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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Notice No. 53]

RIN 1513--AB16

Use of the Word ``Pure'' or Its Variants on Labels or in  
Advertisements of Alcohol Beverage Products; Request for Public Comment

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

ACTION: Advance notice of proposed rulemaking.

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SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is considering amending the regulations concerning the use of the word ``pure'' on labels or in advertisements of alcohol beverage products. We wish to gather information by inviting comments from the public and industry as to whether the existing regulations should be revised.

DATES: We must receive written comments on or before February 6, 2006.

ADDRESSES: You may send comments to any one of the following addresses:

Director, Regulations and Rulings Division, Alcohol and  
Tobacco Tax and Trade Bureau, Attn: Notice No. 53, P.O. Box 14412,  
Washington, DC 20044-4412.

202-927-8525 (facsimile).

[nprm@ttb.gov](mailto:nprm@ttb.gov) (e-mail).

<http://www.ttb.gov/alcohol/rules/index.htm> (an online

comment form is posted with this notice on our Web site).

<http://www.regulations.gov> (Federal e-rulemaking portal;

follow instructions for submitting comments).

You may view copies of this advance notice and any comments we receive on this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of the advance notice and comments

online at <http://www.ttb.gov/alcohol/rules/index.htm>.

See Section VI of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; (301) 290-1460.

#### SUPPLEMENTARY INFORMATION:

#### I. Authority to Prescribe Alcohol Beverage Labeling and Advertising Regulations

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of distilled spirits, wine (at least 7 percent alcohol by volume), and malt beverages, generally referred to as ``alcohol beverage products'' throughout this document. These sections give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with ``adequate information'' as to the identity and quality of the product, and to prohibit false or misleading statements on product labels and in advertisements. Additionally, these FAA Act provisions give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters which are likely to mislead the consumer. In the case of malt beverages, the labeling and advertising provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration of the FAA Act and the regulations promulgated under it. The labeling and adverting regulations for wine, distilled spirits, and malt beverages are codified in title 27 of the Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively.

#### II. Current Regulatory Standards

Sections 5.42(b)(5) and 5.65(a)(8) of the TTB regulations (27 CFR 5.42(b)(5) and 5.65(a)(8)), hereinafter referred to collectively as the ``pure regulations,'' currently state that the word ``pure'' may not be used on distilled spirits labels or in advertisements unless:

It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or

It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

It is part of the bona fide name of the permittee who bottled the distilled spirits.

TTB considers variants of the word ``pure'' such as ``purest,'' ``purity,'' and ``pureness'' to fall within the purview of these regulations. These prohibitions apply only to distilled spirits. There are no similar prohibitions on the use of the

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word ``pure'' in the labeling or advertising of wine or malt beverages.

### III. Regulatory History Concerning the Use of ``Pure'' on Distilled Spirits Labels and in Advertisements

TTB and its predecessor agencies have had a regulation in force concerning the word ``pure'' since the 1930s. The original regulation was first published on April 2, 1936 (1 FR 92), and provided that labels and advertisements of distilled spirits shall not contain the word ``pure'' except as part of the bona fide name of a permittee or a retailer for whom the distilled spirits are bottled. This regulation, as well as additional regulations governing the labeling and advertising of distilled spirits, was codified into 27 CFR part 5.

On April 22, 1936, the Treasury Department published a notice of hearing with reference to proposed amendments to the distilled spirits regulations. Included among the proposed amendments were possible amendments to the regulations prohibiting the word ``pure'' on distilled spirits labels and in advertisements. On May 15, 1936, the Treasury Department conducted the hearings. During the hearings, Treasury's Assistant General Counsel, John E. O'Neill, stated that the ``ordinary man'' regarded the word ``pure'' as denoting that the product is wholesome, free from adulterants, free from harmful ingredients, and not deleterious to a person's health. O'Neill further argued that if a product were permitted to be called ``pure'' consumers would regard it as meeting that definition. Others testified against the prohibition of the word ``pure'' with respect to its use to describe certain types of whisky. One individual testified that while he was satisfied with the regulations prohibiting the word ``pure'' on labels and in advertisements, he did not believe that the word ``pure'' described a healthful commodity. Rather, he believed the word ``pure'' would refer to whether the product had been adulterated with some other material. Another testified that to the average person the word ``pure'' denotes quality and that those seeking to use it have the desire to distinguish between the quality of one product over another. Upon the conclusion of the hearings concerning the regulations in part 5, the prohibition of the word ``pure'' remained unchanged.

The prohibition of the word ``pure'' on distilled spirits labels and in advertisements was raised for reconsideration on November 21, 1978, when the Bureau of Alcohol, Tobacco and Firearms (ATF), TTB's predecessor agency, published an advance notice of proposed rulemaking, Notice No. 313, in the Federal Register (43 FR 54266). The purpose of Notice No. 313 was to obtain input from industry members and the general public concerning the advertising provisions of the FAA Act, and it suggested specific topics within 27 CFR parts 4, 5, and 7, which

ATF was considering changing. Among these topics, ATF considered changing the total prohibition of the use of the term ``pure.'' Of those that commented directly on the pure regulations, fourteen commenters were equally divided on whether to allow the term ``pure'' to be used or not. Two other commenters favored its use on straight whiskeys only, while one commenter favored deleting the particular sections prohibiting its use (Sec. 5.42(b)(5) and Sec. 5.65(a)(8)) and, instead, prohibiting its use under false or misleading statements (Sec. 5.42(a)(1) and Sec. 5.65(a)(1)). Three commenters stated that alcohol beverages were not pure, and that the use of the word ``pure'' as applied to alcohol beverages was misleading. Various regulatory definitions for ``pure'' suggested by commenters were viewed by ATF as too broad or vague to be of any assistance.

On December 19, 1980, ATF published a notice of proposed rulemaking, Notice No. 362 (45 FR 83530), proposing to lift the total restriction against the use of the term ``pure,'' among other proposals. The notice stated:

Historically, the Bureau has prohibited the use of pure when it refers to a distilled spirits product. However, with current consumer awareness and understanding, the Bureau believes that its present restrictive position is unnecessary when such terms used are truthful and not misleading. Therefore, the Bureau is proposing to lift the total restriction against the use of the term ``pure.'' For example, the Bureau will allow its use when referring to the water used in producing the distilled spirits. However, the Bureau is particularly interested in comments on this issue.

Sixteen commenters responded concerning this issue, with 12 supporting ATF's proposal. Two commenters who supported the use of ``pure'' stated that it should refer to particular ingredients only, not the finished distilled spirits product.

On August 8, 1984, ATF issued TD-180 (49 FR 31667), which, among other changes, amended the distilled spirits labeling and advertising regulations to modify the pure regulation to reflect its present content. The language in the preamble to the regulatory amendments explains the reasoning for the relaxation of the prohibition of the word ``pure:''

ATF believes that when the word ``pure'' reflects a truthful statement about a particular ingredient, such as ``pure water,'' it should be allowed to be stated. However, the word ``pure'' may not be used to describe the finished product, such as ``pure gin.'' Therefore, ATF is amending the regulations to allow for such statements and claims on labels and in advertisements of distilled spirits. Further, the present use of ``pure'' when it is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled is retained. One commenter suggested that the word ``pure'' should be allowed to appear in the name of the permittee who bottles the distilled spirits. ATF has no objection to this and is amending the regulation accordingly.

#### IV. Recent Enforcement Activities and Challenges to the Pure Regulations

After receiving a complaint concerning advertisements of distilled spirits products boasting purity claims, TTB undertook a project to identify and contact distilled spirits industry members that were using the word ``pure'' or its variants in their advertising. TTB has found that the use of pure terminology in advertising (and in some labeling) appears to be confined exclusively to clear spirits such as vodka and gin. Within that sector, TTB has found that its use is widespread. TTB has sent letters stating the Bureau's policy to over 20 different distilled spirits industry members regarding their website advertising of 26 different distilled spirits products.

As a result of the letters, some industry members raised questions about the pure regulations as well as TTB's policy that extends the regulations to include variants of the word ``pure.'' The following summarizes the principal arguments we received:

The plain language of the regulation at 27 CFR 5.65(a)(8) prohibits the use of the word ``pure'' only, and does not extend to variations on the word ``pure'' such as ``purest'' or ``purity.'' Other sections in the distilled spirits advertising regulations that prohibit certain words and variations of the prohibited words do so by using phrases such as ``synonymous terms'' or ``similar terms.'' The lack of such terms in the pure regulation evidences the intent to limit the regulation to the word ``pure'' only.

Certain vodkas are pure in the general sense of the term and therefore the statements are not misleading and are protected by the First Amendment to the U.S. Constitution.

Even though distilled spirits contain some impurities, other commodities, such as beer and wine, also contain impurities and TTB regulations do not prohibit use of the

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term ``pure'' as it relates to those commodities.

#### V. Request for Comments

TTB is considering whether to amend the regulations concerning the use of the word ``pure'' or its variants in the labeling and advertising of alcohol beverage products. To assist TTB in identifying and implementing the best course of action, we wish to gather information by inviting comments from the public and industry as to how, if at all, the existing regulations should be amended. In addition to general comments on the issue, we are seeking comments on the following specific questions.

A. What does the general public consider the word ``pure'' to mean when used on labels and in advertisements of alcohol beverage products? Does its use convey information to the consumer about the identity and quality of the product? Does its use convey information about the

alcohol content of a product?

B. TTB considers variants of the word ``pure'' such as ``pureness,'' ``purest,'' and ``purity'' to fall within the purview of the pure regulations. Are these variants misleading and, if so, should TTB amend the regulations to prohibit their use? Should TTB limit the scope of the pure regulations to the word ``pure'' only?

C. Would the use of terms or claims such as ``pure vodka,'' ``pure whisky,'' ``vodka with exceptional purity'' on distilled spirits labels and in advertisements mislead consumers? Would the use of similar terms or claims on wine and malt beverage products mislead consumers?

D. Should TTB amend the pure regulations to allow the use of the word ``pure'' and its variants on distilled spirits labels and in advertisements if the statements are truthful? How can TTB substantiate the truthfulness of such claims? How should pure be defined?

E. Should TTB permit the use of the word ``pure'' or its variants on distilled spirits product labels and in advertisements if those products meet a certain standard? If so, what should that standard be?

F. What would be the impact of allowing the use of these terms?

G. Should TTB prohibit the use of the word ``pure'' and its variants on labels and in advertisements for malt beverages and wine products? Why or why not?

## VI. Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

Mail: You may send written comments to TTB at the address listed in the ADDRESSES section.

Facsimile: You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must--

- (1) Be on 8.5 by 11-inch paper;
- (2) Contain a legible, written signature; and
- (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

E-mail: You may e-mail comments to [nprm@ttb.gov](mailto:nprm@ttb.gov). Comments transmitted by electronic mail must--

- (1) Contain your e-mail address;
- (2) Reference this notice number on the subject line; and
- (3) Be legible when printed on 8.5 by 11-inch paper.

Online form: We provide a comment form with the online copy of this notice on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. Select the ``Send comments via e-mail'' link under

this notice number.

Federal e-Rulemaking Portal: To submit comments to us via

the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

#### Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

#### Public Disclosure

You may view copies of this advance notice, the petitions, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 by 11-inch page. Contact our librarian at the above address or telephone 202-927-2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this advance notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit <http://www.ttb.gov/alcohol/rules/index.htm>.

Select the ``View Comments'' link

under this notice number to view the posted comments.

#### VII. Drafting Information

Lisa M. Gesser and Joanne C. Brady of the Regulations and Procedures Division drafted this advance notice.

Signed: September 29, 2005.

John J. Manfreda,  
Administrator.

Approved: November 3, 2005.

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

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