

Modernization of the Labeling and Advertising Regulations for Distilled Spirits



The Ruling

- Originally published April 2, 2020
- Corrected on April 13, 2020
- Rules are affective beginning May 4, 2020
- Accessed at [FederalRegister.gov](https://www.federalregister.gov) or from [TTB.gov/news/alcohol-beverage-labeling-and-advertising-regulations-final-rule](https://www.ttb.gov/news/alcohol-beverage-labeling-and-advertising-regulations-final-rule)

Background

- November 26, 2018, TTB published Notice 176, “Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages” to:
 - Make labeling regulations easier to understand and navigate
 - Incorporate guidance documents and current TTB policy
 - Changes in labeling standards from statutory changes and international agreements
 - Provide notice and opportunity to comment on new labeling policies and standards

Comment Period

- The comment period originally ended March 2019, but was extended through June 26, 2019
- TTB received and posted 1,143 comments from:
 - Trade associations
 - Consumer interest groups
 - Foreign entities
 - A Federally recognized tribe
 - State legislators and members of Congress
 - Industry members
 - And of course, the public
- Can be viewed at www.regulations.gov

Scope

- The feedback the TTB received was thorough and thoughtful, so there's much more to do.
- These changes are being implemented now to help businesses while they continue to consider other feedback.
- Giving businesses more flexibility and/or clarifying existing regulations.
- These were quick and easy to implement.
- In general, things are being relaxed, so no current labels or ads are required to be changed.

What's Been Updated

- 27 CFR 4 – Labeling and Advertising of Wine
- 27 CFR 5 – Labeling and Advertising of Distilled Spirits
- 27 CFR 7 – Labeling and Advertising of Malt Beverages
- 27 CFR 19 – Distilled Spirits Plants



Discussion of Specific Comments

- A. Issues Affecting Multiple Commodities
- B. Wine Issues
- C. Distilled Spirits Issues
- D. Malt Beverage Issues

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Section A.

MULTIPLE COMMODITIES



1. Definition of “COLA”

- The Definition of COLA (Certificate of Label Approval) as proposed, will be incorporated into 27 CFR 4.10, 5.11, and 7.10, with clarifying language
- TTB intends to allow changes via website announcements for added flexibility moving forward

2. “Adulterated” and “Mislabelled”

- TTB will not incorporate the interaction between FDA’s determination of products to be “adulterated” and TTB’s position that such products are “mislabelled.”
- TTB explains their position on the matter in this document, which is that it is the responsibility of the industry member to ensure compliance with FDA, State, and other regulations.
- TTB will continue to defer to FDA on food/ingredient safety

3. FAA Act Definitions

- TTB sought to clarify that certain products that do not meet FAA Act definitions of Wine, Distilled Spirits, or Beer are not subject to certain TTB requirements
- Such products fall within FDA jurisdiction
- Not applicable to distilled spirits, since all distilled spirits fall under TTB jurisdiction.



4. Exportation in Bond and Labeling

- Originally sought to clarify language in parts 4 and 7 regarding the export of product in bond and FAA Act regulations.
- TTB not moving forward with any changes other than incorporating texts found in 27 CFR Parts 4 and 7 into Part 5 for consistency and clarity.
- Products removed from industry member premises for consumption or sale in the US must be labeled in accordance with the FAA Act.

5. Personalized Labels

- “A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers”
- Proposed changes reflect current policy set forth in guidance documents from 2017.
- Certain COLAs issued with qualification that allows to add or change specified items on the label (names, graphics, artwork, event dates, etc.)

6. Country of Origin References

- TTB will remove requirements for country of origin labeling for distilled spirits, and will instead defer to Customs & Border Protection
- Will include cross-reference to CBP regulations in part 4, 5, and 7



7. Cross-Commodity Terms

- TTB proposed prohibiting the use of certain cross-commodity terms they thought to be misleading to consumers.
- Also would have prohibited the use of class or type designations (or homophones/coined word that simulated or imitated class/types) for one commodity on the label of a different commodity.
- General consensus was that these new rules were unnecessary for preventing deception and could stifle innovation.
- TTB decided not to finalize the proposal and will rely on existing regulations to address concerns of misleading labels.

8. Alternate Contact Info for Ads

- Current regulations require ads to contain name and address of the industry member.
- TTAB proposed to amended to allow alternative information to be displayed, such as phone number, website, or email.
- These were adopted into parts 4, 5, and 7.

Section C.

DISTILLED SPIRITS ISSUES



1. Definition of “Distilled Spirits”

- TTB will amend the definition of “distilled spirits” in § 5.11 to include a longstanding policy that product containing less than 0.5% ABV are **not** regulated as distilled spirits under FAA Act.



2. Definition of “Oak Barrel”

- Originally proposed to define oak barrel as a “cylindrical oak drum of approx. 50 gallons.”
- Sought feedback on use of smaller barrels and non-cylindrical barrels as it related to standard of identity.
- Received almost 700 comment in opposition!
- Most asserted that this went against innovative industry practices and that it would place undue burden on small DSPs.
- TTB is **not** moving forward with this proposal
- Will further consider regulations surrounding use of wood other than oak, and metal containers with oak staves.

3. Certificates of Age and Origin

- TTB will finalize reorganization of 27 CFR 5.52 to put Cognac and Brandy into one paragraph and rum in its own paragraph.
- Removing references to Immature Spirits Act for Canadian, Scotch, and Irish whiskies to instead reference the laws of those countries, which are always subject to change

4. Statements of Composition

- If class and type of spirit is not defined in 27 CFR 5.22, the product must be designated with “truthful and adequate statement of composition.”
- TTB proposed to create standards for what should be included in statements of composition, with three main proposed changes:
 - Listing the separate components of an intermediate product used
 - Listing components in order of predominance
 - Listing full statement of composition of cocktails used in spirits
- Lots of opposition to these proposed changes, as it was seen to be a great burden on distilleries without any benefits to the consumer, citing the benefits as speculative
- Changes were not adopted



5. Use of Term “Bottled in Bond”

- Most were in support of maintaining this designation as consumers appeared to place value on the label (i.e, an indication of quality).
- Previously, gin and vodka could be labeled as “Bottled in Bond,” but needed to be placed in paraffin-lined barrel (stored in wood, but could not contact the wood!)
- TTB is maintaining the regulations, but amending to allow gin to be stored in unlined barrels.



6. Brand Labels

- TTB relaxed regulations allowing the brand name, class and type, and alcohol content to appear anywhere on the label, as long as all three appear in the same field of vision. These key data points make up the “brand label.”
- TTB believes this is important as they convey important information to the consumer about what the product is.
- Change to 27 CFR 5.32: Net contents may appear on any label
- Amending 27 CFR 5.11 to allow the brand label to be on any side of the bottle. No longer required to be the primary (front) panel.



7. Alcohol Content Tolerance

- Alcohol content tolerance will be expanded to +/- 0.3% for all distilled spirits, amending 27 CFR 5.37(b) and 19.356(c)
- There are no longer different tolerances based on solids (i.e., no separate tolerance for liqueurs).



8. Age Statements

- TTB proposed to incorporate its current policy that only the time in first oak barrel counted toward age. They received 50 comments opposed!
- TTB will count all time spent in oak toward the age statement
- Spirits must still meet the requirements of standards of identity (e.g. straight whiskey must be aged two years in new charred oak before being transferred to anything else).
- Amended 27 CFR 40(a)(1) to allow that multiple barrels may be used, and the label may optionally include that information.
- Must still disclose aging in reused cooperage under 17 CFR 5.40(a)(4)
- Amended 27 CFR 5.40(d) to allow age statements for all spirits except neutral spirits (other than grain spirits) – Hello, barrel-aged gin!



9. Multiple Distillation Claims

- TTB will allow distillers to count all distillations, including those required to meet standards of identity, could be used when making label claims relating to distillation count.
- Also defining distillation as “a single run through a pot still or one run through a single distillation column of a column (reflux) still.”



10. Standard of Identity for Vodka

- Mostly sought to codify several past rulings on vodka, such as:
 - Vodka may not be stored in wood (with the exception of paraffin-lined barrels!)
 - Vodka treated with charcoal or activated carbon may be labeled as such under certain parameters
 - May be treated with up to 2g of sugar per liters, and 1g of citric acid per liter
- Will remove requirements that vodka be without distinctive character, aroma, taste, or color.
- Will update CFR to include that harmless coloring, flavoring, or blending materials may be added to vodka
- May not be labeled as aged



11. Whisky Labeling

- Originally proposed that when a whiskey meets the standards for a type of whiskey, that type must be designated as such on the label.
- Due to burden of potential label changes, TTB maintained current policy of giving DSPs the option to use the general “whisky” class or the type.
- The use of the term “straight” will also be optional, though its use will not be expanded to other classes of distilled spirits.

12. Absinthe

- TTB proposed new standard of identity in response to a petition, mostly as a reminder that they must be thujone-free under FDA regulations.
- Also sought to end current requirement that wormwood product undergo TTB lab analysis, in favor of relying on marketplace review and DSP investigations.
- Lots of support on codifying the standards, but differing opinions on testing.
- Standard not finalized, but testing will no longer be required.

13. Agave Spirits

- “Class 7; Tequila” will be changed to “Class 7; Agave Spirits”
 - *“Distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus Agave and up to 49 percent from other sugars”*
 - Must be distilled less than 190° and bottled at or above 80°
 - May be stored in wood barrels
 - May contain added flavoring or coloring materials
- Within the class, there will be two types:
 - Tequila
 - Mezcal
- Labels may state “spirits distilled from agave” or “agave spirits”

For additional questions or clarifications:

<https://www.ttb.gov/contact-rrd>

Thank You!



Sources

“Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.” *Federal Register*, 2 Apr. 2020, www.federalregister.gov/documents/2020/04/02/2020-05939/modernization-of-the-labeling-and-advertising-regulations-for-wine-distilled-spirits-and-malt#h-7.

