

Tequila, except that an appropriate statement with respect to age shall appear on the brand label in the case of brandy (other than immature or unaged brandies, as provided in § 5.22(d)(1), and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. * * *

(e) * * *

(2) * * * *And provided further*, That the labels of whiskies and brandies (except immature or unaged brandies, as provided in § 5.22(d)(1)) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label bearing an age statement.

Par. 4. Section 5.65(c) is amended by revising the last sentence to read as follows:

§ 5.65 Prohibited practices.

(c) *Statement of age.* * * * An advertisement for any whisky or brandy (except immature or unaged brandies, as provided in § 5.22(d)(1)) which is not required to bear a statement of age on the label or an advertisement for any rum or Tequila, which has been aged for not less than 4 years may, however, contain inconspicuous, general representations as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

Signed: April 25, 1996.

Bradley A. Buckles,
Acting Director.

Approved: May 15, 1996.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary,
(Regulatory, Tariff and Trade Enforcement).
[FR Doc. 96-14859 Filed 6-12-96; 8:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 18

[Notice No. 823]

RIN 1512-AB59

Production of Volatile Fruit-Flavor Concentrate (95R-026P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the President's regulatory reform initiative, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations in 27 CFR Part 18. The proposed amendment would specifically authorize the transfer of volatile fruit-flavor concentrate (VFFC) unfit for beverage use from one VFFC plant to another for further processing. The proposed amendment would clarify the regulations in order to allow greater flexibility in the production processes of VFFC plants.

DATES: Written comments must be received on or before August 12, 1996.

ADDRESSES: Submit written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221. ATTN: Notice No. 823.

FOR FURTHER INFORMATION CONTACT:

Mary A. Wood, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, ca a13jn2.071, Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those which are obsolete or burdensome and those whose goals could be better achieved through the private sector, self-regulation or state and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency would, as soon as possible, propose administrative changes to its regulations.

The page by page review of all regulations was completed as directed by the President. In addition, on April 13, 1995, the Bureau published Notice No. 809 (60 FR 18783) in the Federal Register requesting comments from the public regarding which ATF regulations could be improved or eliminated. No comments were received regarding 27 CFR part 18, Production of Volatile Fruit-Flavor Concentrate; however, ATF is proposing a clarifying amendment to this part based on a variance request received from a volatile fruit-flavor concentrate (VFCC) producer.

The Internal Revenue Code of 1986, 26 U.S.C. 5511, authorizes the manufacture of volatile fruit-flavor concentrate by any process which includes evaporations from the mash or

juice of any fruit. Section 5511 also places certain restrictions on the manufacture of volatile fruit-flavor concentrate. Pursuant to section 5511(1), the concentrate, and the mash or juice from which it is produced, must contain no more alcohol than is reasonably unavoidable in the manufacture of such concentrate. Section 5511(2) provides that the concentrate must be rendered unfit for use as a beverage before removal from the place of manufacture; however, concentrate which is fit for beverage use and which does not exceed 24 percent alcohol by volume may be transferred to a bonded wine cellar for use in production of natural wine. Finally, section 5511(3) authorizes the Secretary to prescribe such regulations as are necessary for the protection of the revenue regarding applications, records, reports, bonds, and other requirements with respect to the production, removal, sale, transportation, and use of concentrate and the mash or juice from which the concentrate is produced.

Volatile fruit-flavor concentrate which is produced in accordance with the requirements of the regulations is not subject to the distilled spirits or wine excise tax. However, section 5001(a)(6) provides for the imposition of tax on any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, and is then sold, transported, or used by any person in violation of Chapter 51 or the regulations promulgated thereunder.

Proposed Amendment

The current regulations in 27 CFR 18.54(a) allow the transfer of volatile fruit-flavor concentrate ("concentrate") which is unfit for beverage use for any purpose authorized by law. However, ATF recently received a request from a VFFC producer as to whether a concentrate unfit for beverage use could be transferred from one VFFC plant to another for further processing. Apparently it was more cost-effective for the second VFFC plant to conduct the processing operation at issue. While the transfer of the concentrate was clearly authorized by current regulations, since the concentrate was unfit for beverage use, there was nothing in the current regulations which specifically authorized the second VFFC plant to receive concentrate for further processing.

The existing regulations in section 18.51 allow proprietors to receive processing material which is produced elsewhere, subject to certain restrictions

and recordkeeping requirements. However, the term "processing material" is defined in section 18.11 to mean "[t]he fruit mash or juice from which concentrate is produced." This definition does not include concentrate intended for further processing. The regulations in section 18.56 authorize a VFFC producer to accept the return of a shipment of concentrate shipped by it, and provide recordkeeping and reporting requirements regarding the returned concentrate. However, these regulations do not specifically authorize the proprietor to accept concentrate from another proprietor for further processing.

In response to the request from the VFFC producer, ATF determined that nothing in the Internal Revenue Code or existing regulations precludes one VFFC proprietor from accepting concentrate from another VFFC proprietor for further processing. However, since the existing regulations do not specifically authorize such an operation, ATF is proposing to amend section 18.56 to specifically allow a proprietor to accept concentrate which is unfit for beverage use for further processing. Such concentrate will be subject to the existing recordkeeping and reporting requirements for concentrate which is returned to the proprietor. ATF believes that the proposed amendment will clarify to VFFC proprietors that the transfer of concentrate from one plant to another for further processing is allowed, as long as the concentrate meets the definition of a concentrate unfit for beverage use at the time it leaves the place of manufacture. This liberalizing amendment will allow VFFC proprietors greater flexibility in production operations without jeopardizing the revenue in any way.

Other Possible Changes

ATF also solicits public comment concerning other possible changes to the regulations in Part 18, such as amendments which would authorize VFFC plants to alternate the use of their premises so as to operate temporarily as a distilled spirits plant, bonded winery, or other regulated facility. Comments on this proposal, as well as any other suggestions, are welcome.

Public Participation

ATF requests written comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit a request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be scheduled.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation, if implemented as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposed amendment would liberalize the regulations to add a provision that will allow for the transfer of concentrate from one VFFC plant to another for further processing. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The collections of information contained in the regulations proposed to be amended by this notice have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1512-

0046 and 1512-0098. The proposed amendment is not expected to result in any change in the total number of burden hours.

Drafting Information: The principal author of this document is Mary A. Wood of the Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting requirements, Security measures, Spices and flavorings, Stills, and Surety bonds.

Authority and Issuance

ATF is proposing to amend Part 18 in Title 27 of the Code of Federal Regulations as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Par. 1. The authority citation for Part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5172, 5178, 5179, 5203, 5511, 5552, 6065, 7805; 44 U.S.C. 3504(h).

Par. 2. Section 18.56 is revised to read as follows:

§ 18.56 Receipt of concentrate.

(a) *General.* The proprietor of a concentrate plant may accept the return of concentrate that it shipped. In addition, concentrate that is unfit for beverage use may be received from another concentrate plant for further processing in accordance with this part.

(b) *Record of concentrate received.* When concentrate is received, the proprietor shall record the receipt, including the name of the consignor and a notation regarding any loss in transit or other discrepancy.

(c) *Report of concentrate received.* The quantity of concentrate received shall be reported on an unused line on the annual report, ATF Form 1695 (5520.2).

(Approved by the Office of Management and Budget under control numbers 1512-0046 and 1512-0098).

Signed: May 20, 1996.

John W. Magaw,
Director.

Approved: May 24, 1996.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

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