

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 876; Ref: Notice Nos. 861 and 867]

RIN 1512-AB70

Net Contents Statement on Wine Labels (95R-054P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of withdrawal to inform interested persons that we are not pursuing rulemaking regarding the net contents statement on wine labels as proposed in Notice No. 861. The majority of commenters believe that allowing the net contents to be expressed in centiliters as an alternative to milliliters is misleading and would result in consumer confusion.

FOR FURTHER INFORMATION CONTACT: James P. Ficareta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as the delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer and to provide the consumer with adequate information as to, among other things, the net contents of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code

of Federal Regulations (CFR), part 4. Section 4.32(b) provides, in part, that a statement of net contents must appear on the label of all containers of wine in accordance with section 4.37. Section 4.37 provides that the net contents of wine for which a metric standard of fill is prescribed must be stated on the label in the same manner and form as set forth in the standard of fill. The authorized metric standards of fill for American and imported wine, for sale in interstate commerce within the United States, are set forth in section 4.73 as follows:

3 liters

1.5 liters

1 liter

750 milliliters

500 milliliters

375 milliliters

187 milliliters

100 milliliters

50 milliliters

As provided in section 4.37(a), the net contents of wine for which no standard of fill is prescribed, e.g., sake, must be stated in liters and in decimal portions of a liter for quantities larger than one

liter, and in milliliters for quantities of less than one liter.

Pursuant to section 4.32(b)(2), if the net contents of the wine is an authorized standard of fill, e.g., 750 milliliters, the net contents statement may appear on any label affixed to the container. If the net contents is a standard of fill other than an authorized standard of fill, e.g., 720 milliliters, the net contents statement must appear on a label affixed to the front of the container. Since the regulations show "ml" as an abbreviation for milliliter (section 4.37(a)(2)), that abbreviation may be used in lieu of milliliter, where required.

Finally, section 4.37 provides that the net contents need not be stated on the label if it is legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director on the side, front, or back of the container in an unobscured location.

Notice No. 861

On May 15, 1998, we published a notice in the Federal Register soliciting comments from the public and industry on a proposal to amend the regulations to provide that the net contents statement for wine in containers of less than 1 liter may be expressed on the label in

centiliters (cl) as an alternative to milliliters (ml) (Notice No. 861, 63 FR 27017). The proposal was based on a petition we received from Banfi Vintners (Banfi) of Old Brookville, New York. Banfi had asked that the regulations be amended to provide that the net contents for wine bottled in a 750 milliliter (750 ml) standard of fill be expressed in centiliters, as "75 cl," as an alternative to "750 ml." The petitioner stated that 75 centiliters is a universally recognized measurement equivalent to 750 milliliters in the metric system. Furthermore, authorizing this alternative net contents statement on wine labels "would simplify current regulations and allow for an easier flow of wines among Europe, the world markets and the United States."

The comment period for Notice No. 861, initially scheduled to close on August 13, 1998, was subsequently extended until October 19, 1998 (Notice No. 867, September 18, 1998; 63 FR 49883).

Analysis of Comments

We received 95 comments in response to Notice No. 861. Comments were submitted by consumers, industry members (representing domestic and foreign interests), various organizations and trade associations (e.g., the National Conference on Weights and Measures, the U.S. Metric

Association, Inc., the Wine Institute, the National Association of Beverage Importers, and the Scotch Whisky Association), and one Federal agency (U.S. Department of Commerce--National Institute of Standards and Technology).

Of the 93 comments that addressed the proposed regulations, 82 objected to allowing the net contents for wine to be expressed in centiliters as an alternative to milliliters. The commenters contend that the American consumer is not yet fully oriented to the metric system and that the proposed regulations, if adopted, would result in consumer confusion. Furthermore, the current regulations provide consumers with one standard of common measurement for wine bottled in

containers of less than 1 liter, i.e., milliliters. The commenters believe that having the net contents expressed in milliliters and centiliters on bottles of the same size may lead consumers to assume

the containers do not hold the same amount of wine.

Other commenters expressed similar concerns with the proposed regulations. One commenter, the National Conference on Weights and Measures (NCWM), is a standards-development organization whose members include representatives from Federal, State, and local weights and

measures and other government agencies; businesses, trade and professional organizations; consumer and other interested groups. The NCWM stated the following:

The proposed changes are in direct conflict with the metric provisions of the 'Uniform Packaging and Labeling Regulation' adopted by the NCWM in 1993, the metric regulations adopted by the

Federal Trade Commission (1994), and metric labeling regulations proposed by the Food and Drug Administration for foods, drugs and cosmetics (1993). * * * The labeling requirements for ackaged goods adopted by the NCWM, other Federal Agencies, and OIML limit quantity declarations on consumer products to either milliliters or liters to reduce the possibility of consumer confusion. The Committee urges ATF to withdraw its proposal to permit centiliters because its adoption would result in a proliferation of net quantity declarations that may mislead consumers * * *

The NCWM explained that the OIML (Organization for Legal Metrology) is a worldwide, intergovernmental organization whose primary aim is to harmonize the regulations and metrological controls applied by its Member States, including the United States, Canada, and the European Union.

Other commenters shared the views of the NCWM, including the National Institute of Standards and Technology, a Federal agency within the Department of Commerce, and the U.S. Metric Association, Inc. The U.S. Metric Association was established in 1916 for the purpose of assisting the U.S. in adopting the metric system and providing guidance for metric system usage to industry, business, education, and consumers.

Eleven commenters supported the proposed regulations. One commenter, a national trade association representing importers of alcohol beverages, stated that "differences between labeling rules of U.S. and Europe can cause unnecessary expense to an importer without providing the consumer any added protection or information." This commenter also argued that the proposed regulations would provide producers with flexibility in labeling their products. In addition, the

commenter believed that the proposed regulations should apply to distilled spirits. Other commenters in favor of the proposal expressed similar concerns.

Decision

After careful consideration of the comments received, we have determined that an amendment of the regulations is not justified or warranted. In Notice No. 861 we stated that the metric standards of fill were first prescribed on December 31, 1974, pursuant to T.D. ATF-12, and became mandatory on January 1, 1979. In order to standardize the manner by which metric net contents were to be stated on the label and to avoid confusion among consumers, the final rule required metric net contents to be expressed in liters and decimal portions thereof for quantities larger than one liter and in milliliters for quantities less than one liter. Thus, as one commenter pointed out in the comments received in response to Notice No. 861, for more than 20 years the regulations have provided consumers "with the advantage of one simple standard of common measurement (milliliters) for wines in quantities less than one liter. The proposed regulation would remove that

advantage. Seeing different units of measurement (ml and cl) on wine bottles of the same size may lead the consumer to assume that there is some difference in the contents of these bottles, * * *."

In addition, as discussed in Notice No. 861, our decision to express the net contents in milliliters for wine in containers of less than one liter was based, in part, on testimony presented at the

hearing which preceded T.D. ATF-12. In particular, the American National Metric Council recommended milliliter (ml) as the only submultiple of liter and emphasized that "[t]he important thing is to avoid the confusion of an excessive variety of submultiples, which may cause errors in communication. These other submultiples, * * * would be a deciliter--dl, a centiliter--cl." This concern is still valid more than 20 years later. As the NCWM stated in their comment:

When the NCWM developed its metric labeling regulations it was the consensus of the organization and FTC and FDA that metric prefixes such as centi, deka, deci, hecto and others were

inappropriate for use on consumer packages.

It is clear from the comments received in response to Notice No. 861 that American consumers are not yet completely familiar with all units in the metric system. Based on the information contained in the comments, we believe that the proposed regulations, if adopted, would not be of any value to consumers and would result in confusion. Furthermore, we did not receive any comments from consumers in support of the regulations. We did, however, receive comments from

consumers expressing their objections to the proposed regulations.

Accordingly, for the reasons stated above, we are withdrawing Notice No. 861.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Signed: April 29, 1999.

John W. Magaw,

Director.

Approved: June 4, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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