

Industry Circular



Internal Revenue Service

Alcohol and Tobacco Tax Division
Washington, D.C. 20224

September 30, 1968

Industry Circular No. 68-27

MISCELLANEOUS AMENDMENTS TO 27 CFR Part 5

Proprietors of Distilled Spirits Plants,
Importers and Wholesalers of Distilled
Spirits, and others concerned:

This circular is issued to provide you with a reprint of Treasury Decision 6973 which was published in the Federal Register for September 26, 1968.

The new regulations stem from the public hearing held April 1 through 3, 1968. In general, the Treasury decision (1) revises the standards of identity for gin and vodka to enable manufacturers to vary from existing production methods, but in such a manner as not to change consumer concept of the products; (2) establishes new standards of identity for blended applejack and for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky; (3) deletes the standard of identity for New England rum; (4) amends the definition of "distilled spirits" to exclude products which contain a preponderance of wine; (5) revises the manner of presentation of label information to aid the consumer in locating and better understanding key items describing the container contents; (6) prescribes limits for the extraction of materials from distilled spirits; and (7) clarifies and liberalizes regulatory provisions relating to the labeling of bulk imports, age certificates for imported spirits, and label references to government supervision.

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(T.D. 6973)

PART 5--LABELING AND ADVERTISING OF DISTILLED SPIRITS

Miscellaneous Amendments

DEPARTMENT OF THE TREASURY
Office of Commissioner of Internal Revenue
Washington, D. C. 20224

TO OFFICERS AND EMPLOYEES OF
THE INTERNAL REVENUE SERVICE
AND OTHERS CONCERNED:

Notice of public hearing to be held in Washington, D. C., beginning on April 1, 1968, with respect to several proposals to amend 27 CFR Part 5, Labeling and Advertising of Distilled Spirits, was published in the Federal Register on January 26, 1968 (33 F.R. 1017). At the conclusion of the hearing and after a thorough study of matters relevant to the issues the following conclusions have been reached:

Subject No. 1 -- Natural flavor components.

Proposal -- That an additional factor, based upon the number of "natural flavor components" in the product, be established for use, as a complement to proof of distillation, in distinguishing between classes and types of distilled spirits products.

Discussion -- Three main factors contribute to the development of the taste, aroma, and characteristics generally attributed to whiskies, brandies and rums; (a) the fermented material from which distilled, (b) the manner of distillation, and (c) the types of containers used for storing or aging. The present standards of identity rely on these criteria in distinguishing between types within classes and between classes of distilled spirits.

As to the second factor--manner of distillation--the regulatory controls are expressed in terms of proof of distillation, and various classes of distilled spirits, or types of spirits within the classes, are required to be distilled within specific ranges.

Current distillation proof limitations were prescribed over thirty years ago. Since then, improved distilling equipment and new processes and techniques have been introduced. Laboratory analyses and industry representations have demonstrated that as a result of these changes the proof of distillation no longer insures, in every instance, that a new distillate will possess the characteristics expected from distillation at the prescribed proofs.

Thus, the Treasury Department proposed that an additional factor, based on the number of "natural flavor components" in the product be established for use, under certain circumstances, as a complement to proof of distillation, in distinguishing between the various classes and types of distilled spirits. The notice of proposed rule making contained a table of proposed flavoring component standards. The standards proposed were developed with the primary intention that compliance therewith be readily determinable by inexpensive means.

Evidence was presented at the hearing that the flavoring components proposed do not include all of the flavoring components in the distillate. A number of flavoring components which are present in very minute quantities in the new distillate, but which contribute to the taste, aroma and characteristics of the finished product, cannot be readily quantified even when they are susceptible to measurement. For this and a variety of other reasons, most of the witnesses who testified at the hearing expressed opposition to the proposal.

Conclusion -- The proposal is not adopted.

Subject No. 2 - Revised standard for vodka.

Proposal. That a new definition of vodka be established which would include any neutral spirits, regardless of production method, which is without distinctive character and which contains less than four grams of natural flavor components per 100 liters at 100° proof.

Discussion. Present regulations prescribe two specific methods for the production of vodka but grant the Director, Alcohol and Tobacco Tax Division, authority to approve other methods of production which will result in a product equally without distinctive character, aroma, taste, or color. So long as the finished product offered to the consumer is without distinctive character, aroma, taste, or color,

there appears no longer to be a need to prescribe specific production procedures or to require approval of additional production methods. The proposed new definition of vodka would relieve producers from these unnecessary requirements, but would not change the consumer concept of the product.

Conclusion. The proposal is adopted, modified to delete the proposed reference to natural flavor components.

Subject No. 3 - Revised standard for gin.

Proposal. That a single standard of identity be adopted for "gin", whether produced by distillation or compounding, in place of the present separate standards for "distilled gin" and "compound gin". When gins are made solely by distillation, they could continue to be labeled as "distilled".

Discussion. The regulatory distinction between "distilled gin" and "compound gin" was drawn shortly after repeal to differentiate the distilled products from those made by mixing flavors and essences with alcohol. Currently the production of gin by either compounding or distilling results in an end product which is indistinguishable as to taste, aroma, or other characteristics. Thus the use of the terms "compound" or "distilled" as a part of the designation is essentially a distinction without a difference.

The adoption of this proposal would enable producers to vary from existing methods in making gin, although rectification tax may be incurred in some of the processes.

Conclusion. The proposal is adopted with slight modification in the definitional language proposed. Importers will be given reasonable time to ascertain the precise methods of production abroad and to arrange for such label revision as may be necessary.

Subject No. 4 - Establishment of a standard for "Blended Applejack".

Proposal. That the class "brandy" be revised to add a new type designation for "blended apple brandy" or "blended applejack".

Discussion. A distiller petitioned for a new designation for a blend of apple brandy (applejack) and neutral spirits. The petitioner testified that such a product would have greater consumer acceptance than applejack. Analyses of samples of such a product show that it retains the basic taste, aroma, and characteristics of the applejack, but with less pronounced flavor. In order to adequately advise the consumer that this product is not the same as applejack which is not blended, it would be designated as "blended applejack" and the label would be required to disclose the percentage of neutral spirits in the product and the commodity from which the neutral spirits were distilled.

Conclusion. The proposal for a standard of identity for "blended applejack" is adopted. However, inasmuch as the product may contain neutral spirits from other than fruit, it is prescribed as a new class of distilled spirits rather than as a type within the brandy classification. Since the new product is not a type within the brandy classification, the proposed designation "blended apple brandy" is not adopted.

Subject No. 5 - Deletion of the standard for "New England rum".

Proposal. That the standard of identity for "New England rum" be deleted.

Discussion. New England rum is presently defined as any rum distilled in the United States at less than 160° proof. In addition to eliminating a geographical designation which could mislead the consumer into believing the rum was in fact produced in New England, the adoption of the proposal would enable distillers to mix rum produced in the United States at less than 160° proof with other rums and label the mixture as rum without a statement of composition.

Conclusion. The proposal is adopted.

Subject No. 6 - Flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.

Proposal. That a new standard be established for flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.

Discussion. Flavored gin, flavored rum, flavored vodka, flavored whisky, and especially flavored brandy, in recent years, have achieved such consumer acceptance that a standard was proposed in order to maintain product identity and quality. It was also proposed that the use of wine in these flavored distilled spirits be limited to 2½ percent by volume of the finished product. However, in the case of flavored brandies an additional 12½ percent by volume of wine might be used, without label disclosure, if the wine is derived from the particular fruit corresponding to the labeled flavor of the brandy.

Testimony on this proposal related primarily to the limitations on the use of wine in flavored brandies. Most flavored brandy producers use little or no wine, whereas a few have used a high percentage of wine in their products. After careful consideration of this matter it has been concluded that the use of wine may be justified only as a flavoring ingredient. No significant evidence was submitted which would establish that the use of quantities of wine in any of these products in excess of the limitations proposed is required to adequately flavor the products. The manufacturer would not be precluded from using greater quantities of wine, but if he does so he must disclose such use on the label.

Conclusion. The proposal to establish a standard of identity for these products (including the proposed limitations on the undisclosed use of wine) is adopted.

Subject No. 7 - Amendment of distilled spirits definition.

Proposal. That the definition of "distilled spirits" be amended so as to exclude a mixture of wine and distilled spirits, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Discussion. Products containing not less than 5 percent distilled spirits and as much as 95 percent wine, to which have been added some flavoring materials, and bottled at 48° proof or less, are presently classified as distilled spirits. The packaging, labeling, and strip stamping of these specialties as distilled spirits, even though they are essentially wine products, may well deceive the consumer as to product identity. The proposed revision of the definition of

"distilled spirits" would provide significant consumer protection by precluding the labeling of wine products as distilled spirits.

Conclusion. The proposal to redefine the term "distilled spirits" is adopted with slight modification in the definitional language proposed. Manufacturers of products not conforming to the new definition will be provided ample time to change their labels and thereafter may package and label such products as wine specialties.

Subject No. 8 - Information on labels in regard to net contents, proof of distillation, qualifying words, and alcoholic ingredients.

Proposals.

A. To require that all mandatory information be printed on labels in such a manner as to be generally parallel to the base on which the container rests as it is designed to be displayed (a similar provision is found in the Model State Regulation Pertaining to Packages adopted by the National Conference on Weights and Measures);

B. To require the alcoholic content (proof) to appear on the brand label of the product;

C. To prohibit net contents statements from being qualified by any descriptive term such as, "jumbo", "full", "giant";

D. To require the net contents to appear on the brand label except in the case of distilled spirits packaged in containers conforming to the standards of fill; and

E. To require that any statement, other than required information, on a label as to any of the alcoholic components of the product include the name and percentage of all the alcoholic components, except alcoholic coloring, flavoring, or blending ingredients used in minute quantities.

Discussion. Adoption of these proposed changes would make it easier for the consumer to locate and better understand key items describing the contents of a container.

The quantity in a container is of great importance to the buyer and in the case of distilled spirits this includes both net contents and alcoholic content. Therefore, the alcoholic content of the product and the net contents (when not packaged in containers conforming to the standards of fill) should be shown on the brand (principal) display label in every instance. Qualifying adjectives or statements descriptive of the net contents, for example "giant size" or "full" quart, may deceive the consumer as to the actual contents and should be prohibited. In addition, the key items of information should be so placed on the label as to be readily apparent to the consumer without the need for him to search for them, and this would be accomplished by having the information appear generally parallel to the base on which the container rests as it is designed to be displayed, or to appear in some other equally conspicuous manner.

Cordials and liqueurs are not required to bear statements of composition. Thus, under present regulations, a manufacturer is able to show on the label of such a product any one or more of the alcoholic ingredients without disclosing the total composition. Such partial disclosures may be materially misleading to the consumer. Thus, if the manufacturer elects to show on the labels of these products

any of the alcoholic ingredients, he should be required to show the kinds and percentages of all of the alcoholic ingredients (other than those used within the 2½ percent limitation for harmless coloring, flavoring, or blending materials); such a requirement need not apply, however, to the labeling of two or more products which are sold both separately and in combination, for example, T & B (Triple Sec and Brandy) where no other references are made to the alcoholic ingredients of either product.

Many labels now fully conform to these proposed new rules. The additional information on the brand label would not unduly restrict the bottler in creating new and artistic designs.

Conclusions. The proposals are adopted with slight modification. Bottlers will be granted a reasonable period of time to exhaust stocks of nonconforming labels.

Subject No. 9 - Treatment of distilled spirits.

Proposal. To add, as a counterpart to the present limitations on the addition of materials, a limitation on the extraction of materials.

Discussion. Extensive removal of constituents from distilled spirits in the preparation of a product for bottling may result in an alteration of the class and type. In view of the increased treatment of distilled spirits products, primarily whisky, a need exists for a regulation to limit the removal of product characteristics generally attributed to the class or type by which the spirits are labeled. As to distilled spirits generally, it was proposed that the products after treatment must retain the taste, aroma and characteristics generally attributed to them.

In the case of straight whisky, however, it was proposed that the removal of all substances be prohibited, except for stabilization purposes as prescribed under section 5025 (j) of the Internal Revenue Code. Industry presentations were convincing that in the case of straight whisky, the removal of as much as 15 percent of the fixed acids, or volatile acids, or esters, or soluble solids or higher alcohols, or 25 percent of the soluble color may be necessary in order to produce a stable product. Such treatment will not unduly affect the character of the straight whisky acquired during maturation.

Conclusion. The proposal to prescribe regulatory provisions governing the extraction of materials from distilled spirits is adopted with modifications.

Subject No. 10 - Labeling of bulk imports.

Proposal. To make optional label disclosure of the name and address of the person responsible for importation of the product when the name of the bottler and the place where bottled are shown.

Discussion. Imported bulk spirits are often both bottled and distributed by a person other than the person responsible for the importation. Under present regulations, the label must show the name and address of the person responsible for the importation, and in addition either (a) the name of the bottler and the place where bottled, or (b) that the distilled spirits were bottled in the United States for the person responsible for the importation, e.g. "imported by and bottled in the United States for _____." Compliance with the requirement for showing the name and address of the person responsible for the importation has

proved unnecessarily burdensome in many instances, particularly where the identity of such person has become meaningless as a result of numerous transfers of the goods. The statute requires that the identity of the manufacturer, bottler, or importer be disclosed.

Conclusion. The proposal is adopted.

Subject No. 11 - Age certificates for imported spirits.

Proposal. To require age certificates for all imported whiskies and brandies.

Discussion. Under current regulations age certificates, issued by a duly authorized official of the appropriate foreign government, are required for imported whiskies and brandies only when the label of a product bears a statement of age. Although present regulations do not require such a certificate when a whisky or brandy does not bear an age statement, a certificate seems necessary even in such cases, in order to establish that the product meets the minimum age (4 years for whisky; 2 years for brandy) to be exempt from an age statement.

Conclusion. The proposal is adopted.

Subject No. 12 - Label references to government supervision.

Proposal. To permit the label on domestic spirits to bear truthful statements that the spirits were distilled, barreled, warehoused, blended, proofed, or bottled, as the case may be, under the supervision of the United States Government.

Discussion. Under existing regulations, except for distilled spirits bottled in bond, domestically produced distilled spirits have not been permitted to bear a statement that such spirits have been distilled, blended, made, bottled, or sold, in accordance with any governmental authorization, law, or regulation. On the other hand, imported distilled spirits have been permitted by regulation to bear certain statements of this nature when such statements are specifically authorized or required by the foreign government involved.

No evidence is available of consumer misunderstanding of the statements, appearing on labels of imported spirits, relating to acts of manufacture performed in accordance with foreign regulations, and no evidence is available which would indicate that the consumer would be misled by similar statements with respect to domestic products.

Conclusion. The proposal is adopted. Uniform statements are prescribed in order to avoid possible consumer deception.

Accordingly, the following amendments to 27 CFR Part 5 are hereby adopted:

Paragraph 1. Section 5.10 (e) is amended by striking out the period and adding at the end thereof ", except that this term shall not include mixtures containing wine, bottled at 48^o proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis."

Par. 2. Section 5.21 is amended by adding two new paragraphs (j) and (k) reading as follows:

(j) Class 10; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky. "Flavored brandy", "flavored gin", "flavored rum", "flavored vodka", and "flavored whisky", are brandy, gin, rum, vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 70^o proof. The name of the predominant flavor shall appear as a part of the designation. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(k) Class 11; blended applejack. "Blended applejack" (applejack-a blend) is a mixture which contains at least 20 percent by volume of 100^o proof apple brandy (applejack), aged for not less than two years, and not more than 80 percent of neutral spirits if such mixture at the time of bottling is not less than 80^o proof.

Par. 3. Section 5.21 (a) is amended by revising subparagraph (1) to read as follows:

(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 and bottled at not less than 80^o proof.

Par. 4. Section 5.21 (c) is amended to read as follows:

(c) Class 3; gin. "Gin" is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It shall derive its main characteristic flavor from juniper berries and be reduced at time of bottling to not less than 80^o proof. Gin produced exclusively by original distillation or by redistillation may be further designated as "distilled". "Dry gin" (London dry gin), "Geneva gin" (Hollands gin), and "Old Tom gin" (Tom gin) are types of gin known under such designations.

Par. 5. Section 5.21 (e) is amended by deleting subparagraph (2).

Par. 6. Section 5.21 (g) is amended by inserting in subparagraph 6 ", except that this provision shall not apply to any product conforming to the standard of identity for blended applejack" after "have been added".

Par. 7. Section 5.22 is amended by adding at the end thereof a new paragraph (d) reading as follows:

(d) The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma and characteristics generally attributed to that class or type of distilled spirits alters the class or type thereof, and the product shall be appropriately redesignated. In addition, in the case of straight whisky the removal of more than 15 percent of the fixed acids, or volatile acids, or esters, or soluble solids, or higher alcohols, or more than 25 percent of the soluble color, shall be deemed to alter the class or type thereof.

Par. 8. Section 5.32 (a) is amended by inserting after subparagraph (3) the following two new subparagraphs:

(4) Alcoholic content, in accordance with Section 5.36.

(5) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in Section 5.73 (a), net contents in accordance with Sections 5.37 (b) and (c).

Par. 9. Section 5.32 (b) is amended by inserting in subparagraph (1) "and/or bottler" after "address of importer".

Par. 10. Section 5.32 (c) is amended:

(A) by striking out subparagraph (1); and

(B) by revising subparagraph (2) to read as follows:

(2) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in Section 5.73 (a), net contents in accordance with Sections 5.37 (a) and (d).

Par. 11. Section 5.34 (c) is amended to read as follows:

(c) On labels of cordials and liqueurs, the alcoholic components of the product may, but need not, be stated.

Par. 12. Section 5.35 (b) is amended by revising subparagraph (2) to read as follows:

(2) On labels of imported distilled spirits bottled after importation by a person other than the person responsible for the importation there shall be stated:

(i) the name of the bottler and place where bottled, immediately preceded by the words "bottled by"; or

(ii) the name of the bottler and place where bottled, immediately preceded by the words "bottled by" and in conjunction therewith the name and address of the person responsible for the importation, in the manner prescribed in subparagraph (1) of this paragraph; or

(iii) the name and principal place of business in the United States of the person responsible for the importation, if the spirits are bottled for such person, immediately preceded by the phrase "imported by and bottled in the United States for " (or a similar appropriate phrase).

Par. 13. Section 5.37 (d) is amended by inserting in the first sentence "of a container conforming to the standards of fill prescribed by Section 5.73 (a)" after "on any label".

Par. 14. Section 5.37 is amended by adding a new paragraph (e) reading as follows:

(e) Words or phrases qualifying statements of net contents are prohibited.

Par. 15. Section 5.40 (b) is amended by inserting in the first sentence "(except brand names) shall appear generally parallel to the base on which the

container rests as it is designed to be displayed, or shall be otherwise equally conspicuous, and" after "on labels by Sections 5.30 - 5.41".

Par. 16. Section 5.41 (b) is amended by inserting after the second sentence of subparagraph (1) the following new sentence, "The statements authorized by the Federal Government to appear on labels for domestic distilled spirits are 'Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.) Government supervision', or in the case of distilled spirits bottled under Section 5233, Internal Revenue Code, (26 U.S.C. 5233) 'Bottled in bond under United States (U.S.) Government supervision'."

Par. 17. Section 5.46 (b) is amended by striking out the first sentence and inserting in lieu thereof, "Scotch, Irish, and Canadian whiskies, imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying to the age of the youngest distilled spirits in the bottle."

Par. 18. Section 5.46 (c) is amended by striking out the first sentence and inserting in lieu thereof, "Brandy or cognac, imported in bottles, shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying that the age of the youngest brandy or cognac in the bottle is not less than two years, or if age is stated on the label, that none of the distilled spirits are of an age less than that stated. If the label of any rum, imported in bottles, contains any statement of age, the rum shall not be released from customs custody for consumption unless accompanied by a certificate issued by a duly authorized official of the appropriate country, certifying to the age of the youngest rum in the bottle."

Par. 19. Section 5.51 (b) is amended by striking out the first sentence and inserting in lieu thereof, "Scotch, Irish, and Canadian whiskies imported in bulk shall not be removed from the plant where bottled unless the bottler possesses a certificate for such spirits issued by a duly authorized official of the appropriate foreign government certifying to the age of the youngest distilled spirits."

Par. 20. Section 5.51 (c) is amended by striking out the first sentence and inserting in lieu thereof, "Brandy or cognac imported in bulk shall not be removed from the plant where bottled unless the bottler possesses a certificate for such spirits issued by a duly authorized official of the appropriate foreign government certifying that the age of the youngest brandy or cognac is not less than two years, or if age is stated on the label of the bottle, that none of the distilled spirits are of an age less than that stated. If the label on bottled rum, imported in bulk, bears a statement of age, the rum shall not be removed from the plant where bottled unless the bottler possesses a certificate for such spirits issued by a duly authorized official of the appropriate country, certifying to the age of the youngest rum."

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The amendment of Section 5.10 (e) shall become effective July 1, 1972. This will afford industry ample time within which to effect necessary changes, at Federal and State levels, to redesignate certain products as wine specialties which are now marked as distilled spirits products.

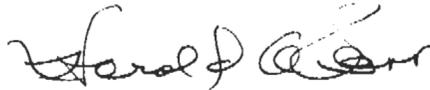
The amendments of Section 5.32 (c), Section 5.34 (c), Section 5.37 (d) and Section 5.40 (b), and the additions of new paragraph (j) to Section 5.21, new subparagraphs (4) and (5) to Section 5.32 (a) and new paragraph (e) to Section 5.37 relate to information appearing on labels of distilled spirits products, and in order to allow industry an opportunity to make conforming changes, such as obtaining new labels and disposing of obsolete inventories, these amendments shall become effective July 1, 1969.

All other amendments either relieve restrictions presently contained in the regulations, generally follow administrative rules now observed, or require very little trade adjustment, and, thus, they shall become effective on the first day of the month that begins not less than 60 days after the date of publication of this Treasury decision in the Federal Register.

(This Treasury Decision is issued pursuant to and under the authority contained in 49 Stat. 981, as amended; 27 U.S.C. 205.)

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Inquiries concerning this circular should refer to its number and be addressed to the Director, Alcohol and Tobacco Tax Division (Attention: CP:AT:JHL), Washington, D. C. 20224.



Harold A. Serr
Director, Alcohol and Tobacco Tax Division