

1 036 OVERLAND PL.  
VACAVILLE, CALIFORNIA 95687  
TELEPHONE (707) 455-8907  
FAX (707) 455-8907

August 24, 2005

Chief,  
Regulations and Procedures Division  
Alcohol & Tobacco Tax & Trade Bureau  
Washington, D.C.

Attn: Notice No. 41

Sir/Madam:

Specific comments on the NPRM's general questions are set forth below, however, responses to those questions share a common theme.

Further research, and likely further regulations, is necessary with respect to what disclosures are adequate and not misleading regarding "imitation" wine, "substandard" or "other than standard" ("OTS") wine (collectively, "Class 8 Wine"), and wine that does not fit within any of the current standards of identity ("Undefined wine"). Such wines can be made in a variety of ways, and there is a concern that inappropriate labeling has led to consumer confusion about what these products are and how much standard natural wine they actually contain.

As an example, some of these products may be made not only with added flavors, but also with the addition of excess water and/or sugar, and possibly also the addition of distilled spirits. Although the use of "grape wine with natural flavors", or "table wine with natural flavors" had previously been considered adequate to disclose the addition of flavors, such labels say nothing about the other ways in which such wines differ from standard natural grape wine.

In fact, use of the term "grape wine" or "table wine" misleadingly suggests that, absent the additional flavors, the wine would qualify for those designations. That would not, however, be true if, even absent the flavoring, the wine would not qualify for the "grape wine", or "table wine" standard of identity because of the addition of water, sugar or distilled spirits.

More accurately, such wines are OTS, or "substandard" wines with added flavors. Also more accurately, and more simply, many such wines would seem to qualify as "imitation" wine because they attempt to stimulate standard natural wine through treatment not used on standard wine. [See 27 CFR 4.21(h)(1)(iii)].

In a previous rulemaking, ATF rejected a proposal to allow OTS wine "to be completely neutralized by successive additions of wine spirits and water so that natural flavors would

be more effective in the final product", because it found that it was "doubtful that the final product could be labeled wine, since it would not have the basic character derived from the primary winemaking material." However, because there are currently no limits on the quantity of spirits, water, or flavors that can be added to Class 8 Wine, or "undefined wine", there is nothing to prevent such wine from being "neutralized" in this way, yet nonetheless labeled as wine.

There is significant danger of consumer confusion or deception with respect to Class 8 wines and Undefined Wine, and further research on this subject is warranted. There is also the potential threat to winemakers and growers, should this information become "common knowledge", and consumers lose faith with those who strive for accurate labeling and standard production processes.

TTB should examine whether the current regulations are sufficient to prohibit confusing or deceptive labeling of such wines, or whether additional or different disclosures are required. For example, the federal regulations already prohibit any "name in the . . . class or type designation which stimulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact, so designated on its labels." [27 CFR 4.39(a)(8)].

On its face, this regulation would appear to prohibit the use of descriptions such as "table wine with natural flavors" on wine that does not qualify for the "table wine" standard of identity, irrespective of the addition of "natural flavors." Yet there are some products currently being marketed that do not qualify as "table wine", but are nonetheless labeled "table wine with natural flavors."

In addition, while ATF previously concluded that flavored wines do not fall within any current standard of identity, it is not clear why flavored wines intended to simulate standard wines are not "imitation" wines under Section 4.21(h)(1), and why they should not be labeled as such.

**1. Should TTB seek to require mandatory nutrition labeling?**

No comment.

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

With respect to wine, TTB should only consider mandatory ingredients labeling for "Undefined Wine", and possibly also for Class 8 Wine. Ingredient labeling is not necessary with respect to wines that fit within the established standards of identity, other than Class 8 Wine.

Unlike Undefined Wine and Class 8 Wine, such wines have clear standards of identity that generally identify the basic agricultural ingredient and set forth standards for production. Most consumers are familiar enough with the standards of identity for such wines to have a basic understanding of their composition.

That is not the case with respect to Undefined Wine, to which no standard of identity applies. For Undefined Wine, ingredient labeling may not only be appropriate, but also necessary because consumers typically will lack any other information about how the wine was created and what it actually contains.

In addition, T1'13 should also consider requiring an ingredient list for Class 8 Wine, which is loosely defined and is a class of wine with which most consumers are not familiar. With respect to Class 8 Wine, T1'13 also should consider whether some of the products that currently carry labels such as "grape wine with natural flavors" actually fall within Class 8 as an "imitation wine", and should be so labeled as such.

With respect to wines that warrant ingredient labeling, TTB should consider requiring a statement of any ingredients that are not "natural" to the product, yet remain in the finished product, such as flavors, sugar, etc. Those types of ingredients should be clearly and specifically shown on the label.

Rather than just a generic statement of composition, such as "grape wine with natural flavors", the type of flavor and amount, as a percentage of the finished product, and any additional ingredients, such as sugar or excess water would be valuable information to the consumer. If such information cannot feasibly fit on the front label, the front label should contain an accurate statement of composition, or Class 8 standard of identity that refers the consumer to the location of the actual list of ingredients (e.g., "imitation wine, see back for ingredient list").

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

As discussed above, further research and evaluation is appropriate with respect to the labeling of wines that do not fit within the current standards of identity. Further research also is appropriate regarding the accuracy and adequacy of labels such as "grape wine

with natural flavors", including whether such wines actually fall within the current Class 8 standard of identity for "imitation wine", and should be labeled as such.

Research also should be conducted to determine the effect that various other statements that are frequently included on labels, such as "premium wine", or "house wine favorite", really have on the consumer, particularly when the product does not, in fact, qualify for the "grape wine" standard of identity. Not infrequently, such additional statements on labels tend to contradict and overwhelm accurate product information, and/or mislead the consumer into thinking the product is something other than it really is. Any information on a label describing the product should be accurate and relevant.

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

Those regulations that deal with the classification, labeling and advertising of Class 8 Wine and Undefined Wine should be thoroughly reviewed. Where necessary, the regulations should be modified to ensure that there are no contradictions, that such products are adequately and accurately labeled, and that the distinction between the various products covered by those regulations are clear unambiguous and easily understood by consumers to distinguish between such products and standard natural wine. The intent should be to afford the consumer with sufficient, clear, concise information to facilitate an informed purchasing decision.

The proposal for ingredient labeling discussed above would be one way to address this issue. Ingredient labeling is obviously not the only solution. But whatever solution TTB considers should ensure that the standard of identity used is accurate.

This includes ensuring that if an existing standard of identity such as "imitation wine" in fact applies to a product, then that standard actually is used, as required by existing regulations. If no existing standard of identity applies, TTB should consider carefully what labeling accurately will describe the product without creating consumer confusion between such wine and standard natural wine.

Possible alternatives to a full ingredient list requirement could include requiring a statement of the percentage of standard natural wine that the product contains.

Another alternative that TTB should consider is requiring that a certain minimum amount of standard natural wine be used as a base for any "OTS"/substandard" wine, Undefined Wine, or any wine that includes on the label a term for natural wine such as, "grape

wine" or "table wine". Any product that does not meet that minimum should be considered, and labeled as "imitation wine".

Further, consideration should be given to eliminating the OTS labeling designation, and utilizing only the "substandard" wine labeling designation. The OTS labeling designation is not fully understood by consumers, and can create a misleading impression as to the real nature of the product. "Other Than Standard" can easily be misconstrued to mean that the product is actually "better" than mere standard wine.

In any event, the "OTS", "substandard", or "imitation" designation should be clearly and concisely stated on the label of any qualified product.

#### **5. Harmonization?**

No comment.

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

Some amount of additional disclosure is necessary, at least with respect to wines that TTB determines do not fit within existing standards of identity, and possibly Class 8 wines as well. The more specific, concise, unambiguous information the consumer has available on a label, the more likely he/she will make an educated decision.

A belief that at least some change to the labeling requirements would benefit consumers is grounded on the fact that certain wine products currently are labeled in a fashion that misleads consumers as to the true nature of the products. Specifically, it is misleading to identify a wine product as "grape wine with natural flavors", when, even without the added flavors, that product would not qualify as "grape wine" because of excess water, sugar, or other ingredients. The misleading nature of such labels can be exacerbated by other statements on the label describing it as a "premium wine" or "house wine favorite".

Such labeling misleads many consumers into believing incorrectly that such products are standard natural wine, when they are not, thus creating consumer confusion or deception, as well as unfair competition with wines that are, in fact, standard natural wine.

Although the precise balance between the amount of additional labeling that is appropriate, relative to the costs of such labeling, requires further study, it should not be assumed that providing accurate information on a label would necessitate increased economic costs. Accurate labeling may merely mean replacing misleading or less than

candid information on a label with information that is more honest and direct, and of more real value to the consumer.

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

Without some idea of all the various items under consideration, it is difficult to develop a priority listing. However, at the top, or near the top, of an priority listing should be any change that is recognized to be of value to the consumer, and particular, any change aimed at correcting misleading labeling that causes consumer confusion and deception.

**8. Should any new labeling requirement apply equally to advertisements?**

Advertising is very nearly as important in providing information to the consumer as is a label on the product. If the products are represented as something they are not, the consumer can be misled into making a purchasing decision based on erroneous information. Although advertisement may have more logistical limitations with respect to the quantity of information provided (e.g., full ingredient lists may not be feasible), they should at the very least not be permitted to be misleading with respect to the nature of the product being advertised.

**9. CSPI questions re allergen labeling on alcohol beverage containers.**

Concerns about allergens provided another reason why any element that is not natural in the product and that remains in the finished product should be listed on the label. This is particularly relevant to elements such as flavors.

Consumers who may be allergic to a specific flavor (e.g., strawberry) should be informed if the product *has* that element added to it. The generic "natural flavors added" is not sufficient information upon which any consumer can make an informed, health-related decision.

I appreciate the opportunity to submit comments on these critical issues, and I wish you luck in arriving at some consensual agreement.

Sincerely,



William T. Drak

Cc: John J. Manfreda, Administrator