



This document is scheduled to be published in the Federal Register on 04/30/2012 and available online at <http://federalregister.gov/a/2012-10332>, and on FDsys.gov

[Billing Code: 4810–31–U]

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB–2012–0002; Notice No. 127]

RIN: 1513–AB33

Proposed Amendment to the Standards of Identity for Distilled Spirits

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations setting forth the standards of identity for distilled spirits to include “Cachaça” as a type of rum and as a distinctive product of Brazil. This proposal follows requests received from the Government of Brazil and subsequent discussions with the Office of the United States Trade Representative. TTB invites comments on this proposed amendment to the TTB regulations.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov>: To submit comments via the Internet, use the comment form for this notice as posted within Docket No. TTB–2012–0002 at “Regulations.gov,” the Federal e-rulemaking portal;

- Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

- Hand Delivery/Courier in Lieu of Mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal within Docket No. TTB–2012–0002 at <http://www.regulations.gov>. A link to this Regulations.gov docket is posted on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml under Notice No. 127. You also may view copies of this notice, all supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005; telephone 202–453–1039, Ext. 138.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of alcohol beverages that will prohibit consumer deception and provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law. Regulations implementing the provisions of section 105(e) as they relate to distilled spirits are set forth in part 5 of title 27 of the Code of Federal Regulations (27 CFR part 5).

Classes and Types of Spirits

The TTB labeling regulations require that the class and type of distilled spirits appear on the product's brand label. See 27 CFR 5.32(a)(2) and 5.35. Those regulations provide that the class and type must be stated in conformity with § 5.22 of the TTB regulations (27 CFR 5.22) if defined therein. Otherwise, the product must be designated in accordance with trade and consumer

understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and, in either case (with limited exceptions), followed by a truthful and adequate statement of composition.

Section 5.22 establishes standards of identity for distilled spirits products and categorizes these products according to various classes and types. As used in § 5.22, the term “class” refers to a general category of spirits, such as “whisky” or “brandy.” Currently, there are 12 different classes of distilled spirits recognized in § 5.22, including whisky, rum, and brandy. The term “type” refers to a subcategory within a class of spirits. For example, “Cognac” is a type of brandy, and “Canadian whisky” is a type of whisky.

Classification of Cachaça

“Cachaça” is a term recognized by the Brazilian Government as a designation for a Brazilian distilled spirits product made from sugar cane. Cachaça products are generally classified as rums under the terms of TTB’s current labeling regulations. The standard of identity for rum is set forth in § 5.22(f) as follows:

Class 6; rum. “Rum” is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80° proof; and also includes mixtures solely of such distillates.

The above standard does not currently provide for any subcategories or “types” of rum.

In some instances, products identified by importers as Cachaça have been manufactured using a small quantity of corn or corn syrup in the

fermentation process. Since these products do not meet the standard for rum as described at § 5.22(f), TTB has required the labeling of these products as distilled spirit specialty products in accordance with § 5.35. In some instances, these products have been labeled with the fanciful name “Cachaça,” followed by a truthful and adequate statement of composition.

2001 Brazilian Petition

By letter dated April 30, 2001, the Embassy of the Government of Brazil submitted a petition to the Bureau of Alcohol, Tobacco and Firearms (ATF) in which it requested that ATF amend its regulations to recognize the Brazilian distilled spirits product known as “Cachaça” as a distinctive product of Brazil.

The Brazilian Embassy stated that Cachaça is known worldwide as a Brazilian product and that Brazil has been a supplier of Cachaça to the United States for many decades. After preliminary discussions with the Brazilian Embassy, no further action was taken with regard to the request.

2006 Brazilian Petition

In a petition dated March 6, 2006, the Brazilian Embassy requested that TTB amend its regulations to provide recognition of Cachaça as a distinctive product of Brazil.

Among other things, the Embassy noted Brazilian Decree No. 4851, of October 2, 2003, which defines “Cachaça” as “the typical and exclusive designation of the sugar cane aguardente produced in Brazil, with an alcohol content of 38 to 48 percent by volume at 20 degrees Celsius, obtained from the distillation of the fermented must of sugar cane with specific sensory

characteristics, to which up to six grams of sugar per liter may be added, expressed in terms of sucrose.”

Brazil requested that TTB initiate regulatory action to recognize Cachaça as a typically and exclusively Brazilian beverage.

In addition, following discussions between officials of Brazil and the Office of the United States Trade Representative (USTR), and after consultations between USTR, and TTB, the United States Trade Representative and Brazil’s Minister of Development, Industry, and Foreign Trade signed an agreement on April 9, 2012, setting out a procedure that could lead each party to recognize certain distinctive distilled spirits produced in the other party’s territory, including Cachaça. The agreement provides in part that if, following the publication of a notice of proposed rulemaking, the United States publishes a final rule that provides, among other things, that *Cachaça* is a type of rum that is a distinctive product of Brazil, then Brazil, within 30 days thereafter, will recognize Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States.

In addition to the petition from the Brazilian Government and advice from USTR, TTB has received a number of essentially identical letters from private parties supporting the recognition of Cachaça as a distinctive type of spirit.

TTB Regulatory Proposal

TTB considers that it is appropriate to recognize Cachaça as a distinctive product of Brazil. Therefore, this notice proposes to recognize Cachaça as a type within the class designation rum that would be recognized as a distinctive product of Brazil, manufactured in Brazil in compliance with the laws of Brazil

regulating the manufacture of Cachaça for consumption in that country. Thus, the product may simply be labeled as “Cachaça” without the term “rum” on the label, just as a product labeled with the type designation “Cognac” is not required to also bear the class designation “brandy.”

The proposed type description will not include as “Cachaça” any spirits that use corn or corn syrup in the fermentation process. TTB has confirmed with the Brazilian Government that the Brazilian standard for Cachaça would not allow for the use of corn or corn syrup in the fermentation process. As such, under the terms of the proposed text set forth in this document, distilled spirits that use any corn or corn syrup in the fermentation process would not meet the proposed standard for “Cachaça” because they are not manufactured in compliance with the laws of Brazil regulating the manufacture of Cachaça for consumption in that country. Such products would not be entitled to be labeled as Cachaça.

The Brazilian standard allows products designated as Cachaça to have an alcohol content ranging from 38 to 48 percent alcohol by volume. However, since the standard proposed in this document would identify Cachaça as a type of rum, and the United States standard requires that rum must be bottled at not less than 40 percent alcohol by volume, or 80 degrees proof, any “Cachaça” imported into the United States would have to conform to this minimum bottling proof requirement. A product that is bottled at below 40 percent alcohol by volume would fall outside this class and type designation. Depending on the way that such a product is manufactured, it could be labeled as a “diluted Cachaça” or a distilled spirits specialty product bearing a statement of composition.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on this proposed rule, including on whether the proposed amendment would have an adverse impact on owners of U.S. trademarks and on the extent to which distilled spirits labeled as “Cachaça” are produced outside Brazil. Although information currently before TTB suggests that all distilled spirits currently sold in the United States with “Cachaça” on the label are produced in Brazil, comments on the extent of production outside of Brazil will assist TTB in determining whether Cachaça should be recognized as a distinctive product of Brazil.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form associated with this notice in Docket No. TTB–2012–0002 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to this Regulations.gov docket is available under Notice No. 127 on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site’s Help or FAQ tabs.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity’s name as well as your name and position title. If you comment via Regulations.gov, please include the entity’s name in the “Organization” blank of the comment form. If you comment via postal mail, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A link to the Regulations.gov docket containing this notice, any posted supporting materials,

and the comments received on this proposal is available on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml under Notice No. 127.

You may also reach the relevant docket through the Regulations.gov search page at <http://www.regulations.gov>. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, the related petitions, any other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendment only amends the standards of identity for rum at 27 CFR 5.22(f) and does not impose any new reporting, recordkeeping, or other administrative requirement. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Christopher M. Thiemann of the Regulations and Rulings Division prepared this notice.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

The Proposed Amendment

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 5, as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

2. Section 5.22 is amended by revising paragraph (f) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(f) Class 6; rum. “Rum” is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum, and

bottled at not less than 80° proof; and also includes mixtures solely of such distillates.

(1) “Cachaça” is a type of rum that is a distinctive product of Brazil, manufactured in Brazil in compliance with the laws of Brazil regulating the manufacture of Cachaça for consumption in that country. The word “Cachaça” may be spelled with or without the diacritic mark (i.e., “Cachaça” or “Cachaca”).

(2) [Reserved]

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Signed: April 9, 2012.

John J. Manfreda,

Administrator.

Approved: April 11, 2012.

Timothy E. Skud,

Deputy Assistant Secretary,
(Tax, Trade, and Tariff Policy).