



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB-2022-0007; Notice No. 213]

RIN: 1513-AC88

Proposed Addition of American Single Malt Whisky to the Standards of Identity for Distilled Spirits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations that set forth the standards of identity for distilled spirits to include “American single malt whisky” as a type of whisky that is a distinctive product of the United States. This proposal follows petitions and comments submitted by several distillers and the American Single Malt Whisky Commission. TTB invites comments on this proposed amendment to its regulations.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB-2022-0007 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/distilled-spirits/notices-of-proposed-rulemaking> under Notice No. 213. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005. Please see

the **Public Participation** section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Background on the Labeling of Distilled Spirits

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers regulations regarding the labeling of distilled spirits that include setting forth “standards of identity.” The authority to establish these standards is based on section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e). That section authorizes the Secretary of the Treasury (the Secretary) to prescribe regulations relating to the “packaging, marking, branding, and labeling and size and fill” of alcohol beverage containers “as will prohibit deception of the consumer with respect to such products” and “as will provide consumers with adequate information as to the identity and quality of the products * * *.” Section 105(e) of the FAA Act also generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval (COLAs) prior to bottling or importing alcohol beverages for sale in interstate commerce.

TTB administers these FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary has delegated certain administrative and enforcement authorities to TTB through Treasury Department Order 120–01.

Part 5 of title 27 of the Code of Federal Regulations (27 CFR part 5) sets forth the regulations implementing those provisions of section 105(e) of the FAA Act as they pertain to distilled spirits.

Classes and Types of Spirits

Subpart I of part 5 of the TTB regulations (27 CFR part 5) establishes standards of identity for distilled spirits products and categorizes these products according to various classes and types. As used in § 5.141, the term “class” refers to a general category of spirits. Currently, there are 12 different classes of distilled spirits set out in §§ 5.142–5.156, such as whisky, rum, gin, and brandy. As used in § 5.141, the term “type” refers to a subcategory within a class of spirits. For example, “Cognac” and “fruit brandy” are types of brandy, and “Cachaça” is a type of rum.

The TTB labeling regulations at 27 CFR 5.63(a)(2) require that the class and type of distilled spirits appear on the product’s label. These regulations provide that the class and type must be stated in conformity with Part 5, Subpart I of the TTB regulations.

Classification of Malt Whisky

Section 5.143(a) sets forth the standard of identity for whisky as follows:

(a) The *class whisky*. “Whisky” or “whiskey” is distilled spirits that is an alcoholic distillate from a fermented mash of any grain distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to whisky, stored in oak barrels (except that corn whisky need not be so stored), and bottled at not less than 40 percent alcohol by volume (80° proof), and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

In § 5.143, paragraphs (c)(1) through (18) categorize the specific types of whisky, such as Bourbon whisky, spirit whisky, and Scotch whisky. Currently, “malt whisky” is found in paragraph (c)(2) and is described as whisky produced at not more than 160° proof from a fermented mash of not less than 51 percent

malted barley and stored at not more than 125° proof in charred new oak barrels. Such whisky stored in charred new oak barrels for a period of 2 years or more may optionally be further designated as “straight.” See 27 CFR 5.143(c)(5). Paragraph (c)(7) sets forth the standard for whisky distilled from malt mash, which is whisky produced in the United States at not exceeding 160° proof from a fermented mash of not less than 51 percent malted barley and stored in used oak barrels. As a result, the labeling regulations provide standards for identifying whisky as “malt whisky” and “whisky distilled from malt mash” but do not further specify standards for “single malt whisky.”

Section 5.154(a)(3) provides that geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, may not be used unless the product is produced in the particular place or region indicated in the name. Accordingly, a product designated as “American whisky” (or “American single malt whisky”) must have been produced in the United States.

American Single Malt Whisky Petitions and Comments

Petitions

In October 2017, TTB received three petitions with similar content from XO Alambic, Rémy Cointreau, and Westland Distillery. Each of these petitioners noted that they were filing the petition on behalf of, or with, the American Single Malt Whiskey Commission (ASMWC), an association of at least seventy-five producers of whisky in the United States.

In their petitions, the distillers requested the establishment of a standard of identity to define the “American single malt whisky” category for producers and consumers alike. They noted that the American whisky category has been growing over the past decade and continues to expand, and that recognition of American single malt whisky is at an all-time high, with U.S. distillers winning

international competitions with products in these categories. They stated that establishment of a standard of identity would benefit consumers, as it would provide a definition for the product, establish trust in the category, clarify label declarations, and equip consumers with the necessary information to make informed decisions so they can have confidence in the products they are choosing to buy in a similar way that Scotch whisky standards provide such information to American consumer. They also believe establishment of a standard of identity would strengthen the U.S. economy by increasing tax revenue related to the sale of American Single Malt Whiskey, and by creating jobs related to producing, distributing, and selling such a product and the ingredients used in this product.

With some slight, non-substantive variations, these petitions requested that TTB add a standard of identity as follows:

American Single Malt Whisky is whisky that is mashed, matured and distilled at a single United States distillery, is so distilled to a proof not exceeding 160° proof from a fermented mash of 100% malted barley, is stored in oak containers not exceeding a capacity of 700 liters, and is bottled at not less than 80° proof.

The petitioners conveyed that they believe the proposed language is complementary to the long-standing regulatory definitions for whiskies such as bourbon, but is distinctive enough to add value to the new designation while not inhibiting innovation among producers of American Single Malt Whisky.

TTB's Rulemaking on Modernizing its Labeling Regulations

On November 26, 2018, TTB published in the **Federal Register** a Notice of Proposed Rulemaking (Notice No. 176, 83 FR 60562) proposing to amend its regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages to reorganize and recodify these regulations. TTB undertook this action in order to simplify and clarify its regulatory standards, incorporate

guidance documents and current policy into the regulations, and reduce the regulatory burden on industry members where possible. In Notice No. 176, TTB sought comments from the public on the regulatory proposals and TTB received over 1100 comments.

TTB did not include a standard of identity for American single malt whisky in the regulatory amendments proposed in Notice No. 176. Regardless, TTB received over 200 comments in support of a new standard for American single malt whisky, including one from the ASMWC, which was mirrored in a number of other comments, urging TTB to add such a standard. The ASMWC's comment in response to Notice No. 176 proposed a standard slightly modified from the original petitioned-for standard. This new proposal would require that the distillation, mashing, and maturation of American Single Malt Whisky take place in the United States, but would require only that the distillation take place at a single United States distillery. The ASMWC stated in their comment that it has the support of more than 130 producers of single malt whisky. They restated their view that the proposed language is complementary to existing definitions for bourbon whisky and whisky, but distinctive enough to add value to the new designation while not inhibiting innovation among producers of American Single Malt Whisky.

On February 9, 2022, TTB published T.D. TTB–176, which finalized the updates to the regulations proposed in Notice No. 176 with regard to distilled spirits and malt beverages. TTB did not finalize a standard for American single malt whisky in that final rule because TTB had not yet published such a standard in a notice of proposed rulemaking.

TTB Regulatory Proposal

After reviewing the petitions and comments, the regulations on the standards of identity in 27 CFR part 5, and TTB's database of approved Certificates of Label Approval (COLAs) (as discussed below), TTB has determined that amending the standards of identity regulations at § 5.143 to provide for a new standard of identity for American Single Malt Whisky merits consideration and public comment, as invited in this notice of proposed rulemaking.

Therefore, this document proposes to amend the standard of identity in § 5.143(c) by adding American Single Malt Whisky as a type of whisky in paragraph (15), generally incorporating the proposal in the comments to Notice No. 176. Of note, TTB is proposing that American Single Malt Whisky could be stored in any oak barrel (used, uncharred new, or charred new) not exceeding 700 liters, as the petitioners requested.

Effect on Currently Approved Labels

If finalized, this amendment to the TTB regulations would revoke by operation of regulation any COLA that uses the term "American single malt whisky" as a designation for a distilled spirits product that does not meet the proposed standard of identity. TTB has searched its COLA database and does not believe that this rulemaking will affect any existing labels. To minimize the adverse effect on industry members who hold COLAs for labels that conflict with the proposed "American single malt whisky" designation and that would therefore be revoked by operation of regulation, however, TTB could allow for a time-limited use up of such labels by delaying the effective date of the rule establishing this designation. Additionally, TTB specifically seeks comments on the impact on current producers, including whether this rulemaking would affect any existing labels. TTB notes that distillers currently using the designations

“malt whisky,” “American malt whisky,” “whisky distilled from malt mash,” or “American whisky distilled from malt mash” on their labels may continue to do so.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on this proposed rule, including on whether the proposed amendment would have an adverse impact on owners of U.S. trademarks and current producers of malt whisky. In addition, TTB specifically seeks comments on the following questions:

- Noting that other whisky standards do not incorporate size restrictions for barrels, is a 700-liter limit for oak barrels for aging American single malt whisky necessary or appropriate?
- What impact, if any, would this new standard of identity have on current producers of malt whisky?
- If TTB adopts this proposed amendment, and if any previously approved labels are impacted, for how long should TTB allow the use of previously approved labels for American single malt whisky that do not meet the new standard of identity before they are revoked by operation of regulation?
- Is it appropriate that the new standard of identity allows the use of used, uncharred new, and charred new oak barrels?
- Should TTB amend its regulations to allow for the designation “straight” to be used with American Single Malt Whisky?
- Should the use of coloring, flavoring, or blending materials be allowed in the production of American single malt whisky? If so, what coloring, flavoring, or blending materials are “customarily employed” in the production of American single malt whisky, in accordance with 27 CFR 5.155? Please provide any available evidence of their use.

- Should TTB amend its regulations to allow for mixtures of American single malt whisky to be labeled as “blended American single malt whisky,” similar to how TTB regulations allow for blended Scotch whisky and blended Canadian whisky to be labeled, respectively, “blended Scotch whisky” and “blended Canadian whisky”?

- On February 9, 2022, the Department of the Treasury released a report, “Competition in the Markets for Beer, Wine, and Spirits,” which was produced in response to Executive Order 14036, “Promoting Competition in the American Economy” (86 FR 36987, July 9, 2021). Would the addition of a standard of identity for American Single Malt Whisky affect competition in the alcohol beverage market?

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 213 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

Confidentiality and Disclosure of Comments

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

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding how to comment on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

Regulatory Analysis and Notices

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule only adds a new standard of identity for whisky at 27 CFR 5.143, which allows for the designation of a new class and type designation on labels, and it imposes no new reporting, recordkeeping, or other administrative requirements. TTB searched the COLAs Online database and did not find any labels that we believe would be affected, but we are taking public comment on the issue of affected labels to get more information about the potential economic effects of the rulemaking. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Christopher M. Thiemann of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, and Reporting and recordkeeping requirements.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 5, Code of Federal Regulations, as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

Subpart C—Standards of Identity for Distilled Spirits

2. Section 5.143 is amended by:
 - a. Adding a sentence at the end of paragraph (b); and
 - b. In Table 1 to paragraph (c), adding paragraph (15).

The additions read as follows:

§ 5.143 Whisky.

* * * * *

(b) * * * “American single malt whisky” must be distilled entirely at one U.S. distillery, and must be mashed, distilled, and aged in the United States.

(c) * * *

Table 1 to paragraph (c): Types of Whisky and Production, Storage, and Processing Standards					
Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
* * * * *					
(15) American single malt whisky	Fermented mash of 100 percent malted barley	160° or less	Oak barrels not exceeding 700 liters	No	Yes

* * * * *

Signed: July 20, 2022.

Mary G. Ryan,

Administrator.

Approved: July 20, 2022.

Thomas C. West, Jr.,

*Deputy Assistant Secretary,
(Tax Policy).*

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