



June 25, 2019

Director Amy Greenberg
Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Box 12
Washington, DC 20005
Re: Docket No. TTB-2018-0007

Dear Director Greenberg,

The American Distilling Institute (ADI) is grateful for the opportunity to comment on Docket No. TTB-2018-0007, Notice No. 176: Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages, on behalf of our more than 1600 members. Founded in 2003, ADI is the oldest and largest and community of small-batch, independently owned distilleries in the United States, and it is our mission to promote and defend the art and enterprise of craft distilling. We support TTB's goals to improve the clarity and readability of the regulations to governing distilled spirits, improve compliance, and to ease burdens on the industry. To that end, we respectfully submit the following comments regarding the proposed rule.

Proposed § 5.15.1 Definitions – Oak Barrel

ADI and our members strongly oppose the proposed definition of oak barrels to mean “cylindrical oak drum of approximately 50 gallons used to age bulk spirits.” We believe that this definition is flawed due to its ahistorical understanding of what was a “standard whiskey barrel,” it also limits consumer choice, stifles producer innovation, and advantages companies with more capital in the marketplace. The current “standard whiskey barrel of approximately 50 gallons capacity,” came into widespread use around World War II due to demands on wood from industries supporting the US war effort. Before WWII, it was common to find whiskey barrel of approximately 40 gallons, and even earlier in our nation’s history some smaller than that. Limiting barrel size to those used by a post-WWII industry that was only 1% of current DSPs will place a significant regulatory burden on the industry that will stifle growth and negatively impact consumers.

As TTB knows the number of new DSPs entering the market has been growing at a near exponential rate for more than a decade. This growth has helped drive innovation in distilled spirits which customers have responded to with a shift in their purchasing towards spirits. The current definition of oak container has allowed for many DSPs, to offer aged spirits from smaller barrels which in turn makes small local distilleries a feasible business model that consumer support. If there is a negative market perception to spirits aged in barrels smaller or larger than 53 gallons, then these businesses will not survive. But the fact that these DSPs are thriving and growing demonstrates that some portion of the market approves of these spirits and it is not in TTB’s charter to intervene when against the interest of consumers. If TTB required mandatory labeling for any barrel smaller than 53 gallons, similar to how whiskeys under four years old must have an age statement, that would support increased transparency



for consumers, but it would so result in a significant number of approved labels to be resubmitted. Therefore, ADI supports maintaining the current definition of oak container.

§ 5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States. (b) Form of statement (2)

ADI appreciates the clarification of what the statement “produced by” means in the context of labeling the function of the bottler, distiller, or processor. However, we believe that the following terms “made by,” “prepared by,” and “manufactured by” are undefined, not well understood in the minds of consumers and can create the misperception that the processor was involved in the original distillation of the spirit. ADI has also seen terms such as “crafted,” “handcrafted,” and “handmade,” used as the processing statement in conjunction with the name and address of the producer. These terms do not represent clear functions that are identifiable by consumers and therefore, we believe they should be excluded from this portion of the label.

Terms such as fermented, aged, matured, distilled, redistilled, blended, compounded, flavored, macerated, filtered, colored, proofed, and bottled are clear well understood functions that are widely used in the industry and are easy for consumers to comprehend. We request that TTB limit the allowable processing function terms to those found in § 5.66 (b) (1), “produced by” in § 5.66 (b) (2), those in § 5.66 (b) (3), and any other term, such as those listed above that have a clear meaning as to the function that was carried out.

Proposed § 5.74(a) (3) Statements of age, storage, and percentage. General

ADI opposes limiting statements of age to only the amount of time spent in the first barrel and instead we request that producers be allowed to count the entire amount of time the spirit remains in barrels before bottling. The proposed rule to only count times spent in the first barrel places US aged spirits at a competitive disadvantage in world market. It is standard practice in the EU, Japan and Latin America to count the entire amount of time a spirit spends in barrels before it is bottled. ADI believes that adopting a similar standard would place US aged spirits on an equal footing.

We also believe it reasonable for spirits designated as “straight” to meet the two-year time requirement in the first barrel before it could be moved into another barrel for continued maturation. If TTB is concerned that an aggregate age statement may be misleading to consumers, we believe it would be reasonable to allow a composite statement of age on the back label that would express the amount of time spent in each barrel or the amount of time spent in the first barrel and the cumulative amount of time spent in any other barrels before bottling.

Proposed § 5.74(e) Statements of age, storage, and percentage. (e) Other distilled spirits.

ADI and its members welcome the proposed extensions of statements of age to all classes of spirits save for neutral spirits and vodka. However, we believe that there is a conflict with this extension and the proposed rule for bottled in bond which states that for gin to use “bond” or similar terms it must be stored in wooden containers coated or lined with paraffin. There are already gins in the market that have been “rested” for 3 years in oak barrels. It is very likely that after the adoption of the new rules there will be aged gins that could meet the standard of bottled in bond except for the fact that spirit was stored in oak containers not coated or lined with paraffin. Therefore, we argue that bottled in bond gin



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should not be subject to the rule that is be stored in wood containers coated or lined with paraffin and instead be allowed to use the term as other non-vodka spirit types.

Proposed § 5.88 Bottled in Bond

ADI whole heartedly believes that TTB should continue to maintain the standard of bottled in bond as proposed in § 5.88. While it is true that all domestic spirits are bottled on a bonded premise, the original 1897 act was designed to “provide standards for certain spirits that would inform consumers that the spirits were not adulterated.” Bottled in bond has become a unique well understood designation of production standards that consumers appreciate and are looking for. Therefore, we believe that Bottled in Bond should persist and because of its American heritage it should be preserved solely for domestic spirits.

Proposed § 5.89 Multiple distillation claims

ADI and its members support TTBs definition of “distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still.” We believe that is definition is clear and readily understood by consumers. However, we take issue with the methodology to count and label distillations to only the “additional distillations beyond those required to meet the product’s production standards.” This rule flies in the face of standard industry convention, is highly dependent on the type of still being used and would require a significant amount of relabeling. Therefore, we believe that this latter portion of the proposal should be removed.

At present it is commonly understood that if a whiskey, rum, agave spirit etc. claims that it was double distilled that it means that the fermented agricultural product was distilled once to concentrate the wash, and then distilled a second time to concentrate the spirit. Similarly, Tequilas or Irish Whiskeys that claim to be distilled three times start with the first distillation of the fermented agricultural product, and two additional distillations of the spirit to concentrate and refine its flavor profile. However, the proposed rule for additional distillations would require these spirits to be relabeled as once distilled and twice distilled respectively, contravening both the plain meaning and the accepted industry usage of these terms. Because the current usage of double and triple distilled is well established in the industry, enforcing this updated rule will require a significant amount of relabeling.

The proposed definition of additional distillations would also prejudice producers with certain stills over others. With a less efficient still it might be necessary to distill a fermented wash of rye malt twice to get the spirit over 80° proof to meet the production standards of rye whiskey before it goes into the barrel. However, with a more efficient still it would be possible to pass the 80° proof mark on the first distillation before being distilled a second time below 160° proof and then barreled. In this example the first spirit could only claim one distillation while the second could claim two even though the alcohol was passed through the still twice. Having an equipment dependent labeling standard for multiple distillation claims will create more confusion in the market and would favor some still designs over others.

Proposed § 5.142 Vodka

Regarding TTB’s request for comments on whether vodka should continue to be defined as being “without distinctive character, aroma, taste, or color,” ADI believes that this portion of the definition



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should be removed. Over the past decade, some craft distillers have in practice created a new style of vodka, distilled to 190° proof in such a way that it retains some character from its agricultural product. Often this is accomplished by distilling in a single pass with enough reflux to reach 190° proof. While not being completely 100% neutral, these spirits are still recognizable as vodka and has opened a whole new group of consumers who before did not consider themselves “vodka drinkers.” In addition, the term without distinctive character is vague and lacks clarity to what specifications a spirit must have to reach this point.

We believe that simpler and better standard would allow vodka to be defined as: A neutral spirits. Vodka may not be aged or stored in wood barrels at any time except when labeled as bottled in bond pursuant to § 5.68. Vodka treated and filtered with not less than one ounce of activated carbon or activated charcoal per 100 wine gallons of spirits may be labeled as “charcoal filtered.” Vodka may contain up to two grams per liter of sugar and up to one gram per liter of citric acid. Addition of any other flavoring or blending materials changes the classification to flavored vodka or to a distilled spirits specialty product, as appropriate. Vodka must be designated on the label as “neutral spirits,” “alcohol,” or “vodka”.

Proposed § 5.143 Whisky (c) Types of whisky

ADI also would like to formally support the addition of a new Standard of Identity for American Single Malt Whisky, defined as: a whiskey mashed, matured, and distilled in a single United States distillery, distilled to a proof not exceeding 160° proof from fermented mash of 100% malted barley, stored in oak containers not exceeding 700 liters, and bottled at not less than 80° proof.

Type	Source	Distillation proof	Storage	Neutral Spirits Permitted	Allowable coloring, flavoring, blending materials permitted
(#) American Single Malt Whisky	Fermented mash of 100% malted barley	160° or less	Oak containers not exceeding 700 liters with no minimum time requirement.	No.....	Yes.
(#) Straight American Single Malt Whisky	Fermented mash of 100% malted barley	160° or less	Oak containers not exceeding 700 liters for a minimum of two years.	No.....	No.....

Proposed § 5.147 Rum (b) Types

At present the industry is engaged in a dialog among producers as to what terms best classify the different types of rum that are found in the market. ADI is pleased to see that TTB has “[Reserved]” a type designation for rum, presumably anticipating the formation of more defined types. While this debate continues how best to describe the various styles of production, there are a couple of areas of agreement that we request TTB to consider as added types.



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Type	Standard
(#) Straight Rum	Rum that meets the standard of identity for its class and is stored in oak barrels for a minimum of two years, to which no neutral spirit or harmless coloring, flavoring, blending materials may be permitted.
(#) Cane Juice Rum or Rum Agricole	Rum that is distilled solely from the fermented unconcentrated juice of sugar cane.
(#) Straight Cane Juice Rum or Straight Rum Agricole	Rum that meets the standard of identity for Cane Juice Rum, or Rum Agricole and is stored in oak barrels for a minimum of two years, and to which no neutral spirit or harmless coloring, flavoring, blending materials may be permitted.

Proposed § 5.149 (a) The class absinthe.

ADI is glad to see absinthe added into this proposed rule and we request a slight modification to the proposed standard of identity with the following definition: "Spirits with a main characteristic derived from the combination of Grand Wormwood (*Artemisia Absinthium*), Fennel (*Foeniculum vulgare*) and Anis Seed (*Pimpinella Anisum*) produced by the distillation of spirits with Grand Wormwood, Fennel, Anis and other herbs and botanicals and bottled at not less than 45% alcohol by volume (90 proof). No sugar may be added."

Traditional absinths is not a liqueur and so it does not have added sugar. Dissolving sugar into the drink before serving is practiced in traditional absinth service, but that should be left up to the customer. We believe that the above definition strikes the right balance in protecting the traditional elements of absinthe, meeting consumer expectations for how absinthe is produced and still allowing for innovation in the marketplace.

Proposed § 5.150 (a) The class cordials and liqueurs

In the proposed definition of cordials and liqueurs it states that they may not be designated as "distilled," "compound," or "straight." However, in the interest of clarity, transparency and allowing producers to make accurate statement about their process, ADI believes that producers should be able to designate their spirits using the most accurate terms. If a producer ferments and distills the base spirit used in the creation of the liqueur, they should be able to state that fact on their label along with other relevant production functions. Producing a spirit from original distillation adds to the cost of the product and is relevant to the decision-making process of the consumer on how and where exerciser their purchasing power in the market.



Overall ADI and its members appreciate the many positive changes in the proposed rule such as the creation of a White Whiskey type, expanding the tolerance for labeling ABV for distilled spirits, expanding the definition of grain to include pseudocereals and many others. We appreciate the effort that this proposed rule represents, and we thank you for the opportunity to submit the above comments.

Sincerely,

Erik Owens
Vice President
American Distilling Institute