



June 26, 2019

Ms. Amy Greenberg
Director, Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW
Box 12
Washington, DC 20005

BY ELECTRONIC SUBMISSION

American Craft Spirits Association Comments on TTB Proposed Rulemaking
27 CFR Parts 4,5,7,14 and 19
Modernization of the Labeling and Advertising Regulations for Wine,
Distilled Spirits and Malt Beverages
Docket No. TTB-2018-0007; Notice No. 176

Dear Ms. Greenberg,

The American Craft Spirits Association (ACSA) is pleased to submit the following comments and suggestions in response to the proposed rulemaking to 27 CFR Parts 4, 5, 7, 14, and 19 concerning the modernization of labeling and advertising requirements for wine, distilled spirits, and malt beverages.

ACSA, the national trade organization for craft spirits producers was formed to support the young and burgeoning small and independent distilling industry in the United States. Our most recent report, the Craft Spirits Data Project (2018), indicates over 1800 craft distilleries operating across all 50 states, with a total economic impact of \$3.7 billion.

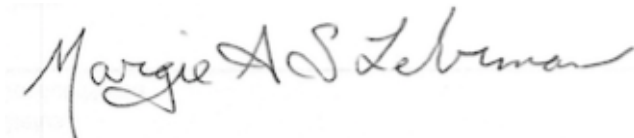
Members of ACSA are distilleries with a current DSP, annually removing from bond fewer than 750,001 proof gallons of product and having at least 75% equity or operational control. Members must also abide by the ACSA Code of Ethics to:

“Operate in an honest, transparent and non-deceptive fashion. We inform consumers truthfully and accurately about the sources and methods used to make our spirits through our labels, materials and communications. We expect fair dealing and respect amongst members. We obey all federal, state, and local laws.”

These comments reflect our position on the contemporary intersection of responsible public, policy and recognition of a modern and rapidly expanding marketplace, including the consumers demand for new and interesting products. Our goal is to provide meaningful and maximum transparency and accuracy in spirits labeling, advertising and marketing while also promoting a regulatory framework that allows for responsible innovation, creativity and growth in our industry.

ACSA is grateful for the opportunity to submit comments and to make recommendations on spirits labelling rules. Moreover, ACSA is thankful for TTB's efforts to modernize and simplify the CFR. Given the evolving nature of the growing and innovative distilled spirits industry and the complexity of the CFR, ACSA formally requests that TTB consider a regular review of labeling (for example, every four years). By allowing the industry the opportunity to review and make suggestions to bring current 27 CFR Part 5, TTB will fulfill its public policy objectives, while allowing the industry to best serve consumers and remain competitive globally.

Respectfully submitted,

A handwritten signature in black ink that reads "Margie A.S. Lehrman". The signature is written in a cursive, flowing style.

Margie A.S. Lehrman
Chief Executive Officer
American Craft Spirits Association

American Craft Spirits Association
Comments on Proposed Rulemaking Docket No. TTB-2018-0007; Notice No. 176

Part 5 Labeling of Distilled Spirits

Subpart A – General Provisions

§ 5.15.1 Definitions

Age: TTB proposes to define “Age” as “The length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels in such a manner that chemical changes take place as a result of direct contact with the wood.”

Aging is defined by chemical reactions that happen over time, and not necessarily in contact with oak. ACSA opposes any definition of aging that does not recognize time as the clearly defining and essential component.

Additionally, ACSA opposes any change to the definition of “age” that would prohibit the use of wood barrels of species other than oak, or the use of non-wood vessels. Although less common, many spirits have been aged in various types of containers in which chemical changes occur over time, and which may or may not occur as a result of contact with the wood.

ACSA recommends that in any cases where aging did not take place in an oak barrel, that a clear and accurate statement of the maturation conditions be required to be declared in the same font size and color as the age statement wherever it appears on the label, in order to prevent consumer confusion. For example, “aged 6 months in maple wood barrels”.

While we recognize and support the requirement for some classes and types of whisky to be stored specifically in oak (whether new or used, charred, etc.), we oppose the prohibition of ageing of other classes or types of spirits in other vessels.

Distilled spirits: TTB proposes to amend the definition of “distilled spirits” to codify its longstanding position that products containing less than 0.5 percent alcohol by volume are not regulated as “distilled spirits” under the FAA Act.

While ACSA agrees with and supports this proposed revision, we also would propose that the existing definition of “Distiller” (*found in Part 19*) be modified to clearly identify the distillation process as a required component, as follows:

“Distiller: Any person who;

- (1) Produces distilled spirits from any source or substance;

(2) Brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than making or using of mash, wort, or wash in the authorized production of wine or beer, or in the production of vinegar by fermentation);

(3) By a *distillation process* that separates alcohol from any fermented substance; or

(4) Making or keeping mash, wort, or wash, has a still in his possession or use."

Grain: ACSA supports the TTB proposal to include all cereal grains as well as the seeds of pseudo cereals such as amaranth, buckwheat, and quinoa, however we would strongly request language clarifying that no cereal grains or pseudo cereal grains are to be excluded from the definition by virtue of not being explicitly listed within the regulations. Additionally, we suggest that the list be expanded to clearly include millet and sorghum.

Oak barrel: TTB has requested feedback on limiting oak barrels to approximately fifty (50) gallons. ACSA strongly **opposes** this change due to the lack of compelling consumer interest in imposing such a change and the substantial negative impact it would have on the American Craft Spirits industry. These impacts include:

- Artificially reducing the geographic area in the US where whisky can be efficiently produced due to climate variations inside the US, where alternative barrel sizes may be critical to controlling losses and effective spirits maturation;
- Substantial negative impacts on the many distillers across the country who have built brands and have already produced spirits in other sizes of oak barrels, both bigger and smaller;
- Substantial costs of modifications to physical structures and manufacturing equipment designed to accommodate alternative barrel sizes.

ACSA is strongly opposed to this substantive change in the definition of "oak barrel" / "oak container", however if it is to be included in the final regulations, ACSA requests a grace period of a least twenty (20) years for compliance, to allow craft producers sufficient time to raise funds, distill, mature and blend these new spirits in with their existing spirits. Additionally, if this provision is adopted, ACSA requests a clear definition of "approximately 50 gallons".

Imposition of such a restriction at this time will be devastating to the American Craft Spirits industry. There is no clear or compelling consumer interest to introduce such a restriction. Therefore, ACSA is strongly in opposition to the definition as proposed.

Other: ACSA recommends that “Solera” be defined in a manner consistent with its accepted and widely understood definition in wine as a “minimum 1/3 fractional blending”.

§ 5.95.9 Compliance with Federal and State requirements

5.95.9(b) Ingredient Safety

ACSA is in opposition to the treatment of distilled spirits as food products. Aspects of the spirits production process, including fermentation, the application of heat during distillation, and the high alcohol content of the distilled spirit all serve to reduce or eliminate potential hazards to human consumption of the spirit or to animal consumption of the production process byproducts.

There is no evidence of common or widespread harm from consumption of distilled spirits. This requirement will unnecessarily raise costs, generate waste, harm the environment, harm farmers, and limit innovation in the American spirits industry.

Proper management of critical control points inside the production process is a reasonable and effective means of protecting human and animal health.

Subpart B – Certificates of Label Approval & Exemptions

No comments

Subpart C – Alteration of Labels; Relabeling

No comments

Subpart D – Label Standards

No comments

Subpart E – Mandatory Label Information

§ 5.63 Mandatory label information

5.63(a) Mandatory information required to appear with the same field of vision.

ACSA supports the TTB proposal in § 5.63(a), to allow 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.

5.63(c)(4) State of distillation

Please refer to our comments in §5.66 (f)(1) below.

§ 5.65 Alcohol Content

§ 5.65(c) Tolerances

ACSA supports the proposal to allow a tolerance of plus or minus .3 percentage points of the labeled alcohol content. Additionally, ACSA asked that guidance be issued in describing the TTB process for testing and authorizing penalties for violations, including clarification that a violation in a single bottle is not sufficient evidence to justify a penalty, and that testing across multiple sources are required.

§ 5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States.

5.66(b)(1)-(3)

ACSA agrees that some industry members and consumers are confused as to the meaning of terms such as "blended by", "made by", "prepared by", "manufactured by" and "produced by", and that clarification of these terms would be beneficial both to industry members and consumers. However, ACSA is opposed to the definitions as outlined in this proposed rulemaking.

ACSA recommends the list of allowable name and address statements be amended as listed below. ACSA recommends that these statements may be used as long as the requirements of that statement are met, and that multiple statements may be joined up as appropriate via a list or "and" statement (i.e. "distilled by X, bottled by Y" or "distilled and bottled by Z"):

"Distilled by" may be used only by the final distiller of the distilled spirits. This distillation must result in a change in abv of more than 5% abv during the distillation, or an additional ingredient (such as a botanical) was added during the distillation process;

"Bottled by" may be used by the bottler of the spirits;

"Blended by" may be used by holder and selector of mature spirit, or in the case of multiple classes and types or multiple base materials (such as flavorings) as in the case of liqueur production;

“Matured by” may be used by the owner of the maturing spirit, provided it was owned for at least one (1) year

"Processed by" or "Created by" may be used in all other cases that require a name and address statement

It is ACSA's position that the term "produced by" indicates to consumers that a manufacturing process has taken place. ACSA is therefore opposed to allowing the broad use of the term "produced by" in the case of non-manufacturing processes.

ACSA recommends elimination of the term "produced by" from the list of allowable statements. It is confusing, unclear, and not beneficial to industry or consumer. Additionally, its definition is inconsistent across various states.

The phrases "distilled by and bottled for" or “distilled for” are misleading and not recommended to be allowed. If the name of the distiller appears on the label, it may be preceded by the phrase "distilled by".

§ 5.66(e) Special rule for straight whiskies.

ACSA recommends that there be no special rule for straight whiskies. ACSA recommends that the term “straight” be utilized only on spirits that are at least two (2) years old and recommends that this term be applied to all spirits categories. Any additional rules or requirements generate confusion.

§ 5.66(f)(1) State of distillation for whisky.

ACSA is in agreement with TTB’s requirement to disclose the original state of distillation in at least one of the following ways: (i) By including a “distilled by” (or “distilled and bottled by” or any other phrase including the word “distilled”) statement as part of the mandatory name and address statement, followed by a single location. (ii) By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as “Kentucky bourbon whisky”), as long as the product was both distilled and aged in that State in conformance with the requirements of § 5.143(b). (iii) By including a separate statement, such as “Distilled in [name of State].”

In order to prevent consumer confusion as to the state or location of origin of a spirits product, ACSA additionally recommends that any state related or geographic claims may be used on a front label only:

- (a) if the product was entirely distilled (or redistilled) in that geographic location claimed (state, city, town, or region)
- (b) if at least 70% of the agricultural ingredients were grown in the geographic region claimed

- (c) if the geographic description included is an accurate representation of process (i.e., “produced with water from _____” or “bottled in _____” and the process description is in the same size and color font

§ 5.66(f)(3)

This section prohibits the inclusion of the state names of Kentucky or Tennessee on any label of a light whisky except as part of a name or address. ACSA is opposed to this provision, as it treats Kentucky and Tennessee differently than other states, and there is no compelling reason to include.

5.66(g)

This section states that “(g) Trade or operating names. (1) The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the basic permit. In the case of a distillation statement for spirits bottled in bond, the name or trade name under which the spirits were distilled must be shown. (2) A trade name may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, if a distiller or bottler of the spirits authorizes the use of its trade name by another distiller or bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the distiller or bottler.”

ACSA is in agreement with the substance and intent of this provision. However, we believe that this provision is vague and may lead to an unlevel playing field due to varying interpretations of “in a way that tends to mislead consumers as to the identity or location of the distiller or bottler.”

Specifically, we ask for either a regulatory interpretation or a codified interpretation of business tools such as DBAs and businesses with multiple locations, as well as greater specificity in how “identity” and “location” would be defined.

§ 5.72 Coloring materials.

ACSA is in favor and supportive of the language on coloring materials and feels strongly the provision should be applied equally to imported spirits.

§ 5.74 Statements of age, storage, and percentage.

General statement relative to 5.74 – ACSA believes that aging can and does occur in containers other than oak barrels, see above.

§ 5.74(a)(1) General

See comments on 5.15.1 Definitions regarding definition of aging and proposed labeling requirements.

§ 5.74(a)(3)

“(3) 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 towards the “age.””

ACSA opposes this revision due to its stifling of innovation in a significant area of exciting new whiskey innovation. Additionally, we feel it will be misleading to a consumer as to the maturation processes applied to the product. For example, if a spirit spent 4 years in a new charred oak barrel and then 4 additional years in a wine barrel, it would be misleading to a consumer to refer to the spirit as 4 years old.

ACSA recommends that the total time in any wooden container may be counted towards the declared age of a product. Additionally, ACSA recommends that any statements of time / aging that are accurate and explicitly state time in various maturation conditions (i.e., different barrels) should be explicitly allowed as long as they accurately represent the minimum time spent in those conditions and are in the same font size and color as the age declaration. For example, “aged 2 years on maple wood chips” should be an allowable statement, as it accurately describes the process used.

§ 5.74(b)(3)

(3) In the case of an imported rye whisky, wheat whisky, malt whisky, or rye malt whisky, a label on the product must state each age and percentage in the manner and form that would be required if the whisky had been made in the United States;

ACSA is in favor of this requirement but believes it should apply to all whiskies that could be imported and not just those listed.

Subpart F – Restricted Labeling Statements

§ 5.87 “Barrel Proof” and similar terms.

ACSA is in favor of defining these common terms, however ACSA is not in favor of creating multiple or separate definitions for the terms “barrel proof”, “cask strength”, “original proof”, “original barrel proof”, “original cask strength”. ACSA suggests the proposed definition in 5.87 (a) be utilized for all of these terms.

The term "entry proof" is clearly understood as the proof at which the spirit was entered into the barrel and would therefore be confusing to define in relation to final proof post-maturation, which can be very different than the entry proof into the barrel. Therefore, ACSA recommends that "entry proof" not be included in this list of definitions, an instead be allowed as an applicable descriptor of the proof of entry into the barrels regardless of bottling proof.

§ 5.88 Bottled in bond.

ACSA is strongly in favor of expanding this important quality and authenticity statement to all spirits categories. ACSA recommends that Bottled in Bond gin be allowed to be stored either in contact with the wood or not. ACSA agrees that Bottled in Bond vodka must not be stored in contact with wood.

§ 5.89 Multiple distillation claims.

ACSA is in favor of defining multiple distillation claims to provide consumer transparency. However, ACSA does not believe that the proposed definition provides that clarity and consistency.

In lieu of this definition, ACSA proposes that multiple distillation claims be based on the number of times vapor is fully condensed prior to being redistilled. If the liquid is distilled, condensed, distilled again, condensed and distilled again, that liquid would be "triple distilled". Partial condensation that occurs on trays inside columns would not count towards multiple distillation claims.

This provides clarity and addresses the issues of columns that may be physically separated by connected via a vapor line, addresses this issue of multiple distillation claims related to the number of trays in a column, and can be evenly applied across both column and pot stills.

The number of distillations may be understated but may not be overstated.

§ 5.90 Terms related to Scotland.

ACSA proposes that the phrase "and similar words connoting, indicating or commonly associated with Scotland" be removed from this section, being overly broad, inviting the potential for inconsistent application, and potentially inhibiting accurate descriptions of the geographic origin of a spirit product.

§ 5.91 Use of the term “pure.”

ACSA believes the term ‘pure’ is vague and in need of further definition. We ask that TTB please clarify with specificity the parameters of the definition prior to incorporation into 27 CFR Part 5.

Subpart G – Restricted Labeling Practices

§ 5.102 False or untrue statements.

ACSA is in favor of the rules as proposed.

§ 5.103 Obscene or indecent depictions.

Neutral

§ 5.122 Misleading statements or representations.

ACSA is in favor of the rules as proposed.

§ 5.124 Disparaging statements.

ACSA is in favor of the rules as proposed.

§ 5.125 Tests or analyses.

ACSA is in favor of the rules as proposed.

§ Depictions of government.

ACSA is in favor of the rules as proposed.

§ 5.128 Claims related to wine or malt beverages.

ACSA recognizes that the intent of this provision is to prevent misleading claims on spirits and believes that this goal is best met by allowing true and accurate statements of composition and origin regardless of use in other beverage categories. Specifically, ACSA recommends that the following be allowed:

- (a) accurate statements of production or composition, such as the true and accurate names of raw ingredients (for example "cabernet brandy" or "pinot brandy");
- (b) accurate statements of production such as "hopped" (whether utilized in traditional mashing of in distillation) or "wild fermented";
- (c) accurate statements of maturation such as "finished in merlot casks" or "aged in peach brandy casks" are also allowable.

ACSA believes that allowing true and accurate statements of production is the most effective way to reduce consumer confusion.

Additionally, ACSA is opposed to the explicit prohibition on homophones / coined words, unless they explicitly create a misleading impression as to the identity, class or type of the product, in which case it would be prohibited by the general prohibition against misleading statements.

§5.129 Health-related statements

ACSA is in favor of the rules as proposed.

Subpart H – Labeling Practices Prohibited if Misleading

No Comments

Subpart I – Standards of Identity for Distilled Spirits

5.142 Neutral Spirits

(1) Vodka: Due to the subjective nature of determining whether a spirit is truly without any distinctive character, and recognizing the growing production of traditional or European style vodkas which may possess distinctive character, ACSA recommends that 5.142 (a) be edited such that “Class 1; neutral spirits or alcohol. “Neutral spirits” or “alcohol” or “vodka” are distilled spirits produced from any material at or above 190° proof, and, if bottled, bottled at not less than 80° proof” and that the additional requirement in 5.142 (a)(1) of “(1) “Vodka” is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color” be removed, such that vodka is clearly defined only by the objective definition of its proof of distillation.

§ 5.143 Whisky

ACSA is supportive of section 5.143, however we would ask that TTB create two new type designations as follows:

American Single Malt Whiskey – ACSA supports the inclusion of a new type for “American Single Malt Whiskey”, subject to the standards recommended by the American Single Malt Whiskey Commission:

- (a) Made from 100% malted barley;
- (b) Distilled entirely at one distillery;

- (c) Mashed, distilled, and matured in the United States of America;
- (d) Matured in oak casks not exceeding a capacity of 700 liters;
- (e) Distilled to no more than 160 proof (80% alcohol by volume); and
- (f) Bottled at 80 proof (40% alcohol by volume) or more

Other: Whereas hops are preservatives and not fermentable, the use of such in a mash or fermentation should not impact the class of spirit from whiskey to non-whiskey. ACSA recommends that TTB issue this clarifying guidance.

§ 5.144 Gin

ACSA generally supports the stand for gin and agrees with all but one provision. We request that 5.144(a) be edited to state that “Gin may be aged in wood containers.”

§ 5.145 Brandy

ACSA proposes the following modifications to the definition of brandy:

A) must be aged for at least 2 years (defined by TTB Beverage Alcohol Manual Volume 2, Chapter 4, page 6 under General Type Definition) the spirit would be determined to be a brandy and the spirit would remain brandy unless any additions violate the guidance for brandy in TTB Beverage Alcohol Manual Volume 2, CHAPTER 7, COLORING/FLAVORING/BLENDING MATERIALS.

These suggestions are intended to protect the use of any source of wood barrel the producer cares to use for maturation as well as allowing for the transfer of the spirit to either neutral wood (traditional practice) or another type of container for finishing (modern practice). Further we suggest that the labeling allow the producer to reflect the type of maturation process if desired.

We propose the following example:

‘Producer Name’
1998
Hudson River Region Brandy
‘XXX’ Vineyard Riesling
Matured in ‘type’ barrels
Finished in ‘type’ barrels, ‘X’ months
Coloring/Flavoring/Blending Materials

ACSA recommends that the TTB define oak chip infusions as HARMLESS COLORING / FLAVORING / BLENDING MATERIALS thus, removing the need for the exception in the TTB Beverage Alcohol Manual Volume 2, Chapter 1, page 9 as well as removing the requirement for TTB analysis of oak chip infusions. This would make the same rules for

domestic producers as has already been made for French brandies including Armagnac, Cognac, etc. Furthermore, it would bring the definition of domestic brandy onto a more standard international basis.

§ 5.147 Rum

ACSA proposes the standard for rum be redrafted to incorporate the following:

Rum shall not be flavored;

Rum may only contain sugarcane-derived additives such as caramel and molasses, or traditional blending materials such as wine, as a means of adjusting the flavor and color;

Rum may be sweetened; however, the final product may not contain more than 20 grams of sweetening products per liter, expressed as invert sugar;

In order to protect and support consumers in making purchasing choices in rum we suggest setting the US standard at 15g/l. Any 'rum' above this level of sweetness may be labeled a rum liqueur, cordial (if qualifying on sweetness levels), distilled spirits specialty, or other designation where appropriate;

ACSA suggests that other regional designations of rum, such as Agricole, clarin, and Jamaican rums be included.

§ 5.148 Agave Spirits

ACSA agrees with and supports the proposed standard of identity for agave spirits with the additional suggestion that the class be divided into two types; one designated for a mixture of at least 51 percent agave and 49 percent sugar as well as an additional type for 100 percent agave spirit.

§ 5.149 Absinthe or absinth

ACSA recommends the following standard for absinthe:

Spirits with a main characteristic derived from the combination of Grand Wormwood (*Artemisia Absinthium*), Fennel (*Foeniculum vulgare*) and Anis Seed (*Pimpinella Anisum*) produced by the distillation of spirits with Grand Wormwood, Fennel, Anis and other herbs and botanicals and bottled at not less than 45% alcohol by volume (90 proof). No sugar may be added.

§ 5.150 Cordials and liqueurs

Support

§ 5.151 Flavored spirits

Support

§ 5.153 Diluted spirits

As the market for spirits products grows, so does consumer demand for a wider and more unique range. Consumers are interested in lower proof products, but the term 'diluted' does not engender a strong desire for purchase.

ACSA suggests the terms "under-proof", "underproof" or "under proof" also be allowed in lieu of "diluted" for the class of diluted spirits, and that the term be used in conjunction with the original class/type of spirit prior to dilution (i.e., under-proof gin, underproof vodka). ACSA recommends that this be allowed for all classes and types.

However, ACSA does not agree that these terms be allowed to be half the size of the class and type. It is ACSA's position that "diluted", "underproof" or similar, immediately precede the class and type designation on the same line and be the same size or larger than the class and type, in order to protect consumers from being misled to believe that the product meets the true standards of those classes.

§ 5.154 Rules for geographical designations

ACSA is in support of the intent of this section to protect geographical designations, however we believe clarification and additional protections are necessary in order to avoid misleading consumers and to protect regional and national American spirit designations.

Specifically, ACSA recommends that TTB recognize and protect any spirits designations that are the product of a specific geographic region and whose production standards have been formally agreed by an organized cohort of producers in that region such that their products are genuinely differentiated from the category, whether those names are specifically geographic in nature (such as Jamaican Rum or Scotch Whisky) or non-geographic in nature (such as Clairin rum or Cachaca).

Additionally, ACSA recommends that regional designations internal to the US be similarly protected if they meet the same standards.

ACSA feels that these steps are critical to protecting existing and future US national and regional spirits categories as well as US export business and avoid potentially misleading consumers as to the identity and origin of the spirit.

ACSA supports the allowance for "____ - style" or "_____ type" statements, provided that "style" or "type" are on the same line and in the same font as the geographical designation stated.

Subpart J – Formulas

No comments

Subpart K – Standards of Fill; Authorized Container Sizes

No Comments

Part 14 Advertising of Wine, Distilled Spirits, and Malt Beverages

No Comments