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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 24 and 27

[T.D. TTB–31]

RIN 1513–AB00

Certification Requirements for Imported Natural Wine (2005R–002P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule implements the new certification requirements regarding production practices and procedures for imported natural wine contained in section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, which amended section 5382 of the Internal Revenue Code of 1986. We are amending the wine regulations to incorporate these changes. We also are soliciting comments from all interested parties on the implementation of these new requirements through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: Temporary rule effective August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Gail Davis, International Trade Division, Alcohol and Tobacco Tax and Trade Bureau (202–927–8110).

SUPPLEMENTARY INFORMATION:

Background

This temporary rule implements section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, 118 Stat. 2434 (''the Act''), signed by President Bush on December 3, 2004. Section 2002 of the Act revised section 5382(a) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5382(a), which sets forth standards regarding what constitutes proper cellar treatment of natural wine. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the IRC provisions relating to wine.

The revision of section 5382(a) took effect on January 1, 2005, and involved the following two principal substantive changes: (1) The addition of a new paragraph (1)(B) to provide that, in the case of wine produced and imported subject to an international agreement or treaty, proper cellar treatment of natural wine includes those practices and procedures acceptable to the United States under the agreement or treaty; and (2) the addition of a paragraph (3) setting forth a new certification requirement regarding production practices and procedures for imported natural wine produced after December 31, 2004. The new certification provision directs the Secretary of the Treasury to accept the practices and procedures used to produce the wine if, at the time of importation, one of the following conditions is met:

1. The Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary;

2. The Secretary has on file or is provided with a certification required by an international agreement or treaty covering proper cellar treatment, or the wine is covered by an international agreement or treaty covering proper cellar treatment that does not require a certification; or

3. In the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary. For purposes of this provision, the new paragraph (3) text also defines ''affiliate'' as having the meaning contained in section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)) and as including ''a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has an ownership interest.''

Based on the January 1, 2005, effective date of the section 2002 statutory change and the fact that the new requirements apply to natural wine produced on or after that date, TTB believes that proper administration and enforcement of those requirements necessitates the adoption of implementing regulations as a temporary rule with immediate effect. TTB believes that such implementing action will ensure that affected industry members have sufficient advance knowledge of the regulatory requirements, and TTB notes in this regard that, given the ''produced'' statutory standard, the vast majority of, if not all, wine importers will not have to meet the certification requirements until the summer of 2005.

Public Meeting; Submission of Comments

TTB held a public meeting regarding these new requirements on December 15, 2004, in Washington, DC, which was announced in Notice No. 26, published in the **Federal Register** (69 FR 71873) on December 10, 2004. The purpose of the meeting was to advise the public of TTB's plans for implementation of the certification requirements and to answer questions from the public regarding these provisions. TTB also encouraged, both at the meeting and in Notice No. 26, the submission of written comments regarding its implementation plans. The public comment period ended January 15, 2005.

TTB received eleven comments regarding implementation of the new requirements. Comments were received from: Allied Domecq, on behalf of Allied Domecq Wines USA; the government of Australia; the California Fine Wine Alliancé; the government of Canada; the Comite Europeen des Entreprises Vins; the Distilled Spirits Council of the United States; the Federation des Exportateurs de Vins et Spiritueux de France; Green Mountain Beverage; Kalik Lewin, on behalf of the Wine Institute; the National Association of Beverage Importers, Inc.; and the government of New Zealand.

TTB took into consideration the comments of the parties mentioned above in drafting this document. The principal points made by the comment submitters, TTB's responses regarding

those comments, and TTB's observations on other aspects of the implementing regulatory texts are set forth below.

The regulatory text to implement the section 2002 statutory changes is set forth in this document as a new § 27.140 within subpart I (Importer's Records and Reports) of part 27 of the TTB regulations, which concerns the importation of distilled spirits, wines, and beer.

The document includes conforming cross-reference changes to §§ 24.301 and 24.302 of the TTB regulations (27 CFR 24.301 and 24.302), which concern records applicable to imported bulk still and effervescent wines received in bond.

The document also includes a new requirement in our regulations promulgated under the labeling provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e). This new provision is in a new paragraph (b) of 27 CFR 4.45, and provides that importers must submit copies of certifications to TTB for use in enforcing the labeling provisions of the FAA Act. These certifications will be made available to the public on the TTB Web site.

1. Filing of Certifications

During the public meeting, TTB stated its intention not to require presentation of the certification as part of the customs entry process. TTB took this position based on the view that compliance with the statutory requirement could be adequately assured if importers simply maintain the certifications in their records where TTB officers can inspect them as may be necessary.

Most of the comment submitters addressing this issue agreed with TTB's position, stating that it will be less burdensome to importers. However, two of them dissented. One contended that the statute requires importers to provide the certification, or at least proof that the certification is on file, to U.S. Customs and Border Protection at the time of importation. The second dissenting comment submitter argued that importers should file certifications with TTB, which would then maintain them in a database that would be available to other importers. On the other hand, another commenter urged TTB to confirm that the affirmed laboratory analyses would be treated as confidential information, asserting that such analyses would necessarily include sensitive proprietary information.

TTB does not agree that the statutory language requires the certification to be presented as part of the customs entry process. Instead, we believe that the requirements of the amended IRC provision will be satisfied if importers maintain copies of the certifications in their records. Moreover, noting that the statute requires that the Secretary have ''on file'' or be ''provided with'' a certification, we believe the ''provided with'' standard is satisfied by a retention requirement because, under 27 CFR 27.137, any record required under part 27 must be retained and made available to TTB for inspection. Finally, we believe the record retention approach will be least burdensome for both the U.S. Government and the industry.

However, as stated above, we have decided to require importers to submit a copy of the certification to TTB under regulations promulgated under the FAA Act. Section 105(e) of the FAA Act, 27 U.S.C. 205(e), authorizes TTB, as the delegate of the Secretary of the Treasury, to issue regulations that will ensure that alcohol beverage labels provide adequate information to consumers as to the identity and quality of the product. Pursuant to this authority, we have issued regulations requiring both domestic and imported wines to be labeled with information regarding the class and type designation of the product. *See* 27 CFR part 4, subparts C and D. These regulations also set forth rules regarding the blending and cellar treatment of wine. *See* 27 CFR 4.22.

An importer's inability to provide a certification regarding proper cellar treatment may indicate that the wine has been treated in a fashion that would change the class and type designation under the pertinent regulations in part 4. Moreover, Congress by amending section 5382 has indicated an increased concern with such treatment. Consequently, TTB will also require importers to submit certifications of natural wine as part of the label approval process and TTB may use such information for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of part 4.

While TTB is requiring that the certification be submitted as part of the label approval process, labels for wines for which a certification is not yet available will be provisionally approved pending submission of the certification prior to the time of release from Customs custody. Certifications that are submitted subsequent to provisional approval must include the label approval number. Certifications submitted subsequent to provisional approval of the label approval should be submitted to the Director, Knowledge Management Staff, with the mailing address as Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Attention: Wine Certification Docket, Washington, DC 20220.

Furthermore, an importer may rely on a certificate of label approval approved prior to the effective date of this regulatory change. In such a case, the importer consequently would not be required to obtain a new certificate of label approval, but must instead submit the required certification to the Director, Knowledge Management Staff, at the address indicated above before the wine in question is released from Customs custody.

The temporary rule also provides that certifications submitted under section § 4.45 shall be made available to the public on the TTB Internet Web site at *www.ttb.gov*, in the same way that approved labels are made available to the public. Consistent with the objectives of the FAA Act, TTB believes that making this information available to the public provides assurance to consumers that the wine was produced in accordance with acceptable practices. However, in order to minimize implementation time and costs, certifications will be displayed on a separate Web page. The certifications on the Web will be indexed to the label approval by the label approval number.

We do not agree with the comment that suggested that the affirmed laboratory analyses necessarily included sensitive proprietary information that should be kept confidential. Unlike formulas, which include sensitive and confidential data about the formulation of products, the laboratory analysis merely sets out in summary form the percentage alcohol by volume, the total sulphur dioxide content (ppm), and the volatile acidity of the product. This is information that could be obtained by anyone who bought a bottle of the product in the marketplace and submitted the sample to a private laboratory for analysis.

In many cases, the alcohol content of the wine is already on the label. TTB does not believe that the information included in the analysis is confidential or proprietary, and thus we have concluded that it may be made available to the public.

Several comment submitters asked if the importer must obtain a certification for each shipment, or merely for the initial shipment of a specific wine. Others proposed that once one importer has imported a specific wine, other importers should be able to use the same certification.

TTB believes if an importer has an original or copy of the certification in his or her possession at the time of the initial importation the statutory requirement will be met for multiple shipments of the same wine (that is, wine of the same brand, class or type, producer, and cellar treatment). Thus, the importer could import additional shipments of the same wine without obtaining a new certification, as long as the certification for the initial shipment is maintained in his or her records and continues to accurately apply to the wine in the subsequent shipments. In addition, because importers may use either an original or copy of a certification, different importers may use copies of the same certification.

2. Wines Produced Under an International Agreement

Some comment submitters requested clarification on the scope of the provision regarding wine produced and imported subject to an international agreement or treaty. In response, the TTB position is that wines fall under this provision if they are imported from a country that has ratified an agreement that provides for acceptance by the United States of the enological practices of the exporting country. On the other hand, wines covered by agreements that do not provide for acceptance of enological practices will not qualify for inclusion under this provision.

The comments also revealed some confusion over whether TTB would require some type of government certification for wines falling under this provision. In response, TTB notes that while the statute does mention a certification in this context, it refers only to a ''certification, if any, as may be required by an international agreement or treaty under paragraph (1)(B).'' TTB does not believe that it is necessary to require retention of a certification if the terms of such an international agreement or treaty do not require a certification, because the existence of the agreement or treaty is sufficient for purposes of verification of the statutory standard by TTB. However, a different approach appears to be necessary under the terms of the statute if the international agreement or treaty provides for a certification. Accordingly, in this case the regulatory text requires the importer to have only the certification required under the agreement or treaty.

3. Importers Affiliated With a U.S. Winery

A number of commenters requested clarification of what qualifies as an ''affiliate,'' while others stated that the statutory definition of affiliate is clear and does not need explanation. One commenter interpreted this provision as permitting an importer in this category to self-certify only wines produced by an affiliated winery. Another commenter questioned whether TTB would allow self-certification by an importer when the importer is controlled by the winery rather than the other way around.

TTB has included in the regulatory text a definition of ''affiliate'' that includes the terms of section 117(a)(4) of the Federal Alcohol Administration (FAA) Act as well as the additional definitional language added by section 2002 of the Act. The following points are noted regarding this definition:

- The language added by section 2002 of the Act is included with the first part of the FAA Act definition because it appears to be more relevant there.
- We have added the word ''controlling'' before the words ''ownership interest'' to ensure consistency with the ''control'' concept in the existing FAA Act definition. In this regard, we do not believe that Congress intended to create an ambiguity by having a definition that contradicts its own terms.

TTB believes that the statute allows an importer that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary to self-certify any natural wine he or she imports, not just wine produced by its affiliated winery. With regard to the other comment, TTB believes that the statutory language does not provide for self-certification when the winery controls the importer.

4. Definition of Natural Wine

As the new requirements apply only to ''natural'' wine, a number of comment submitters requested that TTB clarify the definition of natural wine. For example, some commenters questioned whether non-grape wines, wines under 7 percent alcohol by volume, or wines that are not ''standard'' wines are included in the definition.

TTB has included in the § 27.140 text the definition of natural wine currently found in 27 CFR 24.10, which is based on the definition contained in section 5381 of the IRC. Although Congress had the opportunity to amend the definition of natural wine for purposes of the amendment made by section 2002 of the Act, it did not do so. Accordingly, the current definition of natural wine, which includes some wines made from fruits other than grapes as well as wines under 7 percent alcohol by volume, applies in this regulatory context. Whether a wine falls within the definition of ''natural'' wine or not depends on how it is produced. Because the definition of ''standard'' wine under section 24.10 includes ''natural wine,'' a wine that is not a ''standard wine'' cannot be a ''natural wine.''

Two comment submitters asked if the alcohol content limitations in the definition of natural wine refer to ''acquired'' or ''actual'' alcohol, or to ''total'' alcohol (which includes the alcohol equivalent of residual sugar contained in the wine). Consistent with the approach taken throughout the U.S. wine regulations, the alcohol content limitations contained in the definition of natural wine have reference to the wine's ''actual'' alcohol by volume content, which does not include the alcohol equivalent of the residual sugar.

5. Certifying Government Agencies and Laboratories

A few comment submitters suggested that TTB allow the required government certification to be from a quasi-governmental organization having a regulatory role in the country of origin. They pointed out that in some countries such organizations have significant regulatory authority. They also suggested that TTB should accept analyses not just from government laboratories, but also from laboratories that have been certified by the country of origin to conduct the analyses.

TTB is aware of the fact that quasi-governmental organizations play a significant role in regulating some countries' wine industries. For this reason, TTB will accept the required certification from either a governmental or government-approved entity, provided that the entity has oversight or control over enological practices in the producing country under the laws of the producing country. Likewise, TTB understands that government laboratories in some countries may not easily be able to handle the additional work required by this certification requirement. TTB will therefore accept a laboratory analysis conducted by a laboratory certified by the government of the producing country.

TTB expects that each country exporting wine to the United States that is subject to the government certification and laboratory analysis requirements of the statute will make available to TTB and the general public a list of its governmental or government-approved certifying entities and a list of its government or government-certified laboratories. To assist importers in verifying that the certification and laboratory analysis are from a proper source, TTB will maintain a list

containing all such available information on its Internet Web site.

6. Other Issues

In addition to the points made above in connection with the submitted comments, TTB notes the following in regard to the new § 27.140 text:

1. The definition of ''produced'' refers to removal from the fermenter. TTB believes that this constitutes an objective standard that identifies a specific, definable point in the wine production process.

2. The definition of ''proper cellar treatment'' includes language regarding international agreements and treaties, to reflect the effect of the addition of new paragraph (1)(B) to section 5382(a).

3. TTB must be able to determine if wine imported after December 31, 2004, was produced on or before that date, particularly since significant quantities of wine produced both before and after the statutory cutoff date will be imported. However, TTB also recognizes that, as time goes on, the proportion of imported wine that consists of post-2004 production will increase, with a consequent increase in the recordkeeping burden on importers. In order to reduce the potential burden on importers, the regulatory text merely requires the maintenance of records (which the importer would already have in the normal course of business) to show that the wine was produced before December 31, 2004.

Paperwork Reduction Act

The collections of information contained in this temporary rule have been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and, pending the receipt of public comments, approved under OMB control number 1513–0119. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this regulation are in § 4.45 and § 27.140. The first information collection involves consumer information under the Federal Alcohol Administration Act. The second information collection is required by the Internal Revenue Code of 1986 in connection with the importation of wine from foreign countries. Failure to provide the required information may result in administrative sanctions against the importer. The likely respondents are individuals and business or other for-profit institutions, including partnership, associations, and corporations.

- Estimated total annual reporting and/or recordkeeping burden: 6,600 hours.
- Estimated average annual burden per respondent/recordkeeper: 1.65 hours.
- Estimated number of respondents and/or recordkeeping: 4,000.
- Estimated annual number of responses: 20,000.

Please refer to the related notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for the procedures for submitting comments on the collection of information.

Regulatory Flexibility Act

For applicability of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, we will submit this temporary rule to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the temporary regulations.

Executive Order 12866

We have determined that this temporary rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Requirements

With respect to the provisions of these regulations that implement section 5382 of the Internal Revenue Code, it has been determined that sections 553(b) and (d)(3) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply. With respect to section 5382 and the provisions of these regulations issued under the authority of the Federal Alcohol Administration Act, it has been determined, pursuant to 5 U.S.C. 553(b)(B) and (d), that good cause exists to issue these regulations without prior notice and public procedure, and without a delayed effective date. Because foreign wine subject to these regulations will begin entering the United States shortly, it is impracticable and contrary to the public interest to issue these regulations for prior notice and comment, and with a delayed effective date.

Although we are not required to issue a prior notice of proposed rulemaking, we are soliciting comments from all interested parties on the implementation of these new requirements through a concurrent notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this document was Jennifer K. Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau. However, other personnel participated in its development.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Amendments to the Regulations

n For the reasons discussed in the preamble, TTB amends 27 CFR parts 4, 24, and 27 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

n 2. Section 4.45 is amended by revising the section heading, designating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 4.45 Certificates of origin, identity and proper cellar treatment.

(a) *Origin and identity.* * * *

(b) *Certification of proper cellar treatment of natural wine*—(1) *General.* An importer of wine may be required to have in his or her possession at the time of release of the wine from customs custody a certification or may have to

comply with other conditions prescribed in § 27.140 of this chapter regarding proper cellar treatment. If imported wine requires a certification under § 27.140, the importer must provide a copy of that certification to TTB as follows:

(i) The importer must attach a copy of the certification to the application for a certificate of label approval for the wine in question submitted under § 13.21 of this chapter; or

(ii) If a certification for the wine in question was not available when the importer submitted the application for label approval, the importer must submit a copy of the certification to the appropriate TTB officer prior to release from customs custody of the first shipment of the wine.

(2) *Validity of certification*. A certification submitted under paragraph (b)(1) of this section is valid as long as the wine is of the same brand and class or type, was made by the same producer, was subjected to the same cellar treatment, and conforms to the statements made on the certification. Accordingly, if the cellar treatment of the wine changes and a new certification under § 27.140 is required, an importer is required to submit a new certification for the wine even though it is subject to the same label approval.

(3) *Use of certification*. TTB may use the information from a certification for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of this part. TTB will make certifications submitted under paragraph (b)(1) of this section available to the public on the TTB Internet Web site at *www.ttb.gov*.

PART 24—WINE

n 3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

n 4. Section 24.301 is amended by removing the word ''and'' at the end of paragraph (i), removing the period at the end of paragraph (j) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (k) to read as follows:

§ 24.301 Bulk still wine record.

* * * * *

(k) If the proprietor is an importer of wine to which the provisions of § 27.140 of this chapter apply, any certification or other records required at the time of release from customs custody under that section.

n 5. Section 24.302 is amended by removing the word ''and'' at the end of paragraph (h), removing the period at the end of paragraph (i) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (j) to read as follows:

§ 24.302 Effervescent wine record.

* * * * *

(j) If the proprietor is an importer of wine to which the provisions of § 27.140 of this chapter apply, any certification or other records required at the time of release from customs custody under that section.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

n 6. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6302, 7805.

n 7. Subpart I, Importer's Records and Reports, is amended by adding a new § 27.140 to read as follows:

§ 27.140 Certification requirements for wine.

(a) *Definitions*. When used in this section, the following terms have the meaning indicated:

Affiliate means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons, and includes a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has a controlling ownership interest. An affiliate also means any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

Importer means any person importing wine who must obtain a permit as provided in § 27.55.

Natural wine means the product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by subparts F and L of part 24 of this chapter and containing not more than 21 percent by weight (21 degrees Brix de-alcoholized wine) of total solids.

Produced, when used with reference to wine, means removed from the fermenter.

Proper cellar treatment means a production practice or procedure authorized by subparts F and L of part 24 of this chapter and, in the case of natural wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under that agreement or treaty.

(b) *Certification*—(1) *General*. Except as otherwise provided in paragraph (b)(2) of this section, an importer of natural wine must have an original or copy of a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment. The certification:

(i) Must be from a governmental or government-approved entity having oversight or control over enological practices in the producing country under the laws of that country;

(ii) Must include the results of a laboratory analysis of the wine conducted either by a government laboratory of the producing country or by a laboratory certified by the government of the producing country; and

(iii) Must be in the possession of the importer at the time of release of the wine from customs custody and may cover multiple importations provided that the wine in each case is of the same brand and class or type, was made by the same producer, was subjected to the same cellar treatment, and conforms to the statements made on the certification.

(2) *Alternative certifications and exemptions*—(i) The following are alternatives to the producing country certification and laboratory analysis requirement described in paragraph (b)(1) of this section:

(A) In the case of natural wine produced and imported subject to an international agreement or treaty specifying that the practices and procedures used to produce the wine are acceptable to the United States, no producing country certification and laboratory analysis is required, unless that international agreement or treaty requires a certification, in which case the importer must have in his or her possession at the time of release of the wine from customs custody an original or copy of that certification.

(B) If an importer of natural wine or its affiliate owns or controls a winery operating under a basic permit issued under part 1 of this chapter, in lieu of a producing country certification and laboratory analysis, the importer may

self-certify that the practices and procedures used to produce the wine constitute proper cellar treatment. The self-certification must be either in the format set forth in paragraph (c) of this section with blocks 1 through 4 completed or in an alternative format that sets forth the same information, and it must be in the possession of the importer at the time of release of the wine from customs custody. In the case of self-certification the importer also must have at the time of release from customs custody records to establish that the requirements for self-certification are met.

(ii) The following are exempt from any certification requirement under this section:

(A) Natural wine produced before January 1, 2005. However, in this case, the importer must have in his or her possession at the time of release of the wine from customs custody records to establish that the wine was produced before January 1, 2005.

(B) Importations of natural wine that are of a personal, non-commercial nature. Examples of non-commercial importations include importations by travelers, gift shipments between individuals, and importations by diplomats for embassy or consular use.

(C) Importations of natural wine that constitute commercial samples. Commercial samples include sales samples, samples for trade shows, and samples for laboratory analysis.

(D) Imported natural wine held on board international passenger carriers, such as cruise ships or airliners.

(c) *Form*. The format for certification referred to in paragraph (b) of this section is the following:

BILLING CODE 4810–31–P

Certification of Natural Wine Imported into the United States

1. Producer name and address:

2. Description of wine:

3. Check applicable box:

a. ☐ Producing country certification and laboratory analysis results completed below.
b. ☐ Self-certification by importer completed below. An importer must be able to demonstrate the nature of the ownership or control as well as the nature of any affiliation.

4. Certification - I certify that the practices and procedures used to produce the wine described in block 2 constitute proper cellar treatment under 26 U.S.C. 5382 and 27 CFR 27.140.

Name and address of certifying entity:

Authorized signature:

Name (print or type):

Date (DD/MM/YY):

5. Analysis for wine described in block 2

Percentage alcohol (actual) by volume:

Total sulphur dioxide (ppm):

Volatile acidity (grams per 100 mL):

Name and address of laboratory:

Signature:

Name (print or type):

Date (DD/MM/YY):

6. TTB label approval identification number (required if certification is submitted subsequent to label approval):

BILLING CODE 4810–31–C

(d) *Preparation of Certification.* The following rules apply for the completion of the certification set forth in paragraph (c) of this section:

(1) Block 1 must state the legal name and address (including country) of the producer of the wine.

(2) Block 2 must include a complete description of the wine, including its brand name, year of production, class or type, and country of origin.

(3) The importer must check the applicable box in block 3:

(i) The importer must check box 3a and ensure that blocks 4 and 5 are completed if no alternative certification applies to the wine under paragraph (b)(2)(i) of this section.

(ii) If paragraph (b)(2)(i)(B) applies to the wine, the importer must check box 3b and complete the certification in block 4.

(4) If the certification is submitted subsequent to approval of a label, the importer must complete block 6 by including the TTB identification number from the certificate of label approval, TTB Form 5100.31.

Signed: August 4, 2005.

John J. Manfreda,

Administrator.

Approved: August 4, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Regulation 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is exempting those records contained in A0195–2c USACIDC DoD, entitled ''DoD Criminal Investigation Task Force (CITF) Files'' when the records are compiled in furtherance of activities pertaining to the enforcement of criminal laws.

DATES: Effective August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The proposed rule was published on February 25, 2005, at 70 FR 9261–9262. One public comment was received which has prompted a change in the final rule. The rule, as changed, is being adopted as final.

The commenter expressed two principal concerns. First, the commenter observes that the Department is attempting to establish a new exemption, a prerogative that only Congress possesses. We disagree. As provided by law, the Department may promulgate a rule exempting a system of records from provisions of the Act if the system of records is maintained by a Component of the Agency that performs as its principal function the enforcement of criminal laws. Because the principal function of the DoD Criminal Investigation Task Force is law enforcement (*i.e.*, criminal investigations into acts of terrorism and war crimes), the Department is authorized to adopt an exemption rule that will serve to preserve the integrity of the investigative process. And second, the commenter observes that adoption of the exemption will enable the Department to shield documents that heretofore were available to the public, thereby potentially resulting in the denial of access to individuals who, for example, are innocent members of the Armed Forces or individuals who have witnessed an act of terrorism or war crime. We disagree that the rule will deny access to all documents. As provided by law, the rule provides a basis for the Department to exempt certain records from the access provisions of the Act. It does not act to suspend any rights the individual otherwise may be entitled to under the law. Moreover, to the extent the documents may be disclosed without prejudicing the investigative process, the rule does not bar release. To eliminate any potential ambiguity that may exist regarding release of nonexempt documents from the system of records, the rule has been revised to make clear that only those records, the disclosure of which would have a deleterious impact on the investigative process, are shielded by the rule.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been certified that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Dated: August 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

List of Subjects in 32 CFR Part 505

Privacy.

n Accordingly, 32 CFR part 505 is to be amended to read as follows:

PART 505—ARMY PRIVACY ACT PROGRAM

n 1. The authority citation for 32 CFR part 505 continues to read as follows: