

products identified in this rulemaking action.

### Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA-2005-20918; Directorate Identifier 2004-NM-269-AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 13, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all Boeing Model 737-100, -200, -200C, -300, -400, and -500 series airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD was prompted by reports of fuselage skin cracks adjacent to the skin lap

joints on airplanes that had scribe lines. Scribe line damage can also occur at many other locations, including butt joints, external doublers, door scuff plates, the wing-to-body fairing, and areas of the fuselage where decals have been applied or removed. We are issuing this AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Inspection

(f) Do a detailed inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1262, dated December 9, 2004, except as provided by paragraph (g) of this AD. Do the actions at the time specified in paragraph 1.E., "Compliance," of the service bulletin, except as required by paragraph (i) of this AD. Acceptable inspection exemptions are described in paragraph 1.E.1. of Boeing Alert Service Bulletin 737-53A1262.

(1) If no scribe line is found, no further work is required by this AD.

(2) If any scribe line is found: Do all applicable investigative and corrective actions at the time specified by doing all applicable actions specified in the Accomplishment Instructions of the service bulletin, except as required by paragraph (h) of this AD.

**Note 1:** A detailed inspection is defined in Note 10 of Boeing Alert Service Bulletin 737-53A1262 under 3.A., "General Information." Specific magnification requirements may be specified in the steps of the Work Instructions.

#### Exceptions to Service Bulletin Procedures

(g) This AD requires accomplishment of Parts 1 through 11 of Boeing Alert Service Bulletin 737-53A1262. Parts 12 and 13 of the service bulletin may be accomplished, if applicable, to allow temporary return to service. This AD does not require accomplishment of Part 14 of the service bulletin.

(h) If any scribe line or crack is found during any inspection required by this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

(i) Where the service bulletin specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

### Reporting Requirement

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of positive findings of cracks found during the inspection required by paragraph (f) of this AD to the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report shall contain, as a minimum, the following information: airplane serial number, flight cycles at time of discovery, location(s) and extent of positive crack findings. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120-0056.

(1) If the inspection was done before the effective date of this AD: Send the report within 30 days after the effective date of this AD.

(2) If the inspection was done after the effective date of this AD: Send the report within 30 days after the inspection is done.

### Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 19, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-8578 Filed 4-28-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 4, 5, and 7

[Notice No. 41]

RIN 1513-AB07

### Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) requests public

comment on possible changes to the labeling and advertising requirements of alcohol beverage products regulated by TTB. The agency has long required certain labeling, such as brand name, class and type, alcohol content (in the case of wines containing more than 14 percent alcohol by volume and distilled spirits), net contents, and in recent years has published updated standards for the use of carbohydrate and calorie claims. Because of petitions to mandate additional information, including ingredient, allergen, alcohol, calorie, and carbohydrate content and requests by some to use labels with at least some of that additional information on a voluntary basis under existing rules, TTB believes it is now appropriate to consider revising the alcohol beverage labeling and advertising regulations, and seeks public comment on several issues to assist the agency in formulating specific regulatory proposals.

**DATES:** We must receive written comments on or before June 28, 2005.

**ADDRESSES:** You may send comments to any one of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 41, P.O. Box 14412, Washington, DC 20044-4412.
- 202-927-8525 (facsimile).
- [nprm@ttb.gov](mailto:nprm@ttb.gov) (e-mail).
- <http://www.ttb.gov/alcohol/rules/index.htm> (an online comment form is posted with this notice on our Web site).
- <http://www.regulations.gov> (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this advance notice, the petitions, and any comments we receive on this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of the advance notice and comments online at <http://www.ttb.gov/alcohol/rules/index.htm>.

See Section VI of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

TTB is soliciting public comment on a wide range of alcohol beverage labeling and advertising issues to help

the agency determine what regulatory changes in alcohol beverage labeling and advertising requirements, if any, TTB should propose in future rulemakings. Because of increased interest in including nutrition and ingredient information on alcohol beverage labels, TTB believes it is now appropriate to consider amending the alcohol beverage labeling and advertising regulations to provide more specific information to the consumer.

Accordingly, TTB is soliciting public comments on appropriate ways to use alcohol beverage labels to inform the public about the identity and quality of the products. In addition to specific questions posed later in this advance notice, TTB invites responses to the following general questions:

1. Should TTB seek to require mandatory nutrition labeling (that is, calories, fat, carbohydrates, and protein) for alcohol beverage products, or should nutrition information be permitted only on a voluntary basis?

2. Should TTB seek to require mandatory ingredient labeling (that is, a list of all ingredients used to make the product, including processing aids) for alcohol beverage products, or should ingredient labeling be permitted only on a voluntary basis?

3. What areas need further research and evaluation before TTB can reach decisions on whether and how changes can be made?

4. Are there modifications TTB can make to current requirements regarding alcohol beverage labels to help consumers better understand and benefit from the information on the label?

5. Should TTB harmonize its alcohol beverage labeling regulatory requirements with those of other major producing nations, such as the Member States of the European Union, Australia, and Canada, and with regulatory schemes of other Federal agencies, such as the Food and Drug Administration (FDA)? If so, how would that be best done?

6. Are consumers likely to derive benefits from more specific information on alcohol beverage labels, and, if so, are those benefits sufficient to warrant the economic costs associated with such revisions?

7. What should be the agency's priorities in deciding which changes to make on alcohol beverage labels, that is, which changes are most important and which are least important?

8. Should any new labeling requirements apply equally to advertisements?

##### **II. TTB's Authority To Prescribe Alcohol Beverage Labeling and Advertising Regulations**

###### *Federal Alcohol Administration Act*

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for regulation of the labeling and advertising of distilled spirits, wine (at least 7 percent alcohol by volume), and malt beverages, generally referred to as alcohol beverage products throughout this document. These sections give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with "adequate information" as to the identity and quality of the product, and to prohibit false or misleading statements. Additionally, these FAA Act provisions give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer. In the case of malt beverages, the labeling and advertising provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. TTB is responsible for the administration of the FAA Act and the regulations promulgated under it.

###### *TTB's Implementing Regulations*

Subject to certain jurisdictional limitations, the FAA Act requires that alcohol beverage labels and advertisements be in conformity with the regulations prescribed under it. The basic FAA Act implementing regulations, which appear as parts 4, 5, and 7 in title 27 of the Code of Federal Regulations (27 CFR parts 4, 5, and 7), specifically state what mandatory information must appear, and what is prohibited from appearing, on labels and in advertisements. Most of the mandatory labeling information requirements for alcohol beverages flow directly from the purpose stated in the statute, that is, to "provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof \* \* \* the net contents of the package, and the manufacturer or bottler or importer of the product." See 27 U.S.C. 205(e). The current specific requirements may be summarized as follows: brand name, product identity, the name and address of the bottler, packer, or importer, the net contents and alcohol content (see below) of the

product, and the presence of sulfites, FD&C Yellow No. 5, and in the case of malt beverages, aspartame. (The health warning statement is required pursuant to a different provision of the FAA Act, the Alcoholic Beverage Labeling Act of 1988, codified at 27 U.S.C. 213–219 and 219a.)

In the case of alcohol content, it should be noted that alcohol content statements are not mandatory for all alcohol beverages falling within TTB's jurisdiction. The FAA Act provides that in the case of wines, statements of alcohol content shall be required only for wines containing more than 14 percent of alcohol by volume. See 27 U.S.C. 205(e). The implementing regulations provide that wines having an alcohol content of 14 percent alcohol by volume or less may bear on their labels either an alcohol content statement or the type designation "table" wine or "light" wine. See 27 CFR 4.36(a).

In the case of malt beverages, the FAA Act as enacted specifically prohibited the placement of alcohol content statements on malt beverage labels, unless required by State law. This provision of the law was found to be unconstitutional by the Supreme Court in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995). Accordingly, the regulations at 27 CFR 7.71 now allow the placement of optional alcohol content statements on malt beverage labels, unless prohibited by State law. The regulations do not currently require an alcohol content statement on malt beverage labels; however, effective January 3, 2006, certain flavored malt beverages will be required to bear an alcohol content statement on the brand label (see TTB T.D.–21, 70 FR 194).

The implementing regulations establish the "identity" of alcohol beverage products by defining certain classes and types for wines and distilled spirits. With regard to malt beverages, statements of class and type must conform to the designation of the product as known to the trade. The class and type regulations were promulgated shortly after the enactment of the FAA Act in 1935, and with relatively few exceptions, these standards have remained unchanged since then.

The regulations also prohibit, irrespective of falsity, statements that directly, or by ambiguity, omission or inference, or by the addition of irrelevant, scientific or technical matter, tend to create a misleading impression. Additionally, the regulations prohibit the use of any health-related statements in the labeling and advertising of alcohol beverages, if such statements are untrue in any particular or tend to

create a misleading impression. TTB evaluates such statements on a case-by-case basis, and may require a disclaimer or some other qualifying statement to dispel any misleading impression created by the health-related statement. Statements concerning calorie, carbohydrate, protein, and fat content are not considered health-related statements within the meaning of the TTB regulations.

In order to prevent the sale or shipment of improperly labeled alcohol beverages in interstate or foreign commerce, the FAA Act requires industry members to obtain a certificate of label approval prior to the bottling of, or removal from customs custody in bottles of, distilled spirits, wines, or malt beverages. The regulations do not require a certificate of label approval for products exported in bond. If an industry member can establish that a domestic wine or distilled spirits product is not to be sold, offered for sale, shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce, a certificate of exemption is issued.

Industry members are not required to submit advertisements to TTB for review prior to use. However, TTB encourages industry members to voluntarily submit advertising materials for pre-clearance by the Bureau. In addition, TTB monitors advertisements that are already in the marketplace as part of its comprehensive compliance program to protect the consumer and encourage industry compliance (see Industry Circular 2004–6, dated November 19, 2004).

TTB and its predecessor agencies have traditionally utilized rulings for expressing interpretations of these regulations. The questions now before the Bureau require public rulemaking to resolve because some of the changes on which we are soliciting comments go beyond the mere interpretation of existing regulations.

### III. Alcohol Beverage Ingredient Labeling History

In the case of ingredient disclosure, the Department of the Treasury has considered this issue on a number of occasions dating back to 1972 when the Center for Science in the Public Interest (CSPI), a consumer health organization, petitioned TTB's predecessor, the Bureau of Alcohol, Tobacco and Firearms (ATF), to require ingredient labeling. As a result of that petition, ATF published in the **Federal Register** Docket Nos. 74–17720, 75–3719, and 75–3720 (39 FR 27812, 40 FR 6354, and 40 FR 6349) proposing amendments to 27 CFR parts 4, 5, and 7 regarding

ingredient labeling of alcohol beverages. The agency held three public hearings over the course of six days and received in excess of 1,000 written comments on the matter. After considering all representations, on November 11, 1975, ATF published Notice No. 285 in the **Federal Register** (40 FR 52613) withdrawing the ingredient labeling proposals, stating five reasons: (1) The cost of ingredient labeling to the industry, and ultimately to the consumer, would be excessive in relation to the benefit received; (2) the content of alcohol beverages is extensively regulated; (3) the uniqueness of manufacturing processes of alcohol beverages is such that it makes labeling of their ingredients of little value, and in certain cases, even misleading because ingredients that are used to make the product are not necessarily present in the finished product; (4) ingredient labeling requirements would interfere with international trade negotiations; and (5) ingredient labeling is supported by only a small segment of the public.

Subsequently, on February 2, 1979, ATF published Notice No. 834 in the **Federal Register** (44 FR 6740) proposing requirements for ingredient labeling of alcohol beverages. During the comment period, ATF received over 1,800 comments from consumers, special interest groups, industry members, doctors, government agencies and members of Congress. Thereafter, on June 13, 1980, ATF published in the **Federal Register** (45 FR 40538) a final rule, T.D. ATF–66, which required ingredient disclosure on all alcohol beverages sold in the United States. The final rule included an exception to the requirement. Under the exception, an ingredient list would not have to appear on the label when the producer, bottler, or importer:

(1) Elects to make an ingredient list available upon request;

(2) Places a statement on the front label or on a separate strip label notifying the consumer of the availability of an ingredient list and provides the name and, somewhere on the label, a full mailing address in the United States where such an ingredient list can be obtained upon request; and

(3) Does not place a statement on the label that could be misconstrued to be an ingredient list (for example, a partial ingredient list).

ATF stated that this exception would give the industry maximum flexibility to provide ingredient information at a minimum cost. At the same time, it would provide consumers who have the need or desire to avoid various ingredients a means to do so, thus

meeting the objective of Notice No. 834. Also, because of specific health concerns, T.D. ATF-66 mandated the label disclosure of FD&C Yellow No. 5 whenever it is used in a product. The new labeling regulations were to take effect on January 1, 1983.

On February 17, 1981, President Reagan issued Executive Order 12291, which was published in the **Federal Register** on February 19, 1981 (46 FR 13193). Executive Order 12291 required each Federal agency to establish a management system that would improve the quality and lessen the burden of Federal regulation. Executive Order 12291 required agencies, within their legal authority, to establish regulatory goals, to set regulatory priorities, to review existing regulations, and to implement new regulations with the aim of maximizing the benefits to society while at the same time imposing the least burden to achieve those benefits.

As a result of ATF's review of existing regulations called for by Executive Order 12291, ATF concluded that T.D. ATF-66 was not in accord with the President's mandate. Therefore, on May 4, 1981, ATF published Notice No. 372 in the **Federal Register** (46 FR 24962) proposing to rescind the ingredient labeling amendments before they became mandatory.

ATF received a total of 8,068 comments containing 23,352 individual signatures. Of the comments received, 4,909 comments representing 17,138 individuals supported the proposal to rescind the ingredient labeling regulations and 3,159 comments, representing 6,214 individuals, opposed the rescission. In T.D. ATF-94, published in the **Federal Register** (46 FR 55093) on November 6, 1981, ATF rescinded the ingredient labeling regulations, concluding that the costs were disproportionate to the benefits that would be gained from the additional label information. ATF further concluded that ingredient labeling would not result in an appreciable benefit to consumers when compared to the existing label information requirements and standards of identity. ATF noted in this regard that under the FAA Act regulations, a standard of identity generally identifies the basic agricultural ingredient and sets forth standards for production and alcohol content.

On February 8, 1983, CSPI and two individual consumers filed an action in the United States District Court for the District of Columbia contesting the rescission. See *Center for Science in the Public Interest v. Department of the Treasury*, 573 F. Supp. 1168 (D.D.C.

1983), *appeal dismissed, Center for Science in the Public Interest v. Regan*, 727 F.2d 1161 (D.C. Cir. 1984). As a result of the suit, the district court held invalid and set aside Treasury's decision to rescind T.D. ATF-66 for failure to comply with the Administrative Procedure Act and for violating its statutory mandate under the FAA Act. In essence, the court found that ATF failed to adequately explain the reversal of the prior rule and placed undue weight on cost factors. The court then ordered ATF to announce a new date, not later than one year from the date of the order, to put the regulations of T.D. ATF-66 into effect. Accordingly, in a notice published in the **Federal Register** (48 FR 10309) on March 11, 1983, ATF reinstated the ingredient labeling regulations as originally promulgated in T.D. ATF-66 and mandated compliance by February 8, 1984.

Subsequently, ATF decided to reexamine the ingredient disclosure issue. On June 17, 1983, ATF published Notice No. 469 in the **Federal Register** (48 FR 27782), proposing to reconsider prior decisions concerning ingredient disclosure on labels of alcohol beverages and again proposing to rescind TD ATF-66.

During the comment period, a total of 1,840 comments containing 1,897 signatures were received. Of the total number of comments received, 1,538 supported the proposal to rescind the ingredient labeling regulations. Of these comments, 413 were from American alcohol beverage industry members or related industry members, 64 were from foreign industry members, four were from foreign governments, one was from a Federal agency, and 1,056 were from individuals. A total of 290 comments, representing 303 individuals, were received opposing the rescission of the ingredient labeling regulations.

After considering all of the comments, ATF published T.D. ATF-150 in the **Federal Register** (48 FR 45549) on October 6, 1983. This final rule rescinded the T.D. ATF-66 ingredient disclosure regulations published in 1980 but required the labeling of FD&C Yellow No. 5 by October 6, 1984. ATF determined that there was no clear evidence that any other ingredient posed a special health problem. ATF also concluded that there was no overwhelming desire on the part of consumers for comprehensive ingredient labeling and questioned its usefulness even if it were required. ATF further explained that substantial transformation during the production process means that there is only a strained relationship between the initial

ingredients and the contents of the final product.

CSPI and others brought suit against the Department of the Treasury in the United States District Court for the District of Columbia, again challenging the rescission of T.D. ATF-66. See *Center for Science in the Public Interest v. Department of the Treasury*, Civil Action No. 84-2079, 1985 U.S. Dist. LEXIS 14329 (D.D.C. October 30, 1985). The plaintiffs challenged T.D. ATF-150, contending primarily that ATF's rescission violated the FAA Act and was arbitrary and capricious and an abuse of discretion in violation of the Administrative Procedure Act. The district court granted summary judgment to the plaintiffs and ordered the final rule contained in T.D. ATF-150 vacated.

The Government appealed the district court's decision and on August 5, 1986, the United States Court of Appeals for the D.C. Circuit reversed the decision, affirming ATF's rescission of T.D. ATF-66. See *Center for Science in the Public Interest v. Department of the Treasury*, 797 F.2d 995 (D.C. Cir. 1986). The court concluded that ATF's rationale for rescinding the labeling rule, that the ingredient disclosure rule would not achieve its intended purpose of providing consumers with information upon which to make an informed choice, was reasonably sufficient to support its decision. In particular, the court upheld ATF's conclusion that the record failed to establish that ingredient disclosure would provide useful information as to the actual contents of the alcohol beverage. The court noted that there was "more than enough evidence in the record to support the agency's conclusion that, in many cases, both basic ingredients and additives will be substantially transformed by distillation and fermentation." See 797 F.2d at 1000. Thus, the ingredient labeling rules were rescinded in accordance with T.D. ATF-150.

The ingredient labeling issue was reopened on December 16, 2003, when CSPI, together with the National Consumers League and other organizations and individuals, forwarded a petition to TTB requesting changes to the labeling regulations in 27 CFR parts 4, 5 and 7. This petition is discussed in further detail in Section V of this notice.

#### IV. Alcohol Beverage Nutrition Labeling History

On August 10, 1993, in response to a petition submitted by a law firm on behalf of an unnamed client, ATF published an advance notice of proposed rulemaking (ANPRM) in the

**Federal Register** soliciting comments from the public on whether the regulations should be amended to require nutrition labeling for alcohol beverages. See Notice No. 776, 58 FR 42517. The petitioner's stated purpose was to bring the nutrition labeling requirements for alcohol beverages in line with the requirements for food and beverage products regulated by FDA.

In response to the advance notice, ATF received 55 comments. Of these comments, 41 commenters opposed nutrition labeling (including the Wine Institute, the Beer Institute, CSPI, and the Delegation of the Commission of the European Communities). Seven commenters supported mandatory nutrition labeling (including Seagram's, Brown-Forman, the American Association of Diabetes Educators, and the petitioner). Two commenters supported voluntary nutrition labeling. One commenter supported mandatory nutrition labeling only for "light," reduced alcohol, and non-alcoholic beverages (for example, near beer).

Based on the comments received in response to the ANPRM, ATF concluded that there was neither significant consumer interest in nutrition information for alcohol beverages nor any convincing evidence that nutrition labeling would provide substantial useful information to consumers. Consequently, ATF denied the petition and terminated the rulemaking on this issue.

Presently, TTB requires a Statement of Average Analysis, in effect a nutrition statement, on all alcohol beverage product labels that bear calorie or carbohydrate claims. In addition, if an advertisement bears a carbohydrate or calorie claim (other than the term "lite" or "light" in the brand name) the advertisement must also bear a Statement of Average Analysis. These requirements are explained in more detail in Section V of this notice.

## V. Major Issues Under Consideration

The specific issues and questions on which TTB is seeking public comment are discussed in the remainder of this notice.

### A. Calorie and Carbohydrate Claims

In 1976, ATF issued a ruling that allowed the use of caloric and carbohydrate references as part of a statement of average analysis on malt beverage labels. See ATF Rul. 76-1, 1976 ATF C.B. 82. In subsequent rulings, ATF modified certain requirements with respect to malt beverage labeling statements, and announced its intention to engage in rulemaking on the use of the terms

"light" and "lite" on malt beverage labels. See ATF Rul. 79-17, ATF Q.B. 1979-3, 3, and ATF Rul. 80-3, A.T.F.Q.B. 1980-2, 13.

In the 1980s, ATF published in the **Federal Register** three notices of proposed rulemaking, soliciting comments on substantive standards for use of the terms "light" and "lite" on alcohol beverage labels. In Notice No. 362 (45 FR 83530, December 19, 1980), ATF proposed a rule that would have required, among other things, that whenever references to calorie or carbohydrate content were made on wine, distilled spirits, or malt beverage labels, a statement of average analysis must also appear on the label. However, no statement of average analysis would be required if the word "lite" were used in accordance with current regulations (such as part of the designation "light wine"), or if it was used to describe a characteristic of the product, such as "light taste" or "light flavor."

After the issuance of Notice No. 362, CSPI petitioned the Bureau for an amendment that would require mandatory caloric content labeling for all alcohol beverages and establish a maximum calorie limit for alcohol beverages designated as "light," "lite," or low in calories. In Notice No. 600 (51 FR 28836, August 12, 1986), ATF announced its conclusion that mandatory caloric labeling for all alcohol beverages was unnecessary, and also rejected CSPI's suggestion to establish upper limits on low-calorie alcohol beverages. It again solicited comments on requiring a statement of average analysis on labels where the terms "light" or "lite" were used to denote low calories, and proposed that the calorie statement must appear on the brand label, while the remainder of the statement of average analysis could appear on any label.

In Notice No. 659 (53 FR 22678, June 17, 1988), ATF proposed a substantive standard for the use of "light" or "lite" as part of the brand or product name of a wine, distilled spirits, or malt beverage product. ATF solicited comments on two alternatives. The first would restrict the terms to products that contain at least 20 percent fewer calories than the producer's regular product, or if the producer did not make a regular product, 20 percent fewer calories than a competitor's same or similar regular product. The second alternative would require a statement on the label of the number of calories in the light product and in a "regular" product made by the producer or (if the producer does not make a "regular" product), a competitor.

After reviewing the comments on these various proposals, the Bureau decided not to issue a regulation governing the use of the terms "light" and "lite" on alcohol beverage labels.

Within the past few years, the industry expressed greater interest in the use of carbohydrate claims on alcohol beverage labels. Furthermore, TTB received inquiries from producers of wines and distilled spirits who wanted to know whether ATF Rul. 80-3 applied to their products in addition to malt beverages. Accordingly, on April 7, 2004, TTB issued Ruling 2004-1 to provide guidance to industry about the use of calorie and carbohydrate claims in the advertising and labeling of alcohol beverages.

The ruling allows for the use of truthful and specific statements about carbohydrate and calorie content while prohibiting statements that are false or misleading or that imply that consumption of low-carbohydrate alcohol beverages may play a healthy role in a weight maintenance or weight reduction plan. TTB believes that such claims are misleading in that they provide incomplete information about the health effects of alcohol consumption.

The ruling held that calorie and carbohydrate representations in the labeling and advertising of alcohol beverages are considered to be misleading unless they provide with such representations a "statement of average analysis." A statement of average analysis must list the serving size as well as the quantity of each of the following contained in a single serving size:

- Calories;
- Carbohydrates (in grams);
- Protein (in grams); and
- Fat (in grams).

As part of the ruling, TTB issued interim standards for the use of terms such as "low carbohydrate," "reduced carbohydrate," and "lower carbohydrate." The ruling did not, however, provide specific standards for the use of terms such as "low calorie," "reduced calorie," or "lower calorie." TTB Ruling 2004-1 allows for the use of:

- "Low carbohydrate" (or "low carb") on labels and in advertisements where: (1) a statement of average analysis is present; and (2) the standard serving size for the product (12 fl. oz. for malt beverages, 5 fl. oz. for wines, and 1.5 fl. oz. for distilled spirits) contains no more than 7 grams of carbohydrates.
- "Reduced carbohydrate" and "lower carbohydrate" on a label or in an advertisement that bears a statement of average analysis, as long as the term is

used as part of a statement that specifies the number of carbohydrates per serving size and compares that number with the number of carbohydrates in another specified product made by that producer; for example, “Reduced carbohydrate—10 grams of carbohydrates per 12 fl. oz. serving—40 percent fewer than in our [Brand name] malt beverage” or “Lower carbohydrate—15 grams of carbohydrates per 5 fl. oz.—less than half the carbohydrates in our [brand name] wine.”

The ruling also held that, pending rulemaking on this issue, the terms “effective carbohydrates” and “net carbohydrates” are considered misleading and that their use on labels and in advertisements is prohibited.

TTB recognizes that the best way to develop standards for the use of terms such as “low carbohydrate” and “low calorie” is through the public notice and comment rulemaking process. Moreover, because TTB and FDA both have jurisdiction over alcohol beverages under their respective statutory mandates, TTB would prefer to have the benefit of FDA’s decision-making process before setting a final “low carbohydrate” standard for alcohol beverage products that do not fall within FDA’s exclusive jurisdiction. FDA has received several rulemaking petitions to set a standard for the use of the term “low carbohydrate” on food and beverage products they regulate, but has not yet set a standard.

We would also like to solicit comments on whether we should set additional substantive standards for the use of calorie claims in the labeling and advertising of alcohol beverages. FDA has set standards for the use of calorie

claims (including “calorie-free”, “low-calorie,” “reduced calorie,” and “light” or “lite”) on food and beverage products they regulate. See 21 CFR 101.56 and 101.60(b).

To assist TTB in deciding whether to formulate specific regulatory proposals, we are soliciting comments from consumers, consumer and other interest groups, trade associations, and industry members on the following specific questions. We also are interested in receiving any additional information that a comment submitter believes is relevant to the issue of carbohydrate and calorie claims:

1. Should TTB promulgate regulations that define “low carbohydrate” for alcohol beverage products as containing no more than 7 grams of carbohydrates per standard serving size, as specified in Ruling 2004–1? Why or why not?

2. Should TTB continue to prohibit use of the terms “effective carbohydrates” and “net carbohydrates” on labels and in advertisements? Why or why not?

3. Should TTB wait for the conclusion of FDA’s regulatory decision-making process for the use of the term “low carbohydrate” for food and beverage products FDA regulates before issuing regulations on a low carbohydrate standard for alcohol beverage products?

4. How should TTB define the terms “low calorie” and “reduced calorie” for alcohol beverage products? Should we propose standards for these claims consistent with FDA’s standards? Should we develop our own alternate set of standards and, if so, what should they be?

5. Should TTB establish regulations for the use of the terms “light” and “lite” on alcohol beverage labels? If so,

should we propose standards for these claims consistent with FDA’s standards? How would these standards apply to products for which the term “light” is part of the standard of identity (such as “light whisky” or “light wine”)?

#### B. Petition for “Alcohol Facts” Label and Ingredient Labeling

On December 16, 2003, CSPI, together with the National Consumers League, 67 other organizations, and eight individuals, forwarded a petition to TTB requesting changes to the labeling regulations in 27 CFR parts 4, 5, and 7. After receipt of the CSPI petition, additional individuals wrote to TTB requesting the addition of their names to the petition. This petition requests issuance of a final rule amending parts 4, 5, and 7 to require that labels of all alcohol beverages regulated by TTB include the following information in a standardized format:

- The beverage’s alcohol content expressed as a percentage of volume;
- The serving size;
- The amount of alcohol in fluid ounces per serving;
- The number of calories per serving;
- The ingredients (including additives) from which the beverage is made;
- The number of standard drinks per container; and
- The *U.S. Dietary Guidelines* advice on moderate drinking for men and women.

The petitioners propose that all alcohol beverage containers bear this information on an “Alcohol Facts” label and provide the following as an example for a 750 milliliter bottle of wine:

| <b>Alcohol Facts</b>   |                                  |
|--|----------------------------------|
|   | Contains<br><b>5</b><br>Servings |
| Calories per Serving: 98   |                                  |
| Alcohol by Volume: 13%   |                                  |
| Alcohol per serving: 0.5 oz  |                                  |
| Serving Size: 5 fl oz  |                                  |
| U.S. Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one drink per day for women. |                                  |

**Ingredients:** Grapes, yeast, sulfiting agents, and sorbates.

The petition asks that the words “Alcohol Facts” be immediately followed by a declaration of the number of standard drinks (servings) per container. The petitioners ask that, consistent with the *U.S. Dietary Guidelines*, a serving should be defined

as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. The petitioners further recommend that for alcohol beverages not fitting into one of those standard categories, a serving should be defined as an amount of fluid containing

approximately 0.5 ounces of ethyl alcohol. The petitioners recommend that a consistent graphic symbol (for example, a beer mug, wine glass, or shot glass) should appear first, followed by the number of drinks in the container (for example, “Contains 5 Servings”).

The petition proposes requiring this information on labels of all malt beverages, wines, and distilled spirits products regulated by TTB that contain more than 1/2 of one percent alcohol by volume. The graphics and type size for the "Alcohol Facts" label should follow the Nutrition Labeling Education Act (NLEA) standards as set out in 21 CFR 101.9(d), the petitioners suggest. Further, the petitioners state that ingredient information should appear on the label immediately below, but segregated from, the "Alcohol Facts" box.

To assist TTB in deciding whether to propose specific regulatory changes in response to the above petition, we are requesting information from consumers, consumer and other interest groups, trade associations, and industry members on the desirability and feasibility of alcohol facts, including ingredient, labeling for alcohol beverages. Although TTB is soliciting comments on the following specific questions, the Bureau is also requesting any other relevant information on the subject.

1. Should alcohol beverage containers bear an Alcohol Facts label similar to the one presented in the CSPI petition? Why or why not?

2. Should such a label include an ingredient list as suggested in the CSPI petition?

3. Should the label be voluntary or mandatory?

4. If mandatory, should there be any exemptions from the alcohol facts and ingredient labels, such as for small businesses or for small containers?

5. Should current alcohol content statement labeling requirements be expanded to cover wines with an alcohol content of 14 percent alcohol by volume or less and malt beverages?

6. What would be the costs associated with mandatory alcohol facts and ingredient labeling to the industry and, ultimately, the consumer?

7. How might consumers benefit from such a label?

8. As a consumer, how much extra would you be willing to pay for alcohol facts and ingredient labeling information?

9. Are there alternatives to mandatory alcohol facts and ingredient labeling for alcohol beverages? For example, if a label lists a Web site or telephone number where a consumer could obtain such information about the product, would this be sufficient?

### C. Allergen Labeling

On April 10, 2004, Christine A. Rogers, PhD., a senior research scientist in the Exposure, Epidemiology and Risk

Program at the Harvard School of Public Health, petitioned TTB to change the regulations to require labeling on alcohol products to list all ingredients and substances used in processing. Dr. Rogers, who is allergic to egg protein, is particularly concerned with alcohol beverage products that contain potentially allergenic substances (wheat, milk, and egg or nut proteins).

On August 2, 2004, the President signed the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCP Act, Title II of Public Law 108-282). The FALCP Act amends section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) to require food and beverage products that contain an ingredient that bears or contains a major food allergen to include this information on its label. The FALCP Act's definition of "major food allergens" includes milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans (as well as most proteins derived from these foods). The FALCP Act requires that products containing these ingredients be labeled using plain, common language; for example, instead of merely listing "semolina," the label must list "wheat", instead of merely listing "sodium casein," the label must list "milk." The FALCP Act allows for several options for the labeling of allergens in a food or beverage product:

- The common name of the allergen can be labeled within parentheses in the ingredient list, for example: "Ingredients: Water, wheat, whey (milk), albumen (eggs), and peanuts". The label can list the allergen in summary form after or adjacent to an ingredient list, for example: "Ingredients: Water, sugar, whey, and albumen. Allergens: Milk and egg".

The House of Representatives Committee Report accompanying the legislation indicates that TTB is to work with FDA to promulgate appropriate allergen labeling regulations for alcohol beverages (H.R. Rep. No. 608, 108th Cong., 2d Sess., at 3 (2004)).

In response to this Congressional instruction and the petition received from Dr. Rogers, TTB has been meeting with FDA and is considering rulemaking to require allergen labeling for alcohol beverages. To assist TTB in determining appropriate allergen labeling requirements for alcohol beverages, we are requesting information from consumers, consumer and other interest groups, trade associations, and industry. Although TTB is soliciting comments on the following specific questions, the Bureau is also requesting any other relevant information on the subject.

1. Should TTB require allergen labeling on alcohol beverage containers to be part of or adjacent to a larger list of all ingredients found in the product, similar to the requirements of the Food Allergen Labeling and Consumer Protection Act of 2004? Why or why not?

2. If the product name appearing on the label of an alcohol beverage container indicates that an allergen is present in the product, is it helpful to the consumer to have the allergen labeled again in a standardized allergen statement elsewhere on the container? To illustrate: If a product is called "Wheat Beer," should it also have a label elsewhere on the container that reads: "Allergens: wheat"? Why or why not?

3. TTB's current regulations allow certain allergens such as milk, albumen (egg), isinglass (a protein from fish bladders), and soy flour to be used as fining, processing, and filtering agents in the production of alcohol beverages. While fining, processing, and filtering agents are not primary ingredients in an alcohol beverage product, low levels of an agent may remain in the final product after production. When an allergen is used as a fining, processing, or filtering agent to produce an alcohol beverage, should TTB require that the product be labeled "Processed with [a specific allergen]" or "May contain [a specific allergen]"? Why or why not?

4. Should allergenic fining, processing, and filtering agents be labeled in the exact same fashion as all other allergen ingredients? Why or why not?

5. Testing methods for detecting allergens in food and beverage products typically can only detect an allergen if it is present at or above a certain minimum value. In light of that fact, would it be helpful to consumers for TTB to require an allergenic fining, processing, or filtering agent to be labeled regardless of whether a detection test shows that the allergen is or is not present in the final product? Why or why not?

6. What is the lowest amount of an offending food allergen (or minimum threshold level) in an alcohol beverage product necessary to provide a mild, yet perceptible adverse allergic reaction in consumers with the most sensitive food allergies?

7. Is it possible to define a minimum threshold level for each major food allergen? If so, what are the minimum threshold levels for each major food allergen?

8. If FDA and/or the scientific community establish conclusively a minimum threshold level for a

particular allergen, should TTB exempt from any allergen labeling requirements products containing the allergen proteins, but at a level below the established minimum threshold level? Why or why not?

9. What would be the costs associated with mandatory allergen labeling to the industry and, ultimately, the consumer?

10. How might consumers benefit from allergen labeling?

#### *D. Requests for Voluntary "Serving Facts" Labeling*

Following receipt of the petitions discussed above, TTB received inquiries from industry members who would like to begin voluntarily providing on their labels certain facts about a serving of their product.

Because of the immediate interest in labeling products in this fashion, and in light of the length of time needed to conclude public notice and comment rulemaking procedures, TTB concluded

that there was a need for interim guidance to the industry on what type of "serving facts" information we would allow on alcohol beverage labels and in advertisements, and in what format TTB would accept this information.

Accordingly, in July and then again in September of 2004, TTB posted on its Web site, <http://www.ttb.gov>, a summary of specifications for a planned ruling concerning the manner in which alcohol beverage labels and advertising may permissibly reflect information about a single serving in a "Serving Facts" panel, consistent with the statutory and regulatory standards administered by TTB. The Bureau sought input from interested parties, including the alcohol beverage industry, consumers, and consumer interest groups, about what information should be permitted on such a panel and in what format the voluntary "Serving Facts" panel should be presented.

TTB solicited comments on a variety of options. We asked for comments on an optional "Serving Facts" panel that would include the serving size in fluid ounces based on what was previously specified in TTB Ruling 2004-1, the amount of servings per container, and for each serving the following information:

- Fluid ounces of alcohol (ethyl-alcohol) (to the nearest tenth of an ounce);
- Calories;
- Fat (in grams);
- Carbohydrates (in grams); and
- Protein (in grams).

We also solicited comments on a definition of a "standard drink" (defined as 0.6 fluid ounces of alcohol) and the number of standard drinks in a serving. Finally, we solicited comments on the optional use of three icons similar to the ones at the bottom of the label presented below:

#### Malt Beverage (5% ABV)

| <b>Serving Facts</b>  |       |
|---|-------|
| Serving Size 12 fl oz   |       |
| Servings Per Container 1  |       |
| Amount Per Serving  |       |
| <b>Calories</b>   | 150   |
| <b>Fat</b>  | 0g    |
| <b>Carbohydrates</b>  | 13.2g |
| <b>Protein</b>  | 1.1g  |
| <b>Alcohol</b>  | .6 oz |
| A standard drink contains 0.6 fl oz of alcohol. A serving of this beverage is 1 standard drink. |       |
|   |       |

In the second posting on our Web site, TTB solicited comments on an

alternative label approach that omitted the icons and standard drink references.

An example of this approach is as follows:

## Malt Beverage (4 % ABV)

| <b>Serving Facts</b>      |                  |
|---------------------------|------------------|
| Serving Size              | 12 fl oz         |
| Servings Per Container    | 1                |
| <b>Amount Per Serving</b> |                  |
| <b>Calories</b>           | <b>90</b>        |
| <b>Alcohol</b>            | <b>0.5 fl oz</b> |
| <b>Fat</b>                | <b>0g</b>        |
| <b>Carbohydrates</b>      | <b>2.2g</b>      |
| <b>Protein</b>            | <b>0.8g</b>      |

As a result of the two white papers, TTB received several comments concerning a voluntary serving facts panel. The comments reflected strong and varying opinions. A significant proportion of the comment submitters felt that the issue should be addressed in public notice and comment rulemaking rather than in a TTB ruling. Furthermore, many commenters believed that certain elements of the voluntary serving facts panel would tend to confuse or mislead consumers about the product.

In response to the issues raised by the commenters, on December 28, 2004, TTB issued a press release indicating that we would address these issues in an advance notice of proposed rulemaking. Pending the completion of rulemaking proceedings, TTB does not intend to issue certificates of label approval bearing the optional "Serving Facts" panel. We believe it is important to have the benefit of public comments on these issues before making a decision as to whether the new elements in the panel might tend to mislead consumers. We will, of course, continue to allow the use of statements of average analysis on alcohol beverage labels.

Accordingly, TTB is requesting comments from consumers, consumer and other interest groups, trade associations, and industry members on the desirability and feasibility of adopting serving facts labeling for alcohol beverages. Although TTB is soliciting comments on the following specific questions, the Bureau is also requesting any other relevant information on the subject.

1. Should alcohol beverage containers bear a Serving Facts label similar to the one presented in this section? Why or why not?

2. Should such a label include a definition of a "standard drink" and if

so, how should a "standard drink" be defined?

3. Should such a label include graphic icons similar to, but not necessarily limited to, the one presented in this section? Why or why not?

4. Should the label be voluntary or mandatory?

5. If mandatory, should there be any exemptions from the serving facts label, such as for small businesses or for small containers?

6. If not mandatory for all alcohol beverage products, should the Serving Facts label be required at least on alcohol beverages that make certain calorie or carbohydrate claims?

7. What would be the costs associated with mandatory serving facts labeling to the industry and, ultimately, the consumer?

8. How might consumers benefit from such a label?

9. As a consumer, how much extra would you be willing to pay for serving facts labeling information?

10. Are there alternatives to mandatory serving facts labeling for alcohol beverages? For example, if a label lists a Web site or telephone number where a consumer could obtain such information about the product, would this be sufficient?

11. Should TTB allow a further breakdown of nutrients (for example, trans fat, sugars, fiber)?

12. Does the use of "standard drink" and "serving size" on the same label create confusion? Does any confusion arise if a label specifies ounces of alcohol in conjunction with serving size and percent alcohol?

### E. Composite Label Approach

The proposed "Alcohol Facts" label and the "Serving Facts" label have the following informational components in common: (1) Calorie representation; (2) serving size; (3) number of servings per container; and (4) alcohol content

expressed in fluid ounces. The components that are unique to only one label type are noted below:

- The "Alcohol Facts" label also includes the following information: (1) Alcohol content expressed as a percentage of alcohol by volume; (2) an icon of an alcohol beverage serving container; (3) the *U.S. Dietary Guidelines* advice on moderate drinking; and (4) an ingredient list.

- The "Serving Facts" label also includes the following information: (1) Fat content; (2) carbohydrate content; (3) protein content; (4) a definition of a "standard drink" as well as the number of standard drinks found in a serving of the alcohol beverage; and (5) three icons depicting three different alcohol beverage serving containers, separated by equal (=) signs and each carrying the legend "0.6 oz."

TTB is interested in receiving comments on whether a composite label, which combines the essential information on the examples discussed, would be appropriate to provide the consumer with information they want and need to see on alcohol beverage product labels. TTB is also seeking comments on whether such a composite label should be mandatory or voluntary.

### VI. Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.

• *Facsimile*: You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—

(1) Be on 8.5 by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

• *E-mail*: You may e-mail comments to [nprm@ttb.gov](mailto:nprm@ttb.gov). Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5 by 11-inch paper.

• *Online form*: We provide a comment form with the online copy of this notice on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. Select the “Send comments via e-mail” link under this notice number.

• *Federal e-Rulemaking Portal*: To submit comments to us via the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

#### Confidentiality

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

#### Public Disclosure

You may view copies of this advance notice, the petitions, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 by 11-inch page. Contact our librarian at the above address or telephone 202-927-2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this advance notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit <http://www.ttb.gov/alcohol/rules/index.htm>. Select the “View Comments” link under this notice number to view the posted comments.

## VII. Drafting Information

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

Signed: March 16, 2005.

**John J. Manfreda,**

*Administrator.*

Approved: March 31, 2005.

**Timothy E. Skud,**

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

[FR Doc. 05-8574 Filed 4-28-05; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Notice No. 40; Ref: T.D. ATF-454]

RIN 1513-AA50

#### Santa Rita Hills Viticultural Area Proposed Name Abbreviation to Sta. Rita Hills (2003R-091P)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In response to a petition, the Alcohol and Tobacco Tax and Trade Bureau proposes to modify the name of the existing “Santa Rita Hills” American viticultural area by abbreviating its name to “Sta. Rita Hills.” We propose this change to prevent possible confusion between wines bearing the Santa Rita Hills appellation and wines bearing the Santa Rita brand name used by a Chilean winery. The size and boundaries of the existing viticultural area will remain unchanged. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed amendment to our regulations.

**DATES:** We must receive written comments on or before June 28, 2005.

**ADDRESSES:** You may send comments to any one of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 40, P.O. Box 14412, Washington, DC 20044-4412.

- 202-927-8525 (facsimile).

- [nprm@ttb.gov](mailto:nprm@ttb.gov) (e-mail).

- <http://www.ttb.gov/alcohol/rules/index.htm> (an online comment form is posted with this notice on our Web site).

- <http://www.regulations.gov> (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, and any comments we receive on this proposal by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of the notice and comments online at <http://www.ttb.gov/alcohol/rules/index.htm>.

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

**FOR FURTHER INFORMATION CONTACT:** Rita Butler, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 1310 G. St., NW., Washington, DC 20220; telephone 202-927-8210.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product’s identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive American viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

##### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an