DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 890]

RIN 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations to create a new standard of identity for flavored wine products. ATF believes that this regulation change is necessary to avoid consumer confusion between established classes/types of wines (including varietals, semi-generics, and type designations of varietal significance) and products that fall outside existing classes because of the addition of flavoring materials. In general, ATF proposes that such products must be labeled as ''Flavored Wine Product'' together with a truthful and adequate statement of composition.

In addition, we are proposing to amend the existing definition of ''brand label'' for wine to be consistent with the definition currently provided for distilled spirits products. This change would minimize the likelihood of consumer confusion concerning the identity of the product by making mandatory information readily visible to the consumer at retail.

Finally, this document discusses and solicits comments on a petition we received from the California Association of Winegrape Growers (CAWG) concerning the labeling of wine specialty products.

DATES: Comments must be received on or before March 29, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *Attention: Notice No. 890.* See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485. You may also write questions by e-mail to EAReisman@atfhq.atf.treas.gov. ATF will not accept comments on the proposal that are submitted to this e-mail address.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) provides ATF, as the delegate of the Secretary of the Treasury, with the authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages. 27 U.S.C. 205(e). The FAA Act provides that these regulations shall prevent deception of the consumer, and provide the consumer with adequate information as to the identity and quality of alcohol beverage products.

The wine labeling regulations require that all wines sold, shipped or otherwise introduced into interstate commerce must bear labels that contain certain mandatory information. Among other things, wine labels must contain a statement relating to the class, type, or other designation of the wine. 27 CFR 4.32(a)(2). With certain exceptions, the class of the wine must be stated on the label in conformity with the standards of identity regulations. However, under certain circumstances, certain grape wine type designations may appear in lieu of a class designation, *e.g.,* grape varietal designations (*e.g.,* Chardonnay), semi-generic type designations (*e.g.,* Chablis), or type designations of varietal significance (*e.g.,* Muscatel). If the class of wine is not defined by the regulations, then a truthful and adequate statement of composition must appear on the brand label in lieu of the class designation. 27 CFR 4.34(a).

Subpart C of part 4 sets forth standards of identity for several classes and types of wine. 27 CFR 4.21. Section 4.21(a) defines ''grape wine'' as wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes. Pure condensed grape must and wine spirits may be added to grape wine. Section 4.21(a) also provides limitations on the amelioration of grape wine. Over-ameliorated grape wine may not be designated as grape wine. Rather, such wine must be designated as ''substandard wine'' or ''other than standard wine.'' 27 CFR 4.21(h).

In general, the name of a grape variety may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin (*e.g.,* ''California Chardonnay'') and if not less than 75 percent of the finished wine is derived from grapes of that variety. 27 CFR 4.23. A semi-generic name of geographic significance may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine (*e.g.,* ''California Burgundy''), and if the wine so designated conforms to the standard of identity for the product or, if there is no such standard, to the trade understanding of such class or type. A semi-generic designation is a name of geographic significance that is also the designation of a class or type of wine found to have become semi-generic by the Director of ATF. The regulations provide several examples of semi-generic designations that are also type designations for grape wines, such as Burgundy and Chablis. 27 CFR 4.24(b)(2). Semi-generic designations are also established by the Internal Revenue Code (IRC), 26 U.S.C. 5388(c). In the case of still grape wine there may also appear in lieu of the class designation, a type designation of varietal significance. This applies to American wines only. The regulations provide several examples of type designations of varietal significance, such as Muscatel and Scuppernong. 27 CFR 4.28.

Also, grape wine may be vintage dated if it is made in accordance with the standards prescribed in 27 CFR 4.27(a). Vintage wine is wine labeled with the year of harvest of the grapes, and made in accordance with classes 1, 2, or 3 of 27 CFR 4.21.

Section 4.21 does not allow for the addition of flavoring material(s) to wines with a standard of identity under subpart C of part 4. For example, a class 1, grape wine containing added flavoring material(s) is not entitled to a standard grape wine designation, appellation of origin, or vintage date since these statements only apply to a ''standard'' grape wine. Likewise, ''substandard wine'' or ''other than standard wine'' under § 4.21(h)(2) does not specifically include wine to which flavoring material(s) have been added. Substandard wine or other than standard wine typically includes any wine to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products.

It has been ATF's longstanding policy that wines to which flavoring material(s) are added do not fall within any of the current standards of identity set forth in the wine regulations. A truthful and adequate statement of composition is required on the brand label for such flavored wine products, pursuant to § 4.34(a).

Flavored wine products may be derived from grape wine or other wines. They may be derived from citrus wine

(orange wine, grapefruit wine, *etc.*), fruit wine (apple wine, berry wine, pear wine, *etc.*) or other agricultural products (carrot wine, dandelion wine, honey wine, *etc.*).

Flavored Wine Products

Flavored wine product labels have traditionally displayed statements of composition such as ''Grape Wine With Natural Flavors'' to describe to consumers the composition of these products. Recently, some domestic wineries have begun using varietal and semi-generic names in the statement of composition on their product labels to describe the base wine portion of their flavored wine products. These flavored wine products most often have an appellation of origin such as ''California'' in conjunction with the grape varietal or semi-generic name in the statement of composition (*e.g.,* ''California Chardonnay (or Chablis) With Natural Flavors''). Flavored wine products are composed differently from existing standard of identity wines. Typically, such flavored wine products contain additional flavoring material(s). Such products may contain coloring material(s). Flavored wine products may also contain sugar and water in excess of that allowed in standard wine.

ATF is aware that the recent appearance of these grape varietal and semi-generic names on flavored wine products has caused a great deal of discussion within the wine industry. On February 26, 1998, ATF wrote to the Wine Institute to respond to their concerns about this matter. Soon after the letter was sent to the Wine Institute it was placed on the ATF internet website as public information.

Consumer Survey

In view of ATF's concerns about the labeling of flavored wine products, ATF commissioned a consumer survey in July 1998 to determine consumer interpretations of varietal and semi-generic claims on labels of flavored wine products. Among other things, the survey was designed to assess whether wine consumers distinguish between grape wine and flavored wine products based on information provided on product labels. The survey involved portraying examples of two flavored wine products: one product was portrayed as containing a grape wine base that qualified as a varietal wine and another was portrayed as a product containing a grape wine base that qualified as a semi-generic wine. Both products chosen for the survey were depicted in ''bag-in-box'' containers. Consumers were shown labels bearing only varietal or semi-generic designations and labels bearing a varietal or semi-generic type designation as part of a statement of composition including the term ''With Natural Flavors.'' Consumers were shown boxes bearing the statement of composition on the side panel only, and other boxes with the statement of composition prominently displayed on the front label. None of the labels was identical to the labels of wines currently marketed. The brand names, package designs, and label information were selected by the contractor, U.S. Research Company, in order to best measure consumer perceptions about the overall label presentations and were chosen in order to ensure that the results were not specific to any one particular product or brand of wine.

The survey revealed that even when the ''With Natural Flavors'' disclosure was prominently displayed on the front panel of the product, a large majority (80%) of the respondents failed to distinguish between grape wine and flavored wine products. The survey also revealed that placing the term ''With Natural Flavors'' on the label had no impact on consumer understanding of the amount of varietal or semi-generic wine in the product. This is important because over 55 percent of the consumers surveyed believed that all or almost the entire product was composed of the varietal or semi-generic wine. Moreover, when asked to interpret the ''With Natural Flavors'' disclosure, more than one-third of the consumers surveyed perceived it to convey a positive ''no chemicals or additives'' message. Seventeen percent indicated that they thought the ''With Natural Flavors'' disclosure meant that the product was ''natural,'' and only fourteen percent suggested that it indicated that flavors had been added to the product.

California Association of Winegrape Growers Petition

ATF received a petition, dated September 15, 1999, filed on behalf of the California Association of Winegrape Growers (CAWG), requesting an amendment of the regulations to prohibit the use of any varietal, semi-generic or geographic name as part of a statement of composition on wine specialty products. Specifically, CAWG has requested an amendment of section 4.34(a). This section states that if the class of wine is not defined in the standards of identity in subpart C of part 4, ''a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation.'' The petitioner is requesting that the regulation be amended to add the following wording:

> A statement of composition shall include the standard of identity (class and type designation) of the wine used in the product, but shall not be permitted to include, in lieu of the class designation for the wine used in the product, any varietal (grape type) designation, type designation of varietal significance, or semigeneric geographic type designation, or geographic distinctive designation, to which the wine used in the product may otherwise be entitled.

The petitioner contends that the manner in which flavored wine products are labeled, packaged, and marketed deceives consumers into thinking they are consuming varietal wine rather than flavored wine. As stated in the petition,

> Varietal-based specialty products appear on retailers' shelves next to or intermingled with traditional still wines, in packaging similar to traditional still wines [750 milliliter or 1.5 liter glass bottles sealed with a cork, or 5 liter ''bag-in-box'' containers] and with a varietal designation and an appellation of origin traditionally associated with still wines prominently displayed.

The petitioner asserts that over the last 20 years, American wine producers and grape growers have developed an important consumer market for still grape wines with varietal designations and appellations of origin. According to the petitioner, these wines represent a large volume of the domestic wine sold in the United States (64 percent for the 52 week period ending July 18, 1999). As stated in the petition, ''[v]arietal designations and appellations of origin have earned an important place in the wine consumer marketplace as indications of quality wines with certain distinctive tastes and styles.''

In support of its petition, CAWG commissioned a survey to study consumers' understanding of the current labeling of flavored wine products that include a varietal name with an appellation of origin in the statement of composition. A total of 800 telephone interviews were conducted. According to CAWG, the results of the survey showed that most respondents believe that wine labels accurately reflect what is in the container and that label information is important to their buying decisions. A little more than 48 percent of the respondents expected that products containing labels with such statements as ''California Cabernet Sauvignon with natural flavors'' and ''California Chardonnay with natural flavors'' to be standard grape wines which contain 75 percent wine made from grapes of that variety. The petitioner notes that flavored wine products which include a varietal name

in the statement of composition have no minimum varietal content requirement.

CAWG states that the results of its survey clearly show that the labeling of flavored wine products that include a variety name along with an appellation of origin in the statement of composition is misleading to consumers. The petitioner believes that its proposed amendment ''is targeted directly at the misleading nature of current statements of composition on varietal-based specialty products.'' By prohibiting varietal and semi-generic designations and appellations of origin in the statement of composition, the petitioner contends that consumers will not be misled as to the actual identity of the product. Flavored wine products that have a varietal wine base would have statements of composition in the form ''grape wine with natural flavors'' or ''white wine with natural flavors.''

ATF is not proposing the amendment requested by CAWG, however, we are soliciting comments on the petition. This will be addressed further in the section titled ''Proposed Regulation.''

Significance of Wine Labeling Terms

ATF believes that consumers have learned to attach significance to grape wines entitled to varietal/semi-generic designations, appellations of origin, and vintage dates. This belief is based on the fact that for many years the grape wine industry has heavily utilized varietal/semi-generic designations, appellations of origin, and vintage dating in the marketing of grape wines. Additionally, ATF has conducted rulemaking projects spanning nearly 14 years identifying American grape variety names. See e.g., Treasury Decision ATF–370, 61 FR 522 (January 8, 1996). Similarly, Congress has recently amended the Internal Revenue Code to recognize semi-generic names as being distinctive grape wine designations. 26 U.S.C. 5388(c), as added by Public Law 105–34, § 910(a). These efforts illustrate the importance of varietal and semi-generic grape wine designations to both the wine industry and to wine consumers. This was also addressed in the CAWG petition.

ATF believes that consumers do not understand that flavored wine products are composed differently from existing standard of identity wines. ATF further believes that consumers are confused about the distinction between an existing standard of identity wine and flavored wine products, especially when grape varietal or semi-generic terms appear on the labels of flavored wine products. Flavored wine products are often located next to varietal wines or semi-generic wines on the shelves of grocery and liquor stores. Also, the promotional and advertising materials accompanying these flavored wine products frequently feature or highlight the varietal or semi-generic component of the finished wine product, even though the finished flavored wine product is not entitled to the varietal or semi-generic designation.

Proposed Regulation

ATF has concluded that current statements of composition that include varietal or semi-generic names tend to mislead consumers to believe that flavored wine products are the same as wines that meet the percentage requirements for a varietal or semi-generic designation. ATF is basing this conclusion on its experience in regulating the labeling of wine. ATF also believes that the consumer survey it commissioned and the CAWG consumer survey support that conclusion.

Furthermore, examination of this issue has caused ATF to review its policy relating to statements of composition for all flavored wine products, including those that do not include varietal or semi-generic names, such as those that state ''Grape Wine With Natural Flavors,'' since the finished products are no longer ''Grape Wine'' but are ''Flavored Wine Products'' because of the presence of flavors.

Although we are soliciting comments on the CAWG petition, we are not proposing the amendment requested by the petitioner. We believe the regulation change proposed by CAWG is more restrictive and does not provide the industry with the flexibility in labeling their flavored wine products. On the other hand, we believe that the proposals made in this notice provide the consumer with sufficient information as to the actual identity of the product without imposing an undue burden on the industry.

Accordingly, ATF is proposing to establish a new class designation that would be called ''Flavored Wine Product.'' Under this designation, a flavored wine product would be a wine-based alcohol beverage that does not qualify for any of the class or type designations listed in the existing wine regulations because of the addition of flavoring material(s).

ATF believes that all flavored wine products need to be labeled to indicate to consumers that such products are composed differently from existing standard of identity wines. ATF, therefore, proposes to add a Class 10 to the standards of identity for wine to be called ''Flavored Wine Product.'' Such product will be required to be designated as ''Flavored Wine Product'' on labels. Furthermore, the designation must appear together with a truthful and adequate statement of composition. The designation and the statement of composition must appear in the same size, style and color typeface on the brand label.

At a minimum, the statement of composition for flavored wine products must:

1. Identify Class and/or Type

It must identify the class and/or type of each wine used in the flavored wine product (*e.g.,* ''grape wine,'' ''table wine,'' ''peach wine,'' ''honey wine''). A single grape variety, type designation of varietal significance, or semi-generic name may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product. For *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class. Similar provisions are being proposed for specialty products that do not contain any flavor(s) (§ 4.34(c)).

2. Identify Added Flavoring Material(s)

If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.,* ''strawberry flavor''). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.,* ''peach flavor,'' ''kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as ''other flavor(s).''

With regard to the term ''natural'' as used on alcohol beverage labels to describe a flavor, *e.g.,* ''With Natural Flavors,'' ATF believes that there is no consensus among consumers as to a meaning for the term ''natural.'' This belief is based upon ATF's experience in regulating the wine industry and on its consumer survey noted above, which supports this conclusion. An example indicated in the survey reflects that fully one-third of respondents considered the term ''natural'' to indicate that no additives or chemicals are present in the product. This

conclusion is clearly erroneous. Therefore, to avoid consumer deception concerning the identity of flavored wine products, the term ''natural'' may not be used anywhere on the flavored wine product labels to describe flavoring materials. When artificial flavoring material(s) are used, they must be so described (e.g., ''artificial raspberry flavor'').

3. Identify Added Coloring Material(s)

ATF proposes to require that coloring materials(s) be disclosed in the statement of composition, whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.,* ''caramel,'' ''certified color,'' ''annato,'' *etc.*) or as a general statement, such as ''artificially colored,'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c).

4. Include a Reference to Sugar

ATF proposes to require that sugar be listed in the statement of composition if sugar is used in the production of the flavored wine product (not including its use in the production of the base wine within the range authorized by the regulations).

5. Include a Reference to Water

ATF proposes to require that water be listed in the statement of composition, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product.

6. Include a Reference to Wine Spirits

ATF proposes to require, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits in the statement of composition, whether such wine spirits are added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented. Section 4.39(a)(7) prohibits the appearance on a wine label of any statement that the wine contains distilled spirits with one exception. Accordingly, we are proposing to amend the exception to cover the reference to distilled spirits in the statements of composition for flavored wine products.

Miscellaneous—Amended Definition of ''Brand Label''

ATF also proposes to revise the meaning of the term ''brand label'' in 27 CFR 4.10. Under the amended definition, a brand label is the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

ATF believes that the existing definition of the term ''brand label'' allows the mandatory information to be placed on the container in such a way that it is not readily visible to consumers. ATF also believes consumers are having difficulty locating important mandatory product label information necessary to be adequately informed as to the identity and quality of the wine products, including bag-in-boxes and other new wine containers.

The amended brand label definition proposal is based on the definition of ''brand label'' that is currently in the distilled spirits regulations and is consistent with the principal display panel approach of the Fair Packaging and Labeling Act. ATF recognizes that the proposal to amend the definition of the term ''brand label'' was raised before. On September 12, 1991, ATF published Notice No. 727, ''Definition of 'Brand Label' for Wine, and; Standard Wine Containers'' (56 FR 46393). At that time ATF proposed that the definition of ''brand label'' be amended, consistent with the definition currently proposed. This proposal was subsequently withdrawn for further study (58 FR 56801, October 25, 1993).

ATF has re-examined this issue in the context of the wine regulations for the purpose of ensuring that consumers are not misled about the identity and quality of wine products. The popularity of flavored wine products and the potential for consumer confusion between such products and other wines that fit specific class designations makes this more specific definition of ''brand label'' necessary. Under the proposed definition, the mandatory information will be readily visible to consumers at the point of purchase.

Public Participation

Who May Comment on This Notice?

We are requesting comments on these proposed regulations and the CAWG petition from all interested persons. We are also requesting comments on the clarity of this proposed rule and how it may be made easier to understand. 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.

Will ATF Keep My Comment Confidential?

We will not recognize any material in comments as confidential. All comments and materials received may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public you should not include it in a comment. We may also disclose the name of any person who submits a comment.

Disclosure: Who May Review the Comments ATF Receives for This Notice?

Any interested person may inspect copies of this notice and all comments. You may inspect these documents during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- be legible;
- reference this notice number;
- be 8½″ × 11″ in size;
- contain a legible written signature; and
- be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending them to nprm.notice.890@atfhq.atf.treas.gov.

You must follow these instructions. E-mail comments must:

- contain your name, mailing address, and e-mail address;
- reference this notice number; and
- be legible when printed on not more than three pages 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov/core/regulations/rules.htm

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 90-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

We have determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Does the Paperwork Reduction Act Apply to this Proposed Rule?

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507, and its implementing regulations (5 CFR part 1320) apply to this proposed rule. The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the PRA. The estimated average burden associated with the collection of information is 0 hours per respondent or recordkeeper because the requirement is usual and customary for wine producers. The number of respondents/recordkeepers is 6,060. Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, at the address previously specified.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of ATF, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in 27 CFR 4.21(j) and 4.34. This information is required to properly identify flavored wine products. The collection of information is mandatory. The likely respondents are businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule required to be issued for notice and comment unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. We hereby certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. Since producers routinely make changes to their labels, we do not believe that the proposed amendments, if adopted, would result in any additional burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

Drafting information. This document was drafted by Edward A. Reisman, Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF also participated in the development of this document.

List of Subjects in 27 CFR Part 4

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

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.10 is amended by revising the definition of the term ''brand label'' to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Brand label. The principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

* * * * *

Par. 3. Section 4.21 is amended by adding new paragraph (j) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(j) *Class 10; flavored wine product.* A flavored wine product is a wine-based alcohol beverage that does not qualify for any of the other class or type designations listed in this section because of the addition of flavoring material(s).

(1) *Mandatory class and type designation.* The designation of such product is ''flavored wine product,'' together with a truthful and adequate statement of composition, all of which must appear in the same size, style and color typeface. At a minimum, the statement of composition must:

(i) Identify the class and/or type of each wine used in the flavored wine product (*e.g.,* ''grape wine,'' ''table wine,'' ''peach wine,'' ''honey wine''). A single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, may be used if such named grape variety, type designation of varietal significance, or semi-generic name appears together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent by volume of the finished flavored wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished

flavored wine product. An appellation of origin may not otherwise appear on the label of a product of this class.

(ii) Identify added flavoring material(s). If one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.,* ''peach flavor'' or ''kiwi flavor''). If two or more flavoring materials are used in the production of the flavored wine product, each flavoring material may be specifically identified (*e.g.,* ''peach flavor,'' ''kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as ''other flavor(s).'' The term ''natural'' may not be used to describe flavoring materials anywhere on the product label(s). Artificial flavoring material(s) must be so described (*e.g.,* ''artificial raspberry flavor'');

(iii) Identify coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (*e.g.,* ''caramel,'' ''certified color,'' ''annato,'' etc.) or the words ''artificially colored'' may be used to indicate the presence of any one or a combination of coloring material(s), except that FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c);

(iv) Include a reference to sugar, if the sugar is used in the production of the flavored wine product (not including the use of sugar in the production of the base wine within the authorized limits);

(v) Include a reference to water, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the flavored wine product;

(vi) Include, except for flavored wine products made from a base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits, whether added in the production of the wine component of the flavored wine product or added in the production of the flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented.

(2) *Optional statements.* In addition to the statement of composition portion of the mandatory designation, additional statements regarding the components of the flavored wine product may appear on a back or side label, but not the brand label. Such statements must reference all components listed in the mandatory statement of composition and must include the percentage of each component totaling 100 percent. Furthermore, such additional statements must be truthful, accurate and specific, within the meaning of § 4.38(f).

Par. 4. Section 4.34 is amended by removing the last two sentences in paragraph (a) and adding in their place three new sentences and by adding a new paragraph (c) to read as follows:

§ 4.34 Class and type.

(a) * * * Except as provided in paragraph (c) of this section, an appellation of origin may not appear on the label of the product. If the statement of composition includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively, the product must comply with the provisions of paragraph (c) of this section. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, must appear together in the same size, style and color typeface.

* * * * *

(c) If the class of wine is not defined in subpart C, and the statement of composition required by paragraph (a) of this section includes a single grape variety, type designation of varietal significance, or semi-generic name, as provided in §§ 4.23, 4.28, and 4.24(b), respectively,

(1) An appellation of origin no smaller than a country must appear together with the named grape variety, type designation of varietal significance, or semi-generic name; and

(2) The named grape variety, type designation of varietal significance, or semi-generic type wine must constitute not less than 75 percent by volume of the finished wine product: *Provided,* That for *Vitis labrusca* varieties, the named grape variety must constitute not less than 51 percent by volume of the finished wine product.

Par. 5. Section 4.39(a) is amended by revising the introductory text in paragraph (7) to read as follows:

§ 4.39 Prohibited practices.

(a) * * *

(7) Any statement, design, device, or representation (other than the statement of composition required by § 4.21(j)(1) and a statement of alcohol content in conformity with § 4.36), which tends to create the impression that a wine:

* * * * *

Signed: October 13, 1999.

John W. Magaw,

Director.

Approved: November 12, 1999.

John P. Simpson,

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

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 14, 18, and 75

RIN 1219–AA92

Requirements for the Approval of Flame-Resistant Conveyor Belts

AGENCY: The Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; limited reopening of the record; request for public comments.

SUMMARY: We (MSHA) are reopening the rulemaking record on our proposed rule revising the requirements for approval of flame-resistant conveyor belts for the limited purpose of giving you (interested parties) an opportunity to comment on two documents. These documents are an updated Preliminary Regulatory Impact Analysis (PRIA) and an updated Paperwork Reduction Act (PRA) submission filed with OMB. The updated PRIA, using recent economic and industry data, evaluates the impact of the proposed part 14 approval requirements on small manufacturers and the impact of proposed part 75 modifications on small mines. The updated PRIA concludes that the proposal would not have a significant economic impact on a substantial number of small entities. The updated paperwork submission evaluates the information collection requirements of the proposal using OMB's 1995 revised 83–I. Only comments addressing the updated PRIA, including its conclusion that the proposal would not have a significant economic impact on a substantial number of small entities, and the information collection requirements of the updated paperwork submission will be considered by MSHA. You may obtain a copy of the updated PRIA and updated paperwork submission, using revised form 83–I and Supporting Statement, from MSHA's Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; telephone (703) 235–1910. You may also access our Internet website at http://