# Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 803; CRD-94-8]

**RIN AB32** 

# Alteration of Labels on Containers of Distilled Spirits, Wine, and Beer

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** ATF is proposing to amend the regulations in 27 CFR Parts 4, 5, and 7 which implement section 205(e) of the Federal Alcohol Administration Act of 1935, which makes it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand or label on wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein. The proposed amendments will reinstate a requirement that ATF approval be obtained before relabeling distilled spirits, and will make it unlawful to relabel a distilled spirits, wine, or malt beverage container if the effect of such action is to remove from the container or label any information required by ATF regulations, or a product identification code placed on the product by the producer for tracing purposes.

**DATES:** Written comments must be received on or before March 6, 1995.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco Firearms, P.O. Box 50221, Washington, DC 20091–0221. [Attn: Notice No. 803.]

## FOR FURTHER INFORMATION CONTACT:

Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

### SUPPLEMENTARY INFORMATION:

#### **Background**

Several producers and importers of alcoholic beverages have complained to the Bureau of Alcohol, Tobacco and Firearms (ATF) that product identification code markings placed on containers and labels of wines and distilled spirits by producers for tracing purposes are being removed or mutilated after the product has left the producer's premises. Such alterations of labels or packages have been permitted in foreign trade zones and Customs bonded warehouses, because ATF regulations do not specifically address

such activities, and because product identification codes are not mandatory information under our regulations. However, the effect of such action is to make it impossible for the producers to rely on production codes to trade mislabeled, adulterated, or unsafe products.

Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), authorizes ATF to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of container as will prohibit deception of the consumer with respect to such products or the quantity thereof.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce which are not bottled, packaged, or labeled in compliance with the regulations, the FAA Act requires that prior to bottling distilled spirits, wines, or malt beverages, the producer or bottler must obtain a certificate of label approval covering the product. Similarly, the law provides that no person shall remove bottled distilled spirits, wines, or malt beverages from Customs custody for consumption in bottles, for sale or any other commercial purposes, without having first obtained a certificate of label approval covering the product.

Thus, the certificate of label approval requirement ensures that mislabeled distilled spirits, wines, or malt beverages cannot be introduced in interstate or foreign commerce. To ensure that products with proper labels were not altered once such products had been removed from bond, section 205(e) further provides as follows:

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

Regulations which implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in title 27, Code of Federal Regulations (CFR), Parts 4, 5, and 7, respectively. These regulations provide for relabeling in certain circumstances.

Sections 4.30 and 7.20 provide that someone wanting to relabel must receive prior permission from the Regional Director (Compliance). Section

5.31 does not currently require prior approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved certificate of label approval.

The regulations provide that distilled spirits, wines and malt beverages may be relabeled as authorized by Federal law. Such products may also be relabeled for purposes of compliance with the requirements of the regulations, or of State law. Finally, there may be added to wine and distilled spirits bottles, after removal from Customs custody, or prior to or after removal from bonded premises, without application for permission to relabel, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

Customs Bonded Warehouses and Foreign Trade Zones

The statutory prohibition against the alteration or mutilation of distilled spirits, wine, or malt beverage labels applies to all products held for sale in interstate or foreign commerce. The terms of the statute thus apply to nontaxpaid domestic and imported products held for storage or manipulation in a Customs bonded warehouse or foreign trade zone.

However, since domestic nontaxpaid alcoholic beverages bottled for exportation are exempt from the certificate of label approval requirement, and certificates of label approval are not required for imported alcoholic beverages until they are withdrawn from Customs custody for consumption in the United States, ATF has previously taken the position that relabeling activities could occur in a Customs bonded warehouse or foreign trade zone without prior ATF approval. ATF regulations authorize the relabeling of alcoholic beverages in Customs custody in order to bring such products in compliance with a certificate of label approval prior to withdrawal for consumption. However, current regulations do not specifically set forth the limitations on other types of relabeling activities in Customs bonded warehouses or foreign trade zones. In general, ATF saw no need to scrutinize labeling activities involving such products unless and until they were withdrawn from Customs custody for consumption in the United States.

While ATF has not required that persons relabeling alcoholic beverages in Customs bonded warehouses or foreign trade zones obtain prior approval, such activities are subject to regulation by the United States Customs Service ("Customs"). Because the