

COMPLIANCE MATTERS

95-2

*This issue of **Compliance Matters** features informative articles on a variety of topics including: Changes in policies and procedures in ATF's Processing of label approvals, changes in policy on the use of athletes, athletic events and motor vehicles in labeling and advertising, use of the term "organic" on a label.*

This issue also contains the following Industry Circular:

Athletes, Athletic Activities Or Events And Motor Vehicles In
Labeling And Advertising Of Alcoholic Beverage 95-2 Date 6/16/95

ATTENTION: All Importers And Domestic Producers/Wholesalers Of Wine

ACCURACY IN THE LABELING OF WINE

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received several inquiries concerning the issue of accuracy in the labeling of wine. The inquiries asked whether ATF has the authority to take action against importers or domestic producers/wholesalers who obtain label approval for wine which is later determined not to meet the requirements of 27 CFR Part 4-Labeling And Advertising Of Wine. These inquiries dealt specifically with varietal, appellation of origin, and vintage requirements.

As written, the percentage requirements stated in 27 CFR 4.25a and 4.27, pertaining to appellations of origin and vintage wine respectively, apply to both domestic and imported wines. Section 4.23a, pertaining to varietal (grape type) labeling, does not distinguish between domestic and imported wines, so, therefore, it applies to both of these wines. These sections of regulations require certain minimum percentages to be used before a wine can be labeled with a varietal (grape type) name, appellation of origin, or vintage date.

Additionally, sections 4.25a and 4.27, pertaining to appellations of origin and vintage dates, require that the imported wine also comply with any composition and methods of production requirements of the wine when available for consumption in the country of origin. Thus, if the country of origin requires a higher percentage (or other additional requirements) than contained in the ATF regulation, then the imported wine must meet that percentage (or other additional requirements.)

For example, when the names of one or more grape varieties are to be used as the type designation of a grape wine, the wine must first be labeled with an appellation of origin. If the name of a single grape variety is to be used as the type designation, then not less than 75 percent of the wine must be derived from grapes of that variety, the entire 75 percent of which must be grown in the labeled appellation of origin area.

In addition, for an appellation of origin to be used on a wine label, other than a multicounty or multistate appellation (which requires 100 percent) or a viticultural area (which requires 85 percent), at least 75 percent of the wine in the labeled container must be derived from fruit or agricultural products grown in the appellation area indicated.

Furthermore, wine can only be labeled with a vintage date if at least 95 percent of the wine is derived from grapes harvested in the labeled calendar year, and if the wine is labeled with an appellation of origin other than a country.

Regulations at 27 CFR 4.30 and 27 CFR 251.59 require domestic and imported wine to be labeled in accordance with the Federal Alcohol Administration (FAA) Act and regulations promulgated thereunder (27 CFR Part 4). Also, the certificate of label approval (COLA) form requires that the applicant sign, under penalties of perjury, that to the best of his/her knowledge and belief all statements appearing in the application are true and correct.

In addition, the back of the COLA form states that "This certificate is issued for Bureau of Alcohol, Tobacco and Firearms use only and does not constitute trademark protection, or relieve any person from liability for violations of certain regulations and rulings." Furthermore, regulations 27 CFR 4.38(h) state, in part, that "Upon request of the Director, there shall be submitted a full and accurate statement of the contents of the containers to which labels are to be or have been affixed."

It should be clear from the laws and regulations cited previously, as well as from the information printed on the COLA form, that the requirements listed in 27 CFR Part 4 pertain to both imported and domestic wine. It is the responsibility of the importer or domestic producer/wholesaler who submits the application for a COLA to ensure that the information on the label, which is submitted with the COLA, is truthful and accurate.

If questions arise as to the truthfulness and accuracy of information on the label, it is the responsibility of the importer or domestic producer/wholesaler to provide, within a reasonable period of time, documentation to verify the information on the label. This documentation can take the form of a government certification by a duly authorized official of the country of origin, if this is available, or it can take the form of documentation provided by the domestic or foreign producer.

All importers and domestic producers/wholesalers are reminded that they are responsible and can be held accountable for the accuracy and truthfulness of the information printed on their labels. Documentation from a duly authorized official of the country of origin or from the domestic or foreign producer may be required to verify the information on the label.

CHANGES IN POLICIES AND PROCEDURES REGARDING LABELS AND ADVERTISEMENTS

ATF is in the process of re-evaluating many of its policies and procedures regarding the labeling of alcoholic beverages. Our goal is to reduce the regulatory burden on industry and expedite our processing of Certificates of Label Approval (COLAs) while still accomplishing our mission and enforcing the laws and regulations regarding labeling. While this re-evaluation is a long-term process, we have already made the following policy and procedural changes which we believe will make significant contributions to meeting this goal. We will discuss many of these changes in greater depth in a future ATF Ruling. Please note that Item 9 applies to advertisements as well as labels.

I We have re-interpreted the phrase "direct conjunction", a phrase which appears in several places in the

regulations. In the future, where the regulations give us the flexibility to do so, we will accept two items of information on an alcoholic beverage label as being in direct conjunction if (a) they are on the same label, (b) they are likely to be seen simultaneously by a customer or consumer looking at the label, and (c) they are of sufficient size and are printed in colors which contrast with the background sufficiently to make them legible to a customer or consumer reading the label.

- 2) We will no longer stamp a qualification requiring legibility and contrast on COLAs for legible black and white labels. However, the absence of this stamp does not relieve industry members of the responsibility of ensuring that all labels are legible and have adequate contrast.
- 3) We will no longer require submission of color labels for malt beverages. However, industry members are cautioned that they must still satisfy legibility and contrast requirements for all labels.
- 4) To expedite the processing of labels, we have disbanded the label review board and have eliminated automatic second review of labels for journeyman employees.
- 5) We will no longer require lists of ingredients or statements of process for products claiming to be natural. However, industry members making such claims should maintain these documents to produce to ATF, if requested.
- 6) For distilled spirits, we will not reject or qualify COLAs if a proof statement (optional information) is not in parentheses or brackets.
- 7) We will no longer require a letter of authorization before approving labels which depict or refer to famous people, places or organizations. However, we note that our approval of a COLA does not relieve industry members from acquiring such authorization where appropriate. Moreover, industry members making such claims should maintain these documents to produce to ATF, if requested.
- 8) For personalized labels, we will no longer require that additional documentation for slogans, salutations or graphics be submitted and approved; the submitter will only need to indicate in item 12 "Personalized label". However, we will qualify approved labels of this sort by noting that approval of the COLA does not permit any personalizing information which discusses either the alcoholic beverage or characteristics of the alcoholic beverage.
- 9) We will not automatically consider deceptive or misleading each depiction of or reference to athletes, athletic activities or events, or motor vehicles used in alcoholic beverage labeling or advertising. We recognize that some such depictions or references may appear on labels and in advertisements without being deceptive or misleading. Each such depiction or reference will be reviewed on a case-by-case basis to determine whether it is deceptive or misleading. However, we will not approve applications for labels found to be misleading or deceptive and will initiate appropriate action against such labels and advertisements if they appear in the marketplace. This is discussed in greater detail in Industry Circular 95-2.

The following are **examples of labels or advertisements considered to be unacceptable**:

- (a) any label or advertisement which states that consumption of the alcoholic beverage will enhance

athletic prowess, performance at athletic activities or events, health or conditioning;

(b) any label or advertisement which depicts any individual (famous athlete or otherwise) consuming or about to consume an alcoholic beverage prior to or during an athletic activity or event;

(c) any label or advertisement depicting consumption of an alcoholic beverage while the party consuming the beverage is seated in, about to enter, operating, or about to operate automobiles or other machinery.

USE OF THE WORD "ORGANIC"

"Organic" is not currently defined by regulation. As additional information, however, truthful, accurate and specific organic claims are permissible. These claims are generally limited to a description of the commodity used to make the product (e.g., "organically grown grapes" or "organically grown barley"). A description of the alcoholic beverage itself as organic, (e.g., "organic wine") is not permissible as there is no standard of identity for such a product.

Organic claims must be documented to ensure that the additional information is truthful and accurate. The documentation must accompany each application for approval of a label containing an organic claim. Certification from an accredited or recognized certifying agency or State or foreign government is considered appropriate documentation. We consult with the Department of Agriculture (USDA) to determine whether a certifying agency is accredited or recognized. The USDA is the agency responsible for drafting regulations implementing the Organic Food Act of 1990 and maintains a list of U.S. and international certifying authorities.

CUSTOMER SERVICE STANDARDS

In Compliance Matters, issue 94-3, the Labeling Section, Product Compliance Branch, published its customer service standards. We noted our commitment to courtesy, professionalism and confidentiality. We also established target turnaround times for the processing of the various documents we receive and indicated that we would notify our customers if we were unable to meet the target turnaround times. The turnaround times are:

Certificates of Label Approval - 9 calendar days
Informal comments on proposed labels - 15 calendar days
Correspondence - 21 calendar days

We regularly encounter label submissions and correspondence which raise issues requiring lengthier review times. Some of the situations which may affect our ability to meet our turnaround times are new products and new marketing techniques which industry develops and the difficult questions industry sometimes raise about policies and interpretations of laws and regulations. However, we are working to ensure that all submissions are processed as quickly as possible.

Our statistics on meeting these customer service standards for October 1, 1994 - March 31, 1995 are as follows:

Formal Label Applications

Received: 28,589
Completed in 9 or fewer days: 25,546(89.4%)
Completed in over 9 days or still in process: 3,043 (10.6%)

Informal Label Applications:

Received: 178

Completed in 15 or fewer days: 154 (86.5%)

Completed in over 15 days or still in process: 24 (13.5%)

General Correspondence:

Received: 123

Completed in 21 or fewer days: 107 (87.0%)

Completed in over 21 days or still in process: 16 (13.0%)

We met our customer service standards almost 90% of the time during this period. We are committed to raising this percentage in the future. We will continue to examine our policies and procedures to find ways to improve our processing time and remove unnecessary burdens from industry. Some of the results of this examination can be found in the article entitled "Changes in Policies and Procedures Regarding Labeling and Advertising", which also appears in this issue of Compliance Matters.

Although we had success in meeting our target turnaround times for the items noted above, we have not yet fully implemented our plan to send out notifications when we would not meet the target turnaround times. We have been working to clarify requirements and to develop tracking and reporting systems to meet this commitment. We expect to have this fully implemented by October 1, 1995, with increasing numbers of notifications in the interim.

We are also currently working on a number of new initiatives which will enhance service to our customers. We are developing both a customer survey and a customer complaint system which will provide us with feedback on our performance and assist us in improving operations. We are continuing to work on development of new ADP applications which will help us better process and track our work and provide customers with better access to the information they need. As part of the Administration's Regulatory Reform Initiative, we are reviewing all of our regulations to identify obsolete or unnecessarily burdensome requirements. We are also reviewing the many comments we received regarding our regulations from industry members. As noted previously, we have already changed a number of policies and procedures in an effort to remove unnecessary burdens from industry and to improve processing times.

The Formula and Processing Section is developing customer service standards for the processing of formulas and statements of process. We plan to issue these in 1996.

**REMINDER: COLA REQUIREMENTS FOR CHANGES IN PRODUCER FORMULA, OR
LOCATION OF PRODUCTION FOR IMPORTED PRODUCTS**

Importers are required to submit an application for a new certificate of label approval (COLA), a list of ingredients, the method of manufacture and a sample, if necessary, when there is a change in a producer or formula for an imported alcoholic beverage product.

If a foreign producer changes the place(s) of manufacture for a product which is to be imported into the United States, the importer must provide ATF's Product Compliance Branch, Formula and Processing Section, with a statement on the producer's letterhead. The statement must note that the product is produced in the same manner and with the same ingredients as the product previously approved and it must include a list of ingredients and method of manufacture. The statement must be signed and dated by an officer of the producing company.

UPDATE: PRE-IMPORT APPROVALS

In Compliance Matters 94-2, the "PRE-IMPORT SUPPLEMENTAL" sheet was introduced to help alcoholic beverage importers streamline the pre-import approval process. In an effort to improve this process, we are requesting that the following information be provided:

- 1) The foreign producers should include their name and complete address [the city/province of region/country] where the product will be produced. Please provide a separate address if there are multiple plant locations, in the same or different countries, where the product will be produced.
- 2) The alcoholic beverage importers are asked to include their vendor codes on all correspondence submitted in conjunction with the pre-import approval process. The vendor code is a four digit numeric identifier assigned by ATF. If you have not been assigned a vendor code, please include a copy of your basic permit and indicate that you would like to have one assigned.

COUNTRY OF ORIGIN

- 1) Country of origin statements are required on the labels of all imported alcoholic beverages.
- 2) Historically, country of origin statements were required in one of these formats: "Product of," "Brewed and Bottled by," "Produced and Bottled by" or "Made in." There are now additional acceptable formats for country of origin statements.
 - a. NAFTA countries (U.S., Mexico, Canada)--country of origin statements may appear in the particular country's language -English, Spanish, or French, respectively.
 - b. For any imported alcoholic beverage, the origin may be incorporated as part of the designation or as a part of a descriptive phrase on the same label where the U.S. importer's address appears, in lettering of comparable size and in close proximity to the importer's name and address.

EXAMPLES:

- French Table Wine
- Australian White Wine
- Spanish Brandy
- Canadian Whisky - A Blend
- English Port
- Blended Irish Whisky
- Single Malt Scotch Whisky

- 3) U.S. Customs is the agency responsible for determining whether the country of origin statements are allowable. When we encounter a country of origin statement which contains phrasing with which we are unfamiliar, we will contact U.S. Customs for such a determination.

ATTENTION PLEASE NOTICE REALIGNMENT OF LABELING SECTION WORKLOAD

Effective August 21, 1995, the following alphabet list of responsibilities will be in effect:

| | | |
|--|--|--|
| | | |
|--|--|--|

| <u>Alphabet</u> | <u>Labels/Correspondence</u> |
|-----------------|------------------------------|
| 1. A | 1. Roberta Alford |
| 2. B | 2. Judy Harrison |
| 3. C | 3. Sean Harris |
| 4. D | 4. Roberta Alford |
| 5. E | 5. Judy Harrison |
| 6. F | 6. Sean Harris |
| 7. G | 7. Sherry Zacharias |
| 8. H | 8. Roberta Alford |
| 9. I | 9. Sheila Smith-Harrod |
| 10. J | 10. Sean Harris |
| 11. K | 11. Gwen Pittman |
| 12. L | 12. Sheila Smith-Harrod |
| 13. M | 13. Gwen Pittman |
| 14. N | 14. Sheila Smith-Harrod |
| 15. O | 15. Sherry Zacharias |
| 16. P | 16. Sherry Zacharias |
| 17. Q | 17. Sheila Smith-Harrod |
| 18. R | 18. Jeanne Reed |
| 19. S - | 19. Sheila Smith-Harrod |
| 20. T | 20. Gwen Pittman |
| 21. U | 21. Sherry Zacharias |
| 22. V | 22. Judy Harrison |
| 23. W | 23. Jeanne Reed |
| 23. X, Y, Z | 24. Jeanne Reed |

This distribution of this work will be by corporate name. During the transition period, until October 1, 1995, resubmission of rejected labels will still be assigned to the initiating Specialist.

Telephone inquiries and requests for label status should be referred to the appropriate Specialist.

Whenever you submit label approval applications (COLAs), please submit them in duplicate. This is important not only for your initial submissions but also for any of your resubmissions. You may experience processing delays if you fail to submit COLAs in duplicate.

TEQUILA

We have received several inquiries concerning the addition of harmless color or flavoring or blending materials to tequila. Tequila is a distinctive product of Mexico and, as such, may only be produced in Mexico. Materials other than water may not be added to tequila outside of Mexico.. If materials other than water are added to tequila, such a product may not be labeled tequila.

USE OF NEW OR UNUSUAL MATERIALS IN THE MANUFACTURE

OF ALCOHOLIC BEVERAGE CONTAINERS AND CLOSURES - FDA AND ATF
REQUIREMENTS i

FDA REQUIREMENTS

Alcoholic beverage container materials which are in contact with the product must meet U.S. Food and Drug Administration (FDA) health and safety specifications provided in FDA Indirect Food Additive Regulations (21 CFR Parts 174-178).

According to FDA, all alcoholic beverages are considered food and their containers (including metal/plastic containers, cups, pouches, tubes, tamper evident closures, etc.) are considered indirect food additives. Materials that are in contact with an alcoholic beverage contact surface (including barriers, coatings, adhesives, liners, sealants, etc.) must comply with FDA regulations.

Alcoholic beverage producers and importers desiring to use new plastic or metal materials for alcoholic beverage containers should seek an OPINION OF COMPLIANCE with FDA regulations by contacting:

USFDA

Indirect Additives Branch

HFS 216 - Corbin Miles

200 C St., S.W.

Washington, DC 20204

(202) 418-3087 or (202) 418-3095

ATF BEVERAGE DISTILLED SPIRITS CONTAINER
AND CLOSURE REQUIREMENTS

ATF regulates the bottles, containers and tamper-evident closures used for distilled spirits products. These regulations protect both the consumer and Federal excise taxes. For the ATF requirements relating to domestically bottled spirits see 27 CFR Part 19, Subparts S and T. For imported spirits see 27 CFR Part 25 1, Subparts E and N. In addition, bottles and containers must meet requirements in 27 CFR Part 5, Subpart E. It is important to remember that the closure or other opening device on a beverage distilled spirits product should be constructed in a manner which ENSURES THAT IT IS BROKEN WHEN THE BOTTLE IS OPENED.

When new or unusual distilled spirits container materials or new and unusual distilled spirits closure materials are used, importers or producers of such beverage distilled spirits should provide ATF (Product Compliance Branch) with an OPINION OF COMPLIANCE from USFDA. Prior to issuance of a Certificate of Label Approval (COLA), ATF may wish to inspect new unusual beverage distilled spirits closures to ensure that the revenue is adequately protected. For ATF assistance contact:

Bureau of Alcohol, Tobacco and Firearms

Alcohol and Tobacco Programs Division

650 Massachusetts Ave., N.W.

Washington, DC 20226

For beverage distilled spirits labels and formulas

Product Compliance Branch

(202) 927-8140

For beverage distilled spirits containers and closures

Wine, Beer & Spirits Regulations Branch (202) 453-2265

For testing beverage distilled spirits containers or closures

Beverage Alcohol Section ATF National Laboratory Center 1401 Research Boulevard Rockville, MD 20850 (301) 413-5227

MALT BEVERAGE**LIGHT (LITE) MALT BEVERAGES - AVERAGE ANALYSIS REQUIRED**

ATF Ruling 80-3 requires an average analysis statement on all labels for malt beverages using the word "light" (or "lite") as part of the brand or product name. For example, the average analysis statement may read:

PER 12 fl. oz. - AVERAGE ANALYSIS

| | |
|---------------|-----------|
| Calories | 96 |
| Carbohydrates | 2.8 grams |
| Protein | 0.9 grams |
| Fat | 0.0 grams |

The statement of average analysis is required on the front, back or side label.

No average analysis statement is required to appear on kegs. Please see ATF Ruling 80-3 for specifics on allowable tolerances and comparison statements.

To obtain a copy of 80-3 call Angela Shanks at (202)927-8230.

WINE**PROCYMIDONE TOLERANCE FOR WINE GRAPES**

The Environmental Protection Agency (EPA) has established a permanent tolerance of 5 parts per million (ppm) for residues of the fungicide procymidone in or on wine grapes. This tolerance, announced as a Final Rule in the Federal Register on August 18, 1994, 59 FR 42511 became effective August 12, 1994.

This tolerance level applies to all wine grapes. Any wines containing procymidone residues at a level greater than the 5 ppm wine grape tolerance are considered adulterated under this regulation. ATF conducts tests on wines to determine the presence of procymidone. If a wine is found to have a level greater than 5 ppm, ATF will request a voluntary recall of the wine.

MISCELLANEOUS**POTENTIAL TRADE PRACTICE HAZARD**

The long-awaited trade practice revisions of the Federal Alcohol Administration Act (FAA Act) regulations became effective May 26, 1995. ATF is now in the process of informing the industry of the changes and alerting them to the implications of the new regulations. The industry was highly vocal and virtually unanimous during the formal comment period in its concern that in "slotting fee" demands by large retail chains would result in tied-house and consignment sale arrangements. At the same time, industry members were anxious that ATF continue its traditional role in trade practice enforcement.

Market Compliance Branch has recently become aware of a business practice which has the potential to violate the FAA Act, one which has anti-competitive, exclusionary overtones. We would like to issue a word of caution to all affected industry members, in an effort to prevent harm in the marketplace.

In this scheme, a retail chain is aggressively pursuing assistance from its alcoholic beverage suppliers. The chain contracts to use the services of a third party - a display company - which makes product display bins and the accompanying signs. The actual stocking, monitoring and merchandising of the bins is taken care of by the beverage suppliers. These suppliers are charged by the display company for the bins and signs, leaving the retailer itself with control over the bins but no associated costs for their construction and maintenance. The retailer determines which products will be displayed in the bins by the suppliers who are enrolled in its promotional program.

ATF will investigate this activity as a potential slotting fee violation of the FAA Act. As we understand it preliminarily, beverage suppliers are effectively buying display space from the retailer. The situation is such that a third party (the display company) is involved, which might seem at first to put some distance between the retail chain and the industry members. In practice, however, the retailer is commissioning display bins and signs to be made which benefit the retailer, but for which it does not pay. That cost is borne by the liquor suppliers chosen by the retailer. These chosen suppliers then benefit by having their products displayed and promoted by the retailer.

At this point, ATF does not yet know whether the retailer receives some additional portion of the payments made by industry members to the display company. We will investigate that issue, as well as whether the display bins fit the regulatory definition of "product displays" at 27 CFR 6.83. If the displays are too expensive, do not bear conspicuous and substantial advertising material about the industry member or the product which is permanently inscribed or securely affixed, or are conditioned upon the retailer's purchase of the supplier's products beyond the quantity necessary to fill the initial display, then they are not entitled to be classified as an exemption to fixture and other equipment under the new "safe harbor" Subpart of the "Tied House" regulations. An industry member who participates in this program would therefore risk violating the FAA Act first by furnishing equipment to the retailer, then by paying for subsequent display space. A violation could be present if the practice threatens retailer independence and has an impact on the retailer's purchases.

CIGARETTE SMUGGLING

Beginning in 1991, Canadian authorities determined that a significant, growing problem existed with cigarettes and spirits being smuggled into Canada in evasion of Canadian taxes and duties. Because most

contraband was channeled through the United States, Canadian authorities (Royal Canadian Mounted Police and Canadian Customs) requested assistance from the Bureau of Alcohol, Tobacco and Firearms. From that time to the present, ATF has been working closely with Canadian law enforcement, other U.S.

Federal agencies, as well as state and local law enforcement in an effort to reduce or eliminate the smuggling activities.

Many of the smugglers are involved in smuggling both cigarettes and spirits.

SMUGGLING OF DISTILLED SPIRITS

On January 19, 1995, ATF published Industry Circular 95-1, "Diversion of Distilled Spirits For Purposes of Smuggling." The circular reminds proprietors of distilled spirits plants (DSPs), importers, wholesalers

and other persons who purchase distilled spirits products from DSP's of their responsibility to comply with all applicable Federal and state laws with respect to such sales. The sale of distilled spirits to people to whom such sales cannot legally be made and the diversion of distilled spirits from their destination of record to other destinations in the United States or Canada may violate Federal and/or state laws. This circular also addresses the sale of distilled spirits in violation of state laws and sales on Indian reservations.

Copies of Industry Circular 95-1 are available from the ATF Distribution Center by calling (703) 455780 1. Inquiries concerning Spirits Diversion and the circular should be addressed to the Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, D.C. 20226.

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INTERNET REMINDER

Internet users can access ATF through the Internet. The domain address www.atf.gov can be used to access this system.

If you have any questions regarding access to ATF issuances via Internet, please contact Michael Breen, Technology Planning Staff, at (202) 927-8388.

If you have any ideas or items of interest you would like to submit for consideration in a future issue of COMPLIANCE MATTERS or if you have any questions concerning articles contained in this publication please contact:

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