



## **Ingredients and Processes Used in the Production of Beer Not Subject to Formula Requirements**

*The Alcohol and Tobacco Tax and Trade Bureau (TTB) is exempting from the formula requirements of 27 CFR 25.55 malt beverages made with certain ingredients, such as honey, certain fruits, certain spices, and certain food ingredients, upon a finding that such ingredients are traditionally used in the production of fermented beverages designated as beer, ale, porter, stout, lager, or malt liquor. TTB also has determined that certain processes, such as aging beer in barrels that were previously used in the production or storage of wine or distilled spirits, do not require the filing of a formula.*

### **TTB RULING 2015-1**

#### **Background**

On June 5, 2014, TTB issued Ruling 2014-4, which exempted from the formula requirements of 27 CFR 25.55 beers made with certain ingredients, such as honey, certain fruits, certain spices, and certain food ingredients, based on its finding that those ingredients are traditionally used in the production of fermented beverages designated as “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor.” The ruling sets forth certain conditions that apply to the use of this exemption. Attachment 1 to the ruling listed 35 exempt ingredients. In TTB Ruling 2014-4, TTB also determined that certain processes, such as aging beer in barrels that were previously used in the production or storage of wine or distilled spirits, do not require the filing of a formula.

On September 30, 2015, the Brewers Association submitted a petition, asking that TTB determine that 48 additional ingredients are traditional ingredients when used in the production of fermented beverages designated as beer, ale, porter, stout, lager, or malt liquor. The petition stated that the ingredients have all become widely used in brewing American craft beers since the Brewers Association last petitioned on this issue. TTB has also received requests from individual brewers to exempt several of the ingredients listed in the Brewers Association petition, as well as an additional 9 ingredients not listed in the Brewers Association petition.

TTB agrees that most of the ingredients identified in the petition and the individual requests are traditionally used in the production of fermented beverages designated as beer, ale, porter, stout, lager, or malt liquor. Thus, we have updated and reformatted Attachment 1 of this ruling to include more than 50 additional ingredients.

TTB did not adopt the Brewers Association’s request to exempt malt beverages made with juniper branches, pluot, spruce leaves, squid ink, or woodruff from the formula requirements, because the available data did not establish that these ingredients are traditionally used in the production of fermented beverages designated as beer, ale,

porter, stout, lager, or malt liquor. In addition, TTB did not adopt the request to exempt malt beverages made with licorice (or licorice derivatives) as flavor enhancers because of the limitations placed by the FDA regulations on the maximum levels of these ingredients. See 21 CFR 184.1408. The use of any of these ingredients in beer will continue to require a formula submission.

TTB has also added language to Attachment 1 to clarify that the exemption of specific ingredients does not mean that TTB has exempted extracts, essential oils, or syrups made from those ingredients. Extracts, essential oils, and syrups may contain alcohol or other ingredients, and their use in beer will still require a formula submission, even when they are made from exempted ingredients.

TTB wishes to remind brewers that all applicable conditions of the ruling apply to each ingredient listed in Attachment 1. For example, while TTB has listed “tea” as an ingredient that does not require the submission of a formula under 27 CFR 25.55, this exemption is subject to all of the conditions set forth in the holdings of this ruling, including the following: the product to which the tea is being added must comply with the definition of a malt beverage under 27 CFR 7.10 and the definition of a beer under 27 CFR 25.11; it must comply with the production rules set forth in 27 CFR 7.11 and 25.15; and at least 51 percent of the fermentable materials used in the production must consist of malted barley with or without rice, other grains, bran, glucose, sugar, and/or molasses. Thus, for example, a kombucha-style beer that is brewed from tea and sugar but contains no malted barley would not be eligible for exemption from the formula requirements under this ruling. The ruling also sets forth important conditions with regard to the labeling of products subject to the exemption from the formula requirement.

TTB believes that it will be easier for brewers to refer to this ruling if all of the exempted ingredients are listed in one attachment to the ruling that sets forth the conditions applicable to use of these ingredients in the production of a beer without submission of a formula. Accordingly, this ruling modifies and supersedes TTB Ruling 2014-4. TTB Ruling 2014-4 and Attachment 2 are restated below in their entirety, along with an updated Attachment 1, as noted above.

## **Authority**

### *Federal Alcohol Administration Act*

Sections 105(e) and (f) of the Federal Alcohol Administration Act (FAA Act), [27 U.S.C. 205\(e\) and \(f\)](#), vest broad authority in the Secretary of the Treasury to prescribe regulations with respect to the labeling and advertising of wine, distilled spirits, and malt beverages that are introduced into interstate or foreign commerce or imported into the United States. Section 105(e) also provides that no person may bottle, or remove from customs custody in bottles, distilled spirits, wine, or malt beverages unless they have obtained a certificate of label approval (COLA) issued in accordance with regulations prescribed by the Secretary. Regulations that implement the provisions of §§ 105(e)

and (f), as they relate to malt beverages, are set forth in 27 CFR part 7, Labeling and Advertising of Malt Beverages. In the case of malt beverages, the labeling provisions of the FAA Act apply only if the laws of the State into which the malt beverages are shipped impose similar requirements.

Section 117(a)(7) of the FAA Act ([27 U.S.C. 211\(a\)\(7\)](#)) defines the term “malt beverage” as “a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.” The same definition appears in the TTB regulations at [27 CFR 7.10](#).

#### *Internal Revenue Code*

Chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), provides the Secretary of the Treasury with authority to promulgate regulations pertaining to the operation of breweries and the production of beer.

Section 5052(a) of the IRC ([26 U.S.C. 5052\(a\)](#)) defines the term “beer,” for purposes of Chapter 51, as “beer, ale, porter, stout, and other similar fermented beverages (including saké or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.” A similar definition appears in the TTB regulations at [27 CFR 25.11](#).

Under the statutory authority of [26 U.S.C. 5401](#), [5415](#), [5555](#), and [7805\(a\)](#), TTB prescribes regulations regarding the types of ingredients and processes for which brewers and importers may or may not need to submit formulas for approval. Regulations that implement these IRC provisions as they relate to formulas for beer are set forth in part 25 ([27 CFR 25.55-25.58](#)).

TTB administers these provisions of the FAA Act and the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d), and Treasury Department Order 120-01 (Revised), dated December 10, 2013, through which the Secretary has delegated various authorities to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

#### *Formula Requirements for Domestic Beer*

Section 25.55(a)(1) of the TTB regulations requires a brewer to obtain TTB approval of a formula if the brewer intends to produce any fermented product that will be treated by any processing, filtration, or other method of manufacture that is not generally recognized as a traditional process in the production of a fermented beverage designated as “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor.” Examples of non-

traditional processes for which a formula is required are listed in § 25.55(a)(1)(i). Examples of traditional processes for which no formula is required are listed in § 25.55(a)(1)(ii). Industry members with questions about whether use of a particular process not listed in this section requires the filing of a formula may request a determination from TTB in accordance with § 25.55(f).

Section 25.55(a)(2) requires an approved formula for a fermented product to which flavors or other nonbeverage ingredients (other than hops extract) containing alcohol will be added. Similarly, § 25.55(a)(3) requires an approved formula for the production of any fermented product to which coloring or natural or artificial flavors will be added, while § 25.55(a)(4) requires an approved formula for the production of any fermented product to which fruit, fruit juice, fruit concentrate, herbs, spices, honey, maple syrup, or other food materials will be added.

Section 25.55(f) provides that TTB may determine when the use of a process not listed in paragraph (a)(1) requires the filing of a formula for approval. Section 25.55(f) also allows TTB to exempt the use of a particular coloring, flavoring, or food material from the formula filing requirement of paragraph (a)(3) or paragraph (a)(4) upon a finding that the coloring, flavoring, or food material is generally recognized as a traditional ingredient used in the production of a fermented beverage designated as a “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor.”

Pursuant to § 25.55(f), a brewer may submit a request that TTB exempt from the formula requirement a particular coloring, flavoring, or food material for use in the production of beer. When requesting a determination regarding a coloring, flavoring, or food material, the brewer must include:

- A description of the proposed ingredient;
- Evidence establishing that the proposed ingredient is generally recognized as a traditional ingredient in the production of a fermented beverage designated as "beer," "ale," "porter," "stout," "lager," or "malt liquor;" and
- An explanation of the effect of the proposed ingredient in the production of a fermented product.

The regulations at 27 CFR 25.55(a)(2) do not authorize TTB to grant exemptions for the use of flavors or other nonbeverage ingredients (other than hops extract) containing alcohol. For these products, the formula submission is necessary in order to enforce the limits on the percentage of alcohol derived from flavors and other nonbeverage ingredients. See 27 CFR 25.15(b).

#### *Formula Requirements for Imported Malt Beverages*

The regulations at [27 CFR 7.31\(d\)](#) provide that the appropriate TTB officer may require an importer to submit a formula for a malt beverage or a sample of any malt beverage or ingredients used in producing a malt beverage prior to or in conjunction with the filing of an application for label approval. Pursuant to this authority, [TTB Industry Circular](#)

[2007-4](#) provides that a pre-import letter (formula) is required for imported ice beer, for imported malt beverages that require a statement of composition, and for Belgian White Beer/Wit Beer.

### *Labeling Requirements*

The regulations at [27 CFR 25.142](#) require bottles of beer to show by label or otherwise certain mandatory information, including the nature of the product, such as “beer,” “ale,” “porter,” or “stout.” In enforcing this provision, TTB generally has taken the position that beers designated in accordance with the labeling rules of [27 CFR part 7](#) are in compliance with the requirements of § 25.142. With regard to beers that are not required to be labeled in compliance with the FAA Act (such as beers that do not meet the definition of a malt beverage under the FAA Act), TTB generally has taken the position that the products are in compliance with the requirements of § 25.142 as long as the product is labeled with a term (such as “beer,” “ale,” “porter,” or “stout”) that adequately identifies the product as a beer subject to tax under the IRC.

Malt beverages subject to the labeling regulations under the FAA Act must be labeled with the class of the product. See [27 CFR 7.22](#). As outlined at § 7.24(a), “[t]he class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.”

Traditionally, statements of composition have been required to distinguish between ingredients added before or during fermentation as opposed to ingredients added after fermentation. TTB’s predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) had previously taken the position that a fanciful name such as “cherry ale” could be applied only if the product was fermented with juices, fruits, or fruit juice concentrates. If these ingredients were added after the fermentation process, ATF had required a fanciful name such as “cherry flavored ale.” ATF announced in Compliance Matters 97-1 that it was abandoning this distinction, and that either type of product could bear a fanciful name such as “cherry ale.” However, ATF continued to require that labels for such products bear statements of composition that distinguished between ingredients added before or during fermentation and ingredients added after fermentation.

In Compliance Matters 97-1, ATF set out the following examples of truthful and adequate statements of composition for various combinations of flavoring materials added at different stages in the production of a flavored malt beverage product.

- When fermentable and/or non-fermentable flavoring materials were added before or during the fermentation process to produce a flavored beer, examples of acceptable designations included “beer brewed (or fermented) with natural

flavors,” “beer brewed (or fermented) with cherry juice and natural flavor;” and “beer brewed (or fermented) with cherry juice.”

- When fermentable and/or non-fermentable flavoring materials were added after the fermentation process to produce a flavored ale, examples of acceptable designations included “ale with natural flavor(s),” “ale flavored with cherry juice and natural flavor,” and “ale flavored with cherry juice.”
- Finally, if fermentable and/or non-fermentable flavoring materials were added before, during and after the fermentation process to produce a flavored product, the following examples were acceptable statements of composition: “Porter brewed (or fermented) and flavored with natural flavor(s);” “Porter brewed (or fermented) with natural flavor(s) and flavored with cherry juice;” “Porter brewed (or fermented) and flavored with cherry juice;” “Porter brewed (or fermented) with cherry juice and natural flavor(s) and flavored with cherry juice;” and “Porter brewed (or fermented) with cherry juice and natural flavor(s) with natural flavor(s) added.”

### **Petition from the Brewers Association**

On May 24, 2006, the Brewers Association petitioned TTB to recognize certain ingredients and processes in the production of beer as traditional under the standards of [27 CFR 25.55\(f\)](#). The Brewers Association asked that products made with these ingredients and processes be exempted from formula requirements and be labeled in accordance with trade understanding rather than with a fanciful name and a statement of composition.

The petition stated that “a new generation of American craftbrewers has revived numerous beer styles, saving many from extinction.” It noted that “many ingredients and processes that had died out decades before have been revived and are in use across the United States. Fruit beers, once an obscure specialty of a few Belgian brewers, are brewed by hundreds of American breweries. Spices, too, have gone from the province of a few little-known seasonal products and the occasional Belgian or French import to a staple of many American craftbrewers.” Accordingly, the Brewers Association conducted a survey of its members to identify ingredients and processes that had been or would be used in the brewing of beer. It identified the most popular of those ingredients and processes in its petition. The petition also asserted that the ingredients identified in the survey were all Generally Recognized as Safe (GRAS) in accordance with Food and Drug Administration (FDA) requirements.

The Brewers Association supplemented its petition with two more letters in 2007. In a letter dated May 3, 2007, the Brewers Association stated that “well-known and widely-distributed products such as fruit beers and spiced beers” were “well known to the trade and consumers by their flavor designations: e.g., fruit beers, spiced ales, honey porters, and so forth. Required statements of composition such as ‘ale brewed with raspberry juice’ or ‘porter brewed with honey’ simply are unnecessary, clutter labels, and provide

no more information to the consumer than the readily-understood designations of ‘raspberry ale’ or ‘honey porter.’” The petition also suggested that TTB abandon the distinction between fruit beers made with added fruits or juices and those fermented with such substances, but should instead allow brewers to make this distinction on their labels if they wish.

### **TTB Response to Petition**

TTB’s initial response to the Brewers Association petition, dated December 4, 2007, exempted from the formula requirements brown sugar and candy (candi) sugar when used as a fermentable material. This determination was based on the fact that TTB traditionally had not required a formula when a brewer listed candy or brown sugar as a fermentable ingredient. We stated that the use of candy or brown sugar as a fermentable material does not transform a beer or malt beverage into a product requiring a distinctive or fanciful name, together with an adequate and truthful statement of composition, under the labeling requirements at § 7.24(a). Brewers producing malt beverages that include candy or brown sugar as a fermentable ingredient may label the product as a “beer” or “ale” and so forth, without a fanciful name and statement of composition. TTB later exempted lactose when used as a flavoring in the production of milk stouts under a similar determination.

TTB also stated in its 2007 response to the Brewers Association that we would not exempt under § 25.55(f) the addition of fruits, spices, honey and other food ingredients that were outlined in the petition. We stated at the time that such additions to a malt beverage would create a product that requires a fanciful name and a statement of composition under 27 CFR 7.24(a) because it is not known to the trade as, and therefore could not be designated as, simply “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor.” TTB added that the issues pertaining to such exemptions, which impact labeling requirements for malt beverages, should be the subject of rulemaking, providing notice and comment opportunities to the public, including the industry and other interested parties.

### **TTB’s Reconsideration of the Petition**

Since the 2007 determination, TTB has received numerous requests from the brewing industry to reconsider the formula requirements of § 25.55. TTB also has seen an unprecedented surge in formula approval requests for fruit beers, spiced beers, and beer aged in barrels that were previously used in the production or storage of wine or distilled spirits, illustrating the widespread use and consumer acceptance of some of the ingredients and processes that the Brewers Association identified in its 2006 petition. The increase in formula submissions played a role in TTB’s decision to reconsider its position.

TTB also conducted additional fact-finding. We reviewed data available to us to determine if the ingredients identified by the Brewers Association were traditionally used in malt beverage products that required formulas and whether those ingredients caused

compliance issues. Although this data is not determinative, it did bear out the Brewers Association's assertions that these ingredients and processes are being used with greater frequency, and it showed that compliance issues related to the use of such ingredients were rare. TTB is unaware of consumer concerns regarding the use of such ingredients or processes in the production of beer.

We are issuing this ruling to provide immediate relief from the formula requirement burden for certain products. TTB is also issuing this ruling as part of an ongoing analysis of ways in which TTB can reduce regulatory burdens on industry members and increase administrative efficiencies consistent with its mission to protect the public and collect the revenue.

Accordingly, we list in the first attachment to this ruling those ingredients that we have exempted from the formula requirements of the TTB regulations and those processes that we have determined to be traditional in the production of beer. TTB may request information about the formulation and ingredients of any beer or malt beverage, on a case-by-case basis, during the label review process or whenever necessary to enforce TTB regulations.

This ruling also sets forth general guidelines for labeling designations in accordance with trade understanding for products covered by this ruling, and provides examples of such designations in the second attachment.

#### *Request to Exempt Other Ingredients*

The Brewers Association's petition also asked TTB to consider exempting vanilla in the forms of whole bean, powder, and extract. TTB is not exempting "vanilla powder" because it may include ingredients other than vanilla that are not suitable for exemption from the formula requirement. This ruling does not exempt vanilla extract because it contains alcohol and TTB regulation § 25.55 does not authorize TTB to grant exemptions for the use of flavors or other nonbeverage ingredients (other than hops extract) containing alcohol. Thus, this ruling exempts only whole and crushed vanilla beans.

If brewers believe that there are other ingredients that TTB should exempt, brewers may petition TTB, as outlined in § 25.55(f). If TTB exempts a new ingredient or process in the future, we will publicize the determination and add the item(s) to our online list, "Ingredients and Processes Exempt from Formula Requirements under 27 CFR part 25" at [www.TTB.gov](http://www.TTB.gov).

#### *Processes Determined to be Traditional*

TTB has determined that the process of aging beer in barrels (or with woodchips, staves, or spirals from barrels) that were previously used in the production or storage of wine or distilled spirits is a traditional process and thus will no longer require a formula. Similarly, the process of aging beer with woodchips that were previously used in the

production of wine or distilled spirits is a traditional process that will no longer require a formula. Please note that this exemption from the formula requirement does not apply to the use of woodchips that have been soaked or infused with distilled spirits or wine for the sole purpose of use in the production of beer.

One significant reason for requiring a formula for these processes in the past was to enable TTB to review the process used by the brewer to ensure that it was not being used to indirectly add distilled spirits or wine to the beer during the aging process, thus changing the tax classification or labeling of the product. When proprietors of distilled spirits plants and bonded wine cellars sell used barrels, woodchips, or parts of a barrel to brewers or to the general public, they are obligated under the IRC to ensure that they are not thereby removing nontaxpaid wine or spirits from their premises. Accordingly, the barrels should be completely empty and the barrels, woodchips, and parts of the barrel should not contain any discernible quantity of distilled spirits or wine. TTB reminds brewers that TTB regulations do not authorize a brewer to use wine or distilled spirits in the production of beer. See [27 CFR 7.11](#) and [25.15](#). Brewers must ensure that the use of barrels, woodchips, and part of barrels that were previously used in the production or storage of wine or distilled spirits will not add any discernible quantity of wine or distilled spirits to the beer.

Industry members are reminded that it is a violation of the regulations to make misleading claims on labels or in advertisements that suggest that a malt beverage contains distilled spirits or wine. See [27 CFR 7.29\(a\)\(7\)](#) and [7.54\(a\)\(8\)](#). TTB also considers it misleading to claim that products were aged in barrels if they were aged using woodchips rather than barrels.

### **Labeling In Accordance with Trade Understanding**

TTB has determined that the use of the ingredients and processes listed in the first attachment to this ruling in the production of malt beverages are traditional. Thus, there is no longer a need for TTB to review individual formulas for such products in order to provide a suggested statement of composition. We are also providing guidance on the labeling of such products in accordance with trade understanding, as set forth in this ruling.

This ruling expands on [Compliance Matters 97-1](#) in that for the traditional malt beverage products that are covered by this ruling, TTB will no longer require a statement of composition that distinguishes between exempt ingredients added before or during fermentation and ingredients added after fermentation for such products. Thus, labels for malt beverages produced with exempt ingredients may be designated with a class and type designation in accordance with trade understanding. As requested in the petition from the Brewers Association, this ruling allows brewers the flexibility to identify their products in accordance with trade understanding, with the precise wording left up to the brewer.

There are a few important guidelines with respect to whether TTB will consider that a designation in accordance with trade understanding adequately identifies the product in a non-misleading manner. A designation in accordance with trade understanding must include the designation of the base product (such as “malt beverage” or “beer” or “ale”). Furthermore, it must include enough information to make it clear that the product contains at least one of the ingredients exempted by this ruling. Where more than one exempted ingredient is included, the label may use the term that best identifies the product, in accordance with trade understanding. Thus, the label may either identify each fruit or spice or other ingredient (for example, “Blackberry and blueberry ale,” or “Cinnamon and allspice stout”), refer to them by category (“Fruit ale” or “Flavored ale” or “Spiced stout”), or identify one ingredient that best identifies the product (“Blackberry ale” or “Cinnamon stout”) in a manner that clearly distinguishes the product from a malt beverage, beer, ale, porter, stout, lager, or malt liquor that is not brewed or flavored with any of these ingredients. Thus, a designation such as “beer” or “stout” is not adequate.

It should be noted that a designation of the type previously allowed as a statement of composition for these products also would be acceptable as a designation in accordance with trade understanding. Thus, labels with such designations as “stout brewed with fruit” or “Ale with natural flavors” will still be in compliance. The second attachment to this ruling provides examples of acceptable and insufficient designations. TTB will continue to allow the use of fanciful names, but they will no longer be required for products covered by this ruling.

Brewers and importers also should note that these labeling guidelines with regard to designations in accordance with trade understanding do *not* apply to products that require formulas and statements of composition. For example, this ruling has no impact on the formula requirements or labeling requirements applicable to malt beverages to which natural cherry flavors containing alcohol are added (which would be covered under [27 CFR 25.55\(a\)\(2\)](#)), or malt beverages to which natural or artificial cherry flavors that do not contain alcohol will be added (which would be covered under the regulations at [27 CFR 25.55\(a\)\(3\)](#)). It does exempt products to which cherries, cherry juice, cherry puree, and/or cherry concentrate have been added.

In addition, although TTB will no longer require that a brewer distinguish between exempt ingredients added before or during fermentation and ingredients added after fermentation for products covered by this ruling, if the label provides specific information about this process, it must be truthful and non-misleading. For example, if a brewer adds cherry juice after fermentation, a labeling statement such as “Beer brewed with cherries [or cherry juice]” would be prohibited because it is false and misleading.

Further, when a brewer produces a malt beverage and ages it in barrels or with woodchips from barrels previously used in the production or storage of wine or distilled spirits, the brewer may label the product simply as a “malt beverage,” “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor,” without the addition of a modifier or explanation regarding the aging. The brewer also may label the product with a description of how the product was aged. However, if the beer in question was made with an exempt

ingredient, it should be designated as such, as outlined above. Examples would be “Honey ale aged in a whisky barrel,” “Aged honey ale,” or simply, “Honey ale.” However, “Whisky barrel aged ale” or “Ale” would not be sufficient for an ale brewed or flavored with honey.

### *Misleading Labels*

Brewers and importers are responsible for ensuring that their malt beverage labels are truthful and accurate, and they must be able to substantiate any information or claims found on a label. TTB considers depictions or representations on labels to be misleading if they imply that a particular ingredient is used in the production of the malt beverage when it was not used. For example, a lager produced with the addition of the spices cinnamon, nutmeg, and allspice, may not be designated as “pumpkin ale.” Designations are also misleading if they emphasize one element (such as the aging in barrels previously used in the production or storage of distilled spirits or wine) in a way that could be misleading as to the identity of the product.

### *Conditions*

The exemptions set forth in this ruling apply only to ingredients traditionally used in the production of beer, ale, porter, stout, lager, or malt liquor. Accordingly, the exemption applies only if the resultant product meets the definition of “beer” at § 25.11 and is made in accordance with the brewing standards set forth at TTB regulations §§ 7.11 and 25.15. Furthermore, the exemptions set forth in this ruling apply only to products that meet the definition of a “malt beverage,” found at § 7.10 of the TTB regulations. This means, for example, that a beer brewed with honey and a substitute for malt (such as sugar or rice) but no malted barley is not recognized as traditional and thus would still require a formula.

It must be emphasized that a product is not classified as beer under the IRC if it is fermented primarily from fruit or honey. As previously noted, the definition of “beer” in 26 U.S.C. 5052(a) requires that it must be brewed or produced from malt, wholly or in part, or from any substitute therefor. The regulations at 27 CFR 25.15 list the substitutes for malt as rice, grain of any kind, bran, glucose, sugar, and molasses. As noted in the preamble to T.D. TTB-21 (70 FR 194), the recognition of fruit, honey, and other ingredients as fermentable adjuncts in the production of beer does not mean that beer may be fermented primarily from these ingredients. Instead, beer under the IRC is fermented predominantly from malted barley or a substitute therefor. Because this ruling applies only to products that comply with the definition of a malt beverage under the FAA Act, the exemption set forth in this ruling also applies only to beer where at least 51 percent of the fermentable materials consist of malted barley with or without rice, other grains, bran, glucose, sugar, and/or molasses.

### *Certificates of Label Approval*

Malt beverage products made with exempt ingredients or processes determined to be traditional by this ruling that were previously issued a COLA for a label bearing a statement of composition and a fanciful name in accordance with TTB's prior policy will be considered to be labeled in accordance with trade understanding. Previously approved COLAs are not affected by this ruling.

#### *New applications for label approval*

To avoid delays in the processing of COLA applications, brewers and importers are encouraged to note on their application that they are requesting approval of a new label for a product made with an ingredient or process exempted under this ruling and are labeling the product in accordance with the provisions of this ruling by inserting "TTB Ruling 2014-4" or "TTB Ruling 2015-1" as a comment on [TTB F 5100.31, Application for and Certification/Exemption of Label/Bottle Approval](#) or via COLAs Online.

TTB will approve new applications for label approval for malt beverages made with the ingredients exempted by this ruling and with the processes determined by this ruling to be traditional with a qualifying statement, which will provide that the COLA is conditioned upon compliance with this ruling by the bottler or importer. Products that include an ingredient that has not been exempted or a process that is not been determined to be traditional under this ruling or the applicable regulations are subject to the same formula and labeling rules as in the past.

#### **Effect on Currently Approved Formulas**

Previously approved formulas for malt beverages made with exempted ingredients will continue to be valid. However, TTB will not accept for review formulas submitted for products that do not require a formula under the provisions of this ruling and the regulations.

#### **Ingredient Safety Issues**

It should be noted that TTB's approval of the use of certain ingredients without submission of a formula does not exempt industry members from their obligation to ensure the safe use of these ingredients. For example, certain fruits have stones, pits, and seeds that present safety concerns. It has always been, and it will remain, the responsibility of the industry member to use good commercial practices to ensure that the ingredients and production process result in the production of wholesome products suitable for human food consumption and that the ingredients and finished products comply with all applicable regulations of the FDA regarding ingredient safety. This is true regardless of whether the product is subject to the formula requirements of the regulations.

#### **TTB Determination**

*Held,* The use of the ingredients or processes identified in Attachment 1 to this ruling in the production of beer does not require the filing of a formula under 27 CFR

25.55, or the submission of a pre-import letter (formula) under Industry Circular 2007-4, provided that the beer meets the definition of a malt beverage under 27 CFR 7.10 and the definition of a beer under 27 CFR 25.11, complies with the production rules set forth in 27 CFR 7.11 and 25.15, and at least 51 percent of the fermentable materials used in the production consist of malted barley with or without rice, other grains, bran, glucose, sugar, and/or molasses. TTB may request information about the formulation and ingredients of any beer or malt beverage at any time, on a case-by-case basis, during the label review process or whenever necessary to enforce TTB regulations.

*Held further,* Industry members remain responsible for using good commercial practices to ensure the safety of all ingredients and processes and for ensuring compliance with applicable regulations of the FDA with regard to ingredient safety, regardless of whether the ingredient or process is exempted from formula requirements under this ruling or is listed in an approved formula.

*Held further,* Brewers and importers using ingredients exempted under this ruling must label the malt beverage in accordance with trade understanding, which requires a designation that identifies the base product, such as “malt beverage,” “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor,” along with a modifier or explanation that provides the consumer with adequate information about the fruit, spice, honey, or other food ingredient used in production of the beer.

*Held further,* Where more than one exempted ingredient is included, a designation in accordance with trade understanding may identify each ingredient (“Ale with cherry juice, cinnamon and nutmeg”), refer to the ingredients by category (such as “Fruit ale,” “Spiced ale,” or “Ale with natural flavors”) or simply include the ingredient or ingredients that the bottler or importer believes best identify the product (such as “Cherry ale,” “Cinnamon ale,” or “Nutmeg ale”). The designation must distinguish the product from a malt beverage, beer, ale, porter, stout, lager, or malt liquor that is not brewed or flavored with any of these ingredients; thus, unmodified designations such as “beer,” “stout,” or “ale” would not be acceptable. All parts of the designation must appear together and must be readily legible on a contrasting background. Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited.

*Held further,* Pursuant to 27 CFR 25.55(f), TTB has determined that the aging of beer in barrels, or with woodchips, spirals, or staves derived from barrels, that were previously used in the production or storage of wine or distilled spirits, as well as woodchips previously used in the aging of distilled spirits or wine, is a process that does not require the filing of a formula, provided that the barrels, woodchips, spirals or staves do not contain, or add to the beer, any discernible quantity of distilled spirits or wine.

*Held further,* Label designations for malt beverages aged in barrels or with woodchips, spirals, or staves derived from barrels previously used in the production or storage of wine or distilled spirits, or from woodchips previously used in the aging of distilled spirits or wine, may, but are not required to, include a description of how the

product was aged. Thus, for example, an acceptable designation for a standard beer aged in a wine barrel would be either “beer” or “beer aged in a wine barrel” or “wine barrel aged beer.” An acceptable designation for an ale brewed with honey and aged in a bourbon barrel would be “honey ale” or “bourbon barrel aged honey ale” but not simply “ale” or “bourbon barrel aged ale.” All parts of the designation must appear together and must be readily legible on a contrasting background. Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited.

*Held further*, Pursuant to TTB regulations at 7.29(a)(1) and (a)(7), malt beverage labels may not include misleading representations that imply that a malt beverage contains distilled spirits or wine, or is a distilled spirits or wine product. Examples of designations that would be prohibited under this provision are “bourbon-flavored lager,” “Chardonnay lager,” or “lager with whiskey flavors.”

*Held further*, TTB will qualify new certificates of label approval for malt beverages made with the ingredients exempted under this ruling and with the processes determined by this ruling to be traditional with a statement that the COLA is conditioned upon the bottler’s or importer’s compliance with this ruling.

Date signed: December 17, 2015

/s/

John J. Manfreda  
Administrator  
Alcohol and Tobacco Tax and Trade Bureau

Attachments