight Whisky,” which relates to outdated provisions regarding wholesale liquor dealer packages.

12. Absinthe

TTB proposed a new standard of identity for Absinthe (or Absinth) in proposed § 5.149 in response to a petition TTB had received. Absinthe products are distilled spirits products produced with herbs, including wormwood, fennel, and anise.

The proposed standard was to remind the reader that the products must be thujone-free under FDA regulations. Based on current limits of detection, a product is considered “thujone-free” if it contains less than 10 parts per million of thujone.

TTB proposed to supersede a current requirement that appears in Industry Circular 2007–5 that all wormwood-containing products undergo analysis by TTB's laboratory before approval of the product's formula. In the proposal, TTB explained that it would verify compliance with FDA limitations on thujone through marketplace review and distilled spirits plant investigations, where necessary.

TTB received 10 comments supporting the addition of a standard for absinthe. Most of the commenters, including DISCUS, the American Craft Spirits Association, St. George Spirits, and the American Distilling Institute, recommend that TTB finalize a more restrictive standard for absinthe and provided comments on changes that would better align the standard with the marketplace. With regard to the laboratory testing requirement, St. George Spirits was the only commenter opposed to its elimination, and one commenter supported eliminating the requirement but requested that TTB laboratory services be made available for thujone testing. DISCUS specifically supported removing the laboratory testing requirement, saying that the elimination of the testing requirement will decrease burdens upon industry and TTB.

TTB Response

With regard to the standard of identity for absinthe, TTB is not finalizing its proposed standard of identity for absinthe at this time and intends to air in further rulemaking the standards that were proposed by the commenters. With regard to the laboratory testing requirement, TTB is removing the testing requirement for products made with wormwood, and will update published guidance to reflect this change. However, TTB intends to continue to offer the same type of thujone-

testing that it has previously provided for the next year, and will assist industry members and outside laboratories to develop their own thujone-testing capabilities.

13. Agave Spirits

The TTB regulations currently in § 5.22(g) provide for a standard for Tequila, and both Tequila and Mezcal are recognized as distinctive products of Mexico that must be manufactured in Mexico in accordance with the laws and regulations of Mexico governing their manufacture. Currently, spirits that are distilled from agave that are not Tequila or Mezcal are subject to formula requirements.

In Notice No. 176, TTB proposed to create within the standards of identity a class called “Agave Spirits” and two types within that class, “Tequila” and “Mezcal” (see proposed § 5.148), replacing the existing Class 7, Tequila. The proposed standard would include spirits distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus *Agave* and up to 49 percent is derived from sugar. Agave spirits must be distilled at less than 95 percent alcohol by volume and bottled at or above 40 percent alcohol by volume. Tequila and Mezcal would be types within the Agave Spirits class, and the standards of identity for those products would not be changed.

TTB received 11 comments in support of the creation of the “Agave Spirits” class, including several distillers, the Missouri Craft Distillers Guild, the Kentucky Distillers’ Association, the American Craft Spirits Association, and the American Distilled Spirits Association. Some commenters suggested changes to

the proposed standards, such as creating an additional type designation for products made from 100 percent agave or allowing the use of agave syrup as the fermentable ingredient. The Tequila Regulatory Council (CRT) stated that it welcomes the proposed class but suggested that Tequila or Mezcal should be required to use the designations “Tequila” or “Mezcal” on their labels if they meet the requirements for those standards.

Two commenters, Diageo and DISCUS, opposed the creation of the class “agave spirits,” arguing that it may create consumer confusion or “take advantage of Tequila’s or Mezcal’s prestige.” Additionally, DISCUS requested “a carveout” to clarify that “additives permitted under Mexican regulations for Tequila and Mezcal do not change the class and type” of those distilled spirits.

TTB Response

TTB believes that the creation of the “Agave Spirits” class will provide more information to consumers and will allow industry members greater flexibility in labeling products that are distilled from agave. Accordingly, TTB is amending the regulations in current § 5.22(g) to incorporate the proposed standard. Industry members who have approved labels for “spirits distilled from agave” may choose to change their labels to designate their products as “agave spirits,” but will not be required to do so. New applicants will continue to have the option of designating their products as “spirits distilled from agave” if they meet the requirements for use of this statement of composition. As a result of this change, products labeled as “agave spirits” are not subject to a requirement to submit a formula for approval, which reduces the burden on distillers and importers.

TTB does not plan to move forward with the restrictive amendments suggested by commenters. Such suggestions include a requirement that products meeting the standard of identity for Tequila or Mezcal be labeled with the applicable type designation rather than the class designation. Making use of the type designation optional rather than mandatory is consistent with TTB's approach for other classes and types, such as whisky, as described in Section 11 above, and for brandy and rum. Accordingly, TTB is not adopting this comment. TTB is making conforming changes to § 5.40(b) to clarify that the current provisions relating to age statements for Tequila will apply to all agave spirits.

With regard to the DISCUS comment about Tequila and Mezcal, we have made a revision to clarify that this final rule does permit the use of harmless coloring, flavoring, or blending materials in the production of agave spirits, including Tequila or Mezcal, in accordance with the provisions of § 5.23. This means that such materials may be used when they are "customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2½ percent by volume of the finished product." 27 CFR 5.23(a)(2).

TTB has published guidance in the Beverage Alcohol Manual for Distilled Spirits (Distilled Spirits BAM; TTB P 5110.7), which provided that no harmless coloring, flavoring, or blending materials may be used in the production of Tequila or Mezcal. This position was based on the understanding that no such materials were recognized as being customarily used in the production of Tequila or Mezcal in accordance with established trade usage. TTB agrees that in

making such a determination, it should take into consideration what Mexican regulations allow. Accordingly, TTB will review this guidance and make appropriate revisions after consulting with the Government of Mexico with regard to what ingredients are customarily used in the production of alcohol beverages designated as “Tequila” or Mezcal” under Mexican regulations. Any coloring or flavoring materials that are allowed based on customary use would be subject to the 2½ percent limit prescribed by § 5.23.

It should be noted that this position does not change certain minimum requirements that are set forth in the standard of identity for all “agave spirits,” including Tequila and Mezcal, regarding proof at distillation, bottling proof, and the percentage of mash derived from plant species in the genus Agave. Furthermore, TTB regulations may require the disclosure of certain ingredients on distilled spirits labels even if the ingredients are authorized by the regulations of a foreign country.

D. Malt Beverage Issues

1. Alcohol by Weight

Current regulations at § 7.71 provide that alcohol content may be stated on malt beverage labels unless prohibited by State law. They further provide that when alcohol content is stated, and the manner of statement is not required under State law, it must be expressed as percent alcohol by volume, and not as percent by weight, proof, or by maximums or minimums. Certain States require alcohol content to be expressed as percent alcohol by weight, and some industry members have expressed an interest in using labels that express alcohol content

as a percentage of alcohol by volume and by weight, so that they may use the same label throughout the country.

In Notice No. 176, proposed § 7.65 provided that other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may appear on the label, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

TTB received one comment in response to this proposal. The Beer Institute supported the proposal as long as statements of alcohol by weight appeared with statements of alcohol by volume. The Beer Institute believed that consumers were most familiar with alcohol by volume statements, and alcohol by weight information would be more meaningful to them if presented in conjunction with statements they already recognize. No commenters opposed TTB's proposal.

TTB Response

TTB is incorporating this provision into existing § 7.71(b)(1). This change will provide for an additional manner in which industry members can state truthful alcohol content statements, such as alcohol by weight, that appear together with, and as part of, a statement of alcohol content as a percentage of alcohol by volume. As stated in the proposed rule, this change is also consistent with the policy adopted in TTB Ruling 2013–2, which authorizes per-serving statements of fluid ounces of alcohol, as long as they appear as part of a statement that includes the percentage of alcohol by volume.

This change also reflects TTB's recognition that under current regulations, brewers may have to obtain different labels for sale in States that require different types of alcohol content statements. Under the regulations as amended, brewers will be able to use the same label in States that require alcohol content to be stated as a percentage of alcohol by weight and in other States that neither require nor prohibit alcohol by weight statements.

2. Use of the Term "Draft" or "Draught"

In § 7.87, TTB proposed codifying longstanding Bureau policy, expressed in Industry Circular 65-1, that limited use of the terms "draft" or "draught" to malt beverages dispensed from a tap, spigot, or similar device, or that were unpasteurized and required refrigeration for preservation.

Two commenters addressed this proposal. The Brewers Association opposed the proposal because it believes that industry members and consumers understand "draft" to mean beer served from a keg or barrel. The Brewers Association stated that consumers understand that beer in cans or bottles is not "draft" beer, and such labeling claims are "puffery." The Brewers Association therefore requested that TTB remove the proposed restrictions on use of the word "draft." Beverly Brewery Consultants, however, supported the proposal, noting that it "reflects the requirements outlined in Industry Circular 65-1."

TTB Response

After further consideration, TTB has decided not to incorporate the proposed restrictions on use of the word "draft" or "draught" on malt beverages into its regulations, and to cancel Industry Circular 65-1. TTB agrees with the

Brewers Association that consumer perceptions have shifted regarding the terms “draft” or “draught,” and that to most consumers, the term has little or no relation to pasteurization. TTB also agrees that consumers are not likely to confuse beer from a bottle or can with beer from a tap or keg and will not be misled by seeing the term “draft” on a label. Therefore, TTB will treat the words “draft” or “draught” as marketing puffery.

3. Prohibition on Strength Claims

The TTB regulations in § 7.29(f) prohibit the use of the words “strong,” “full strength,” “extra strength,” “high test,” “high proof,” “pre-war strength,” “full oldtime alcoholic strength,” and similar words or statements that are likely to be considered as statements of alcohol content on labels of malt beverages, unless required by State law. The regulations in § 7.29(g) prohibit the use on malt beverage labels of any statements, designs, or devices, whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcohol content, unless required by State law. Current § 7.54(c) contains similar provisions for malt beverage advertisements, with an exception allowed for the reproduction of a malt beverage label bearing an alcohol content statement as allowed by the regulations.

As explained in the preamble to the proposed rule, the labeling prohibitions gave effect to section 105(e)(2) of the FAA Act (27 U.S.C. 205(e)(2)), which prohibited placement of alcohol content statements on malt beverage labels, unless required by State law. The Supreme Court struck down this section of the law, as applied to truthful and non-misleading statements of

alcohol content, on First Amendment grounds in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995). Since then, the TTB regulations have permitted optional alcohol content statements for malt beverage labels, and have mandated alcohol content statements for malt beverages that contain any alcohol derived from added flavors or added nonbeverage ingredients (other than hops extract) containing alcohol. See 27 CFR 7.22(a)(5) and 7.71. Accordingly, sections 7.29(f) and (g) do not prohibit statements of alcohol content as permitted or mandated by those regulations. The advertising provisions of § 7.54(c) are based on 27 U.S.C. 205(f)(2), which was not reviewed in the *Coors* decision.

In Notice No. 176, TTB proposed to modernize the language of these provisions, in proposed § 7.132, by removing some terms (such as “pre-war strength” and “full oldtime alcoholic strength”) that are not likely to be used by today's brewers. TTB also proposed corresponding changes to the malt beverage advertising regulations. The proposed regulations would prohibit strength claims if they mislead consumers by implying that products should be purchased or consumed on the basis of higher alcohol strength.

Three commenters addressed proposed § 7.132. The Beer Institute supported the proposed changes, but noted that all information on product labels essentially exists to entice consumers to purchase a product. The Beer Institute therefore requested examples of claims that TTB would consider to be implying that products should be purchased based on alcohol strength.

A member of the public expressed the belief that certain terms such as “strong” should not be prohibited on labels if they are part of a recognized style

designation, such as “Belgian-style Dark Strong Ale.” The New Civil Liberties Alliance cited removal of the prohibition on “full oldtime alcoholic strength” as an example of easing the burden of regulations on the alcoholic beverage industry.

The Brewers Association commented in support of requiring mandatory statements of alcohol content on malt beverages, which it believed would “eliminate the need to regulate use of the word ‘strong’ or similar terms.” The Brewers Association also called for the removal of the prohibition on the use of “strong” and similar terms on malt beverage labels in a comment in response to the Treasury Department Request for Information. In that comment, the Brewers Association expressed the belief that the prohibition is “an obsolete exercise in light of alcohol content labeling, a more informed consumer, and recognition of first amendment speech rights.”

The Brewers Association also suggested that TTB remove the prohibition in current § 7.29(g) on the use of numerals on malt beverage labels that are likely to be considered as statements of alcohol content. The Brewers Association claimed that numbers on labels are rarely relevant to alcohol content and are instead used to convey information or distinguish products, for example in names that refer to a brewer’s area code. Accordingly, the Brewers Association suggested that sections 7.29(f) and (g) should be removed, and that sections 7.54(c)(1) and (c)(2) should also be removed.

TTB Response

After reviewing the comments, TTB has decided not to finalize proposed § 7.132 and to instead remove prohibitions on strength claims on malt beverage

labels from the regulations entirely. TTB's proposed regulations defined a "strength claim" for the purposes of malt beverage labeling and advertising as "a statement that directly or indirectly makes a claim about the alcohol content of the product" and prohibited such statements if they implied that a malt beverage "should be purchased or consumed on the basis of higher alcohol strength." In light of the comments received, TTB believes that the standard articulated in the proposed regulations would be too difficult to define or enforce in practice.

Instead of implementing a separate policy for the evaluation of whether strength claims are misleading, TTB is removing the regulations in §§ 7.29(f) and 7.54(c), which prohibit strength claims in malt beverage labeling and advertising, respectively. These regulations both prohibited the use of several specific terms, such as "full strength" and "strong," as well as "similar words or statements, likely to be considered as statements of alcoholic content." The removal of TTB's prohibition on strength claims includes the use of the term "strong" or other indications of alcohol strength in malt beverage names, provided such descriptors are not misleading.

Although *Coors* related to labeling, not advertising, TTB believes it is appropriate to have consistent policies regarding statements of alcohol content. While such statements are now permitted, these regulatory changes should not be interpreted to limit TTB's authority to prohibit claims relating to alcohol content that TTB considers false or misleading.

For the same reasons, TTB is removing § 7.29(g), which prohibits the use of numerals likely to be considered statements of alcohol content.

III. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While TTB has determined that the majority of businesses subject to this rule are small businesses, the regulatory amendments in this final rule will not have a significant impact on those small entities as it will not impose, or otherwise cause, an increase in reporting, recordkeeping, or other compliance burdens on regulated industry members. The final rule will not require industry members to make changes to labels or advertisements. The following analysis provides the factual basis for TTB's certification under 5 U.S.C. 605.

1. Background

In Notice No. 176, published on November 26, 2018, TTB proposed a recodification of the labeling and advertising regulations pertaining to wine, distilled spirits, and malt beverages. The purpose was to clarify and update these regulations to make them easier to understand and to incorporate agency policies. TTB determined that the majority of businesses subject to the proposed rule were small businesses (see Notice No. 176 for more information on this determination). Accordingly, TTB sought comments on the impact of the proposals, and on ways in which the regulations could be improved. TTB also proposed a delayed compliance date to provide all regulated entities three years

to come into compliance with the proposed regulations, to minimize the costs associated with any label changes.

In this final rule, TTB is amending certain of its regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages to address comments it received in response to Notice No. 176. TTB is continuing to consider all of the issues raised by comments it received in response to that notice, but is taking this interim step to finalize certain of the liberalizing and clarifying changes that have been decided, and that could be implemented quickly and provide industry members some greater flexibility.

2. Comment from SBA Chief Counsel for Advocacy

As required by section 7805(f) of the Internal Revenue Code (26 U.S.C. 7805(f)), TTB submitted Notice No. 176 to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations.

By letter dated August 6, 2019, the Office of Advocacy for the U.S. Small Business Administration (“SBA Office of Advocacy”) provided a comment on Notice No. 176. The comment stated that “Advocacy commends the TTB on its logical reorganization of the labeling and advertising rules and streamlining some of its processes.” However, the comment also indicated that in its discussions with small businesses in the alcohol beverage industry, two issues with the proposed rule were brought to its attention: the definition of an “oak barrel,” and creating a separate class and type for mead. The comment suggested that TTB revise the rule to reduce the impacts of the proposed definition of “oak barrel.”

As described in more detail in section II.C.2 of this preamble, in Notice No. 176, TTB proposed to define the term “oak barrel,” as a “cylindrical oak drum of approximately 50 gallons capacity used to age bulk spirits.” However, TTB specifically solicited comment on whether smaller barrels or non-cylindrical shaped barrels should be acceptable for storing distilled spirits where the standard of identity requires storage in oak barrels.

With regard to TTB’s proposed definition of an “oak barrel” as a “cylindrical oak drum of approximately 50 gallons used to age bulk spirits,” the SBA Office of Advocacy stated that many small distillers use oak barrels of varying sizes, including barrels of 25 and 30 gallons. The comment noted that the SBA Office of Advocacy had spoken with one small distiller that had approximately 5,000 proof gallons of whisky that is either aging in small cooperage or is in holding tanks after aging in small cooperage, and that under the proposed rule, that product could not be sold as “whisky.” The SBA Office of Advocacy noted that this distiller’s product is worth approximately \$1.5 million at retail.

The comment from the SBA Office of Advocacy also stated that the proposed 3-year compliance date would be inadequate, because it would not provide enough time to sell all spirits aged in barrels smaller than 50 gallons, and because small distillers need to make purchasing decisions for barrels on an ongoing basis. Additionally, some small distillers use square barrels rather than cylindrical barrels.

In response to Notice No. 176, TTB received almost 700 comments from distillers and trade associations that stated that the proposed rule would impose

burdens on small businesses that currently use barrels of varying sizes and shapes. Only a handful of commenters supported the proposed definition.

After careful review of the comments received on this issue, TTB has determined that it will not move forward with the proposal to define an “oak barrel” as a “cylindrical oak drum of approximately 50 gallons used to age bulk spirits” or otherwise define the term in the regulations. In the absence of a regulatory definition for “oak barrel” or “oak container,” it will be TTB’s policy that these terms include oak containers of varying shapes and sizes.

Because TTB is not moving forward with the proposed definition of “oak barrel,” the final rule addresses the comment from SBA Office of Advocacy. Accordingly, there is no need to conduct a supplemental initial regulatory flexibility analysis to propose alternatives to the rule. The other issue addressed by the comment from the SBA Office of Advocacy dealt with the proposed regulations on honey wine (also known as “mead”). This final rule does not address that issue; thus, TTB will review SBA’s comment on mead, along with the other comments received on this issue, for further action.

3. Other Proposals That Will Not Be Adopted

In addition to not adopting its proposed definition of an “oak barrel,” TTB has decided not to adopt certain other proposals, including the following:

- A proposed restriction on the use of certain types of cross-commodity terms (for example, imposing restrictions on the use of various types of distilled spirits terms, including homophones of distilled spirits classes on wine or malt beverage labels).

- Proposed changes to statements of composition for distilled spirits labels, including changes that would have required disclosure of intermediate products, required distilled spirits and wines used in a finished product to be listed in order of predominance, and removed the flexibility to use an abbreviated statement of composition for cocktails.
- A policy that would have limited “age” statements on distilled spirits labels to include only the time the product is aged in the first barrel, and not aging that occurs in subsequent barrels.
- A proposal that would have required that whisky that meets the standards for a specific type designation be labeled with that type designation rather than the broader class designation.

This final rule includes only amendments that TTB believes offer clarifications and liberalize requirements for industry members and that avoid unintended conflicts with current labels or business practices, while still providing adequate protection for consumers. Because the final rule will not require changes to labels, advertisements, or business practices, no delayed compliance date is necessary, and the final rule will take effect 30 days from publication in the **Federal Register**.

The preamble explains in detail the reasons why the proposals that have been adopted in this final rule are either clarifying or liberalizing. For example, the final rule clarifies existing policies regarding personalized labels and exemptions from the labeling regulations for products exported in bond. Some examples of liberalizing measures that TTB is finalizing in this document include:

implementing an increase (to plus or minus 0.3 percentage points) in the tolerance applicable to the alcohol content statements on distilled spirits labels; removing the current prohibition against age statements on several classes and types of distilled spirits; removing outdated prohibitions against the use of the term “strong” and other indications of alcohol strength on malt beverage labels; and removing a limitation on the way distilled spirits producers could count the distillations when making optional “multiple distillation” claims on their labels. The final rule also liberalizes the advertising regulations for wine, distilled spirits, and malt beverages, by allowing alternate contact information for the responsible advertiser, such as a telephone number, website, or email address, in lieu of the responsible advertiser’s location by city and State.

In summary, while the entities affected by the amendments in this final rule include a substantial number of small entities, the final rule does not require labeling or advertising changes by these small businesses, but instead offers industry members additional flexibility in complying with the regulations. Thus, TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore, a regulatory assessment is not necessary.

C. Paperwork Reduction Act

The collections of information in the regulations contained in this final rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0020, 1513–0041, 1513–0064 and 1513–0087. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The specific regulatory sections in this final rule that contain approved collections of information are §§ 4.62, 5.32, 5.52, 5.63, 7.52, and 19.353. In addition, the new regulations at §§ 4.54, 5.57 and 7.43 include cross-references to regulations covered by an approved collection of information. As explained further below, the regulatory amendments made in this final rule do not change any reporting, recordkeeping, or third-party disclosure requirement of, or the respondent burden associated with, these existing information collections.

Regarding OMB control number 1513–0020, the regulations in §§ 4.54, 5.57, and 7.43, set forth the process for importers and domestic bottlers to make certain changes to approved labels in order to personalize the labels without having to resubmit the labels for TTB approval. These new regulations cross-reference the existing label approval regulations covered under OMB control number 1513–0020 that require applications for label approval for wine, distilled spirits, and malt beverages, respectively. The new regulations do not add any new requirements or respondent burden to that previously-approved collection as

they merely set forth current TTB guidance regarding when the submission of label approval applications for personalized labels is required.

Regarding OMB control number 1513–0041, relating to gauging records for distilled spirits plants, TTB is amending § 19.353 to include conforming language that refers to the expanded labeling tolerance for alcohol content that is provided in the amendments to § 19.356. The addition of that conforming language has no effect on this information collection’s requirements or respondent burden.

Regarding OMB control number 1513–0064, related to importer records, amendments to § 5.52 merely make clarifications to the regulations concerning certificates of age and origin for distilled spirits and do not affect the information collection’s requirements or respondent burden.

Regarding OMB control number 1513–0087, related to FAA Act-based labeling and advertising requirements, TTB is amending §§ 4.62(a), 5.63(a) 7.52(a) to allow alcohol beverage advertisers optional ways to provide contact information in their advertisements, such as by displaying a telephone number, website, or email address in lieu of the advertiser’s city and State. In § 5.32, TTB is amending its distilled spirits labeling requirements to allow the display of a non-standard distilled spirits container’s net contents on any label and to remove the TTB regulatory provision relating to country of origin statements. None of these regulatory amendments increase the requirements or respondent burdens associated with OMB control number 1513–0087.

IV. Drafting Information

Personnel of the Regulations and Rulings Division drafted this document with the assistance of other employees of the Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Imports, International agreements, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers,

Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Regulatory Amendments

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

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

Subpart A—Scope

2. Add § 4.6 to read as follows:

§ 4.6 Wines covered by this part.

The regulations in this part apply to wine containing not less than 7 percent and not more than 24 percent alcohol by volume.

3. Add § 4.7 to read as follows:

§ 4.7 Products produced as wine that are not covered by this part.

Certain wine products do not fall within the definition of a “wine” under the FAA Act and are thus not subject to this part. They may, however, also be subject to other labeling requirements. See 27 CFR parts 24 and 27 for labeling requirements applicable to “wine” as defined by the IRC. See 27 CFR part 16 for health warning statement requirements applicable to “alcoholic beverages” as defined by the Alcoholic Beverage Labeling Act.

(a) *Products containing less than 7 percent alcohol by volume.* The regulations in this part do not cover products that would otherwise meet the definition of wine except that they contain less than 7 percent alcohol by volume. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

(b) *Products containing more than 24 percent alcohol by volume.* Products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are classified as distilled spirits and must be labeled in accordance with part 5 of this chapter.

Subpart B—Definitions

4. Amend § 4.10 by adding the definition of “Certificate of label approval (COLA)” in alphabetical order to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Certificate of label approval (COLA). A certificate issued on form TTB F 5100.31 that authorizes the bottling 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 appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at www.ttb.gov).

* * * * *

Subpart C—Standards of Identity for Wine

5. Amend § 4.21 by:

a. Revising paragraph (a)(1);

b. Redesignating paragraphs (a)(2) and (3) as paragraph (a)(5) and (6), respectively;

c. Adding new paragraphs (a)(2), (a)(3), and (a)(4);

d. Removing and reserving paragraph (d);

e. Revising paragraph (e)(1);

f. Redesignating paragraphs (e)(2), (3), (4), and (5) as paragraphs (e)(5) (6), (7), and (8), respectively;

g. Add new paragraphs (e)(2), (3), and (4);

h. In redesignated paragraph (e)(8), in the first sentence, remove the phrase “e.g., “peach wine,” “blackberry wine.”” and add in its place the phrase “e.g., “peach wine,” “blackberry wine,” “orange wine.””; and

i. In redesignated paragraph (e)(8), inserting a new sentence after the end of the second sentence.

The additions and revisions read as follows:

§ 4.21 The standards of identity.

* * * * *

(a) * * *

(1) *Grape wine* is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed

grape must), with or without the addition, after fermentation, of pure condensed grape must and with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Still grape wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5383 for natural grape wine.

(3) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 degrees Celsius) for red wine and 0.12 gram per 100 mL (20 degrees Celsius) for other grape wine, provided that the maximum volatile acidity for wine produced from unameliorated juice of 28 or more degrees Brix is 0.17 gram per 100 mL for red wine and 0.15 gram per 100 mL for white wine.

(4) Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as “red wine,” “pink (or rose) wine,” “amber wine,” or “white wine” as the case may be. Any grape wine containing no added grape brandy or alcohol may be further designated as “natural.”

* * * * *

(d) [Reserved]

(e) * * *

(1) Fruit wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must) other than grapes, with or without the addition, after fermentation, of pure condensed fruit must and, with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Fruit wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5384 for natural fruit wine.

(3) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for fruit wine that does not contain added brandy or wine spirits, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 milliliters (20 degrees Celsius).

(4) Any fruit wine containing no added grape brandy or alcohol may be further designated as "natural."

* * * * *

(8) * * * If the fruit wine is derived wholly (except for sugar, water, or added alcohol) from more than one citrus fruit, the designation "citrus wine" or "citrus fruit wine" may, but is not required to, be used instead of "fruit wine," and the designation must also be qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. * * *

* * * * *

§ 4.27 [Amended]

6. Amend 4.27 by:

- a. Removing the phrase “in containers of 5 liters or less” from paragraph (b);
- b. Adding the word “and” at the end of paragraph (c)(1);
- c. Removing paragraph (c)(2); and
- d. Redesignating paragraph (c)(3) as new paragraph (c)(2).

Subpart D—Labeling Requirements for Wine

7. Amend § 4.35 by revising paragraph (e) to read as follows:

§ 4.35 Name and address.

* * * * *

(e) *Cross reference—country of origin statement.* For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

Subpart F—Requirements for Approval of Labels of Wine Domestically Bottled or Packed

8. Add § 4.54 to read as follows:

§ 4.54 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For

example, a winery may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 4.40 or 4.50 of this part, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

Subpart G—Advertising of Wine

9. Amend § 4.62 by revising paragraph (a) to read as follows:

§ 4.62 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted.

* * * * *

PART 5— LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

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

Subpart A—Scope

11. Revise § 5.1 to read as follows:

§ 5.1 General.

(a) The regulations in this part relate to the labeling and advertising of distilled spirits. This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) The regulations in this part shall not apply to distilled spirits exported in bond.

Subpart B—Definitions

12. Amend § 5.11 by:

- a.** Revising the definition of “Brand label”;
- b.** Adding the definition of “Certificate of label approval (COLA)” in alphabetical order; and
- c.** Adding a sentence to the end of the definition of “Distilled spirits.”

The revision and additions read as follows:

§ 5.11 Meaning of terms.

* * * * *

Brand label. The label or labels bearing the brand name, alcohol content, and class or type designation in the same field of vision. Same field of vision means a single side of a container (for a cylindrical container, a side is 40 percent of the circumference) where all of the pieces of information can be viewed simultaneously without the need to turn the container.

* * * * *

Certificate of label approval (COLA). A certificate issued on form TTB F 5100.31 that authorizes the bottling 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 appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at www.ttb.gov).

* * * * *

Distilled spirits. * * *. The term “distilled spirits” also does not include products containing less than 0.5 percent alcohol by volume.

* * * * *

Subpart C—Standards of Identity for Distilled Spirits

13. Amend § 5.22 by:

a. Revising paragraph (a)(1);

b. Amending paragraph (b)(1)(iii) by removing the word “shall” and adding in its place the phrase “may optionally” wherever it appears; and

c. Revising paragraph (g).

The revisions read as follows:

§ 5.22 The standards of identity.

* * * * *

(a) * * *

(1) “Vodka” is neutral spirits which may be treated with up to two grams per liter of sugar and up to one gram per liter of citric acid. Products to be labeled as vodka may not be aged or stored in wood barrels at any time except when stored in paraffin-lined wood barrels and labeled as bottled in bond pursuant to § 5.42(b)(3). Vodka treated and filtered with not less than one ounce of activated carbon or activated charcoal per 100 wine gallons of spirits may be labeled as “charcoal filtered.”

* * * * *

(g) *Class 7; Agave Spirits.* “Agave spirits” are distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus *Agave* and up to 49 percent is derived from other sugars. Agave spirits must be distilled at less than 95 percent alcohol by volume (190° proof) and bottled at or above 40 percent alcohol by volume (80° proof). Agave spirits may be stored in wood barrels. Agave spirits may contain added flavoring or coloring materials as authorized by § 5.23. This class also includes mixtures of agave spirits. Agave

spirits that meet the standard of identity for “Tequila” or “Mezcal” may be designated as “agave spirits” or as “Tequila” or “Mezcal” as applicable.

(1) “Tequila” is an agave spirit that is a distinctive product of Mexico.

Tequila must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Tequila for consumption in that country.

(2) “Mezcal” is an agave spirit that is a distinctive product of Mexico.

Mezcal must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Mezcal for consumption in that country.

* * * * *

§ 5.23 [Amended]

14. Amend § 5.23, paragraph (a)(3) by removing the phrase “a trace amount of citric acid” and adding in its place the phrase “citric acid in an amount not to exceed one gram per liter”.

Subpart D—Labeling Requirements for Distilled Spirits

15. Amend § 5.32 by:

- a. Removing and reserving paragraph (a)(4);
- b. Removing and reserving paragraph (b)(2); and
- c. Revising paragraph (b)(3).

The revision reads as follows:

§ 5.32 Mandatory label information.

* * * * *

(a) * * *

(4) [Reserved]

* * * * *

(b) * * *

(2) [Reserved]

(3) Net contents, in accordance with § 5.38.

* * * * *

§ 5.35 [Amended].

16. Amend § 5.35 by removing the word “designed” and adding in its place the word “designated”.

17. Amend § 5.36 by revising paragraph (e) to read as follows:

§ 5.36 Name and address.

* * * * *

(e) *Cross reference—country of origin statement.* For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

* * * * *

18. Amend § 5.37 by revising paragraph (b) to read as follows:

§ 5.37 Alcohol content.

* * * * *

(b) *Tolerances.* A tolerance of plus or minus 0.3 percentage points is allowed for actual alcohol content that is above or below the labeled alcohol content.

* * * * *

19. Amend § 5.40 by:

- a. Redesignating the text of paragraph (a)(1) as paragraph (a)(1)(i);
- b. Adding paragraph (a)(1)(ii);
- c. Amending paragraph (b) by removing the word “Tequila” and adding in its place the phrase “agave spirits” wherever it appears; and
- d. Revising paragraph (d).

The addition and revision read as follows:

§ 5.40 Statements of age and percentage.

(a) * * *

(1) * * *

(ii) If a whisky is aged in more than one container, the label may optionally indicate the types of oak containers used.

* * * * *

(d) *Other distilled spirits.* (1) Statements regarding age or maturity or similar statements or representations on labels for all other spirits, except neutral spirits, are permitted only when the distilled spirits are stored in an oak barrel and, once dumped from the barrel, subjected to no treatment besides mixing with water, filtering, and bottling. If batches are made from barrels of spirits of different ages, the label may only state the age of the youngest spirits.

(2) Statements regarding age or maturity or similar statements as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section) are prohibited from appearing on any label.

* * * * *

20. Amend § 5.42 by revising paragraphs (b)(3)(iii) and (b)(6), to read as follows:

§ 5.42 Prohibited practices.

* * * * *

(b) * * *

(3) * * *

(iii) Stored for at least four years in wooden containers wherein the spirits have been in contact with the wood surface, except for vodka, which must be stored for at least four years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface, and except for gin, which must be stored in paraffin-lined or unlined wooden containers for at least four years;

* * * * *

(6) Distilled spirits may not be labeled as “double distilled” or “triple distilled” or any similar term unless it is a truthful statement of fact. For purposes of this paragraph only, a distillation means a single run through a pot still or a single run through a column of a column (reflux) still. The number of distillations may be understated but may not be overstated.

* * * * *

Subpart F—Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits

21. Amend § 5.52 by:

a. By revising paragraphs (a) and (b);

b. In paragraph (c)(1), adding the phrase “, or a conformity assessment body,” between the words “Government” and “stating”, and by removing the word “certificate” and adding the phrase “Certificate of Tequila Export” in its place;

c. In paragraph (c)(2), adding the phrase “, or a conformity assessment body,” between the words “Government” and “as”, and by removing the word “certificate” and adding the phrase “Certificate of Tequila Export” in its place;

d. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

e. In newly redesignated paragraph (g), removing the phrase “(a) through (e)” and adding in its place the phrase “(a) through (f)”; and

f. Adding new paragraph (e).

The addition and revisions read as follows:

§ 5.52 Certificates of age and origin.

* * * * *

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be; and

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the container. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy and Cognac.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the bottle is not less than two years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac,

imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as “Cognac” by the laws and regulations of the French Government.

* * * * *

(e) *Rum*. Rum imported in bottles that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the bottle. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

* * * * *

Subpart G—Requirements for Approval of Labels of Domestically Bottled Distilled Spirits

22. Add § 5.57 to read as follows:

§ 5.57 Personalized labels.

(a) *General*. Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized

for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a distiller may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 5.51 or 5.55 of this part, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

Subpart H—Advertising of Distilled Spirits

23. Amend § 5.63 by revising paragraph (a) to read as follows:

§ 5.63 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

* * * * *

24. Amend § 5.65 by revising paragraph (a)(9) to read as follows:

§ 5.65 Prohibited practices.

(a) * * *

(9) The words “double distilled” or “triple distilled” or any similar terms unless it is a truthful statement of fact. For purposes of this paragraph only, a distillation means a single run through a pot still or a single run through a column of a column (reflux) still. The number of distillations may be understated but may not be overstated.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

25. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart A—Scope

26. Add § 7.6 to read as follows:

§ 7.6 Brewery products not covered by this part.

Certain fermented products that are regulated as “beer” under the Internal Revenue Code (IRC) do not fall within the definition of a “malt beverage” under the FAA Act and thus are not subject to this part. They may, however, also be subject to other labeling requirements. See 27 CFR parts 25 and 27 for labeling requirements applicable to “beer” as defined under the IRC. See 27 CFR part 16 for health warning statement requirements applicable to “alcoholic beverages” as defined in the Alcoholic Beverage Labeling Act.

(a) *Saké and similar products.* Saké and similar products (including products that fall within the definition of “beer” under parts 25 and 27 of this chapter) that fall within the definition of a “wine” under the FAA Act are covered by the labeling regulations for wine in 27 CFR part 4.

(b) *Other beers not made with both malted barley and hops.* The regulations in this part do not cover beer products that are not made with both malted barley and hops, or their parts or their products, or that do not fall within the definition of a “malt beverage” under § 7.10 for any other reason. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

Subpart B—Definitions

27. Amend § 7.10 by adding a definition of “Certificate of label approval (COLA)” in alphabetical order to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Certificate of label approval (COLA). A certificate issued on form TTB F 5100.31 that authorizes the bottling 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 appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at www.ttb.gov).

* * * * *

Subpart C—Labeling Requirements for Malt Beverages

28. Amend § 7.25 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 7.25 Name and address.

* * * * *

(c) *Cross reference - country of origin statement.* For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

* * * * *

§ 7.29 [Amended]

29. Amend § 7.29 by removing and reserving paragraphs (f) and (g).

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

30. Add § 7.43 to read as follows:

§ 7.43 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a brewer may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 7.31 or 7.41 of this part, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

Subpart F—Advertising of Malt Beverages

31. Amend § 7.52 by revising paragraph (a) to read as follows:

§ 7.52 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

* * * * *

§ 7.54 [Amended]

32. Amend § 7.54 by removing and reserving paragraph (c).

33. Revise the heading to subpart H to read as follows:

Subpart H—Alcoholic Content Statements

34. Amend § 7.71 by revising paragraph (b)(1) to read as follows:

§ 7.71 Alcoholic content.

* * * * *

(b) * * *

(1) Statement of alcoholic content shall be expressed in percent alcohol by volume, and not by proof, by a range, or by maximums or minimums, unless

required by State law. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

* * * * *

PART 19—DISTILLED SPIRITS PLANTS

35. 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, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 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.

Subpart N—Processing of Distilled Spirits

36. Amend § 19.353 by revising the second sentence to read as follows:

§ 19.353 Bottling tank gauge.

* * *. The gauge must be made at labeling or package marking proof, subject to variations in accordance with the tolerances set forth in § 19.356(c); however, the actual measurement of the gauge must be entered on the bottling and packaging record required in §19.599.

* * * * *

37. Amend § 19.356 by revising paragraphs (c) and (d) to read as follows:

§ 19.356 Alcohol content and fill.

* * * * *

(c) *Variations in alcohol content.* Variations in alcohol content may not exceed 0.3 percent alcohol by volume above or below the alcohol content stated on the label.

(d) *Example.* Under paragraph (c) of this section, a product labeled as containing 40 percent alcohol by volume would be acceptable if the test for alcohol content found that it contained no less than 39.7 percent alcohol by volume and no more than 40.3 percent alcohol by volume.

* * * * *

Signed: January 9, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: March 13, 2020.

Timothy E. Skud,

*Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).*

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