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[Proposed Rules]

[Page 51732-51735]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Notice No. 74]

RIN 1513-AB36

Modification of Mandatory Label Information for Wine, Distilled
Spirits, and Malt Beverages

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

ACTION: Notice of proposed rulemaking; solicitation of comments.

SUMMARY: In this notice, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations regarding the mandatory labeling requirements for alcoholic beverages. The proposed regulatory changes would permit alcohol content to appear on other labels affixed to the container rather than on the brand label as currently required. These regulatory changes will provide greater flexibility in alcoholic beverage labeling, and will conform the TTB wine labeling regulations to the recent agreement reached by members of the World Wine Trade Group regarding the presentation of certain information on wine labels.

DATES: Comments must be received on or before November 13, 2007.

ADDRESSES: You may send comments on this notice to one of the following addresses:

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

follow the instructions for submitting comments); or

Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at <http://www.regulations.gov>. You also may view

copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400.

FOR FURTHER INFORMATION CONTACT: Mari A. Kirrane, Wine Trade and Technical Advisor, Alcohol and Tobacco Tax and Trade Bureau, 221 Main Street, Suite 1340, San Francisco, CA 94105; telephone (415) 625-5793.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Current TTB Mandatory Brand Labeling Requirements for Wine

Part 4 of the TTB regulations (27 CFR part 4) sets forth the requirements for labeling and advertising wine promulgated under the FAA Act. Section 4.10 (27 CFR 4.10) defines a brand label as the label carrying, in the usual distinctive design, the brand name of the wine. Section 4.32 (27 CFR 4.32) prescribes mandatory label information. Section 4.32(a) requires a statement of the following on the brand label:

The brand name, in accordance with Sec. 4.33;

The class, type, or other designation, in accordance with Sec. 4.34;

The alcohol content, in accordance with Sec. 4.36; and

On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

In addition, Sec. 4.32(b) lists other mandatory label information, which may appear on any label affixed to the container.

Current TTB Mandatory Brand Labeling Requirements for Distilled Spirits

Part 5 of the TTB regulations (27 CFR part 5) sets forth the requirements for labeling and advertising distilled spirits promulgated under the FAA Act. Section 5.11 (27 CFR 5.11) defines a brand label as 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 bottle as the principal display panel. The principal display panel 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. Section 5.32 (27 CFR 5.32) prescribes mandatory label information. Section 5.32(a) requires a statement of the following on the brand label:

The brand name;

The class and type, in accordance with Sec. 5.35; and

The alcohol content, in accordance with Sec. 5.37.

In addition, Sec. 5.32(b) lists the mandatory label information that must appear on either the brand label or the back label, including net contents and the country of origin of imported spirits.

Current TTB Mandatory Brand Labeling Requirements for Malt Beverages

Part 7 of the TTB regulations (27 CFR part 7) sets forth the requirements for labeling and advertising malt beverages promulgated under the FAA Act. Section 7.10 (27 CFR 7.10) defines a brand label as the label carrying, in the usual distinctive design, the brand name of the malt beverage. Section 7.22 (27 CFR 7.22) prescribes mandatory label information. Section 7.22(a) requires a statement of the following on the brand label:

The brand name, in accordance with Sec. 7.23;

[[Page 51733]]

The class, in accordance with Sec. 7.24;

The name and address (except when branded or burned in the container) in accordance with Sec. 7.25, except as provided in Sec. 7.22(b);

The net contents (except when blown, branded, or burned, in the container) in accordance with Sec. 7.27; and

The alcohol content in accordance with Sec. 7.71, for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

In addition, Sec. 7.22(b) lists mandatory label information that must appear on either the brand label or on a separate label (front or

back).

World Wine Trade Group Agreement

The World Wine Trade Group (WWTG) is a six-member informal group composed of both government officials and industry representatives from Argentina, Australia, Canada, Chile, New Zealand, and the United States. The WWTG was formed to discuss and address issues relating to international wine trade, including reducing and preventing non-tariff barriers to wine trade.

An inter-agency team composed of representatives from, among others, TTB, the Food and Drug Administration, and the Departments of Commerce, State, and Agriculture, represents the U.S. Government during WWTG discussions. The Office of the U.S. Trade Representative heads the inter-agency team.

The WWTG recently concluded negotiations on a wine labeling agreement intended to facilitate further wine trade among members. The WWTG Agreement on Requirements for Wine Labelling, hereinafter referred to as the ``Agreement,`` was initialed on September 20, 2006, and was signed in Canberra, Australia, on January 23, 2007. A full copy of the Agreement can be viewed at <http://www.ita.doc.gov/td/ocg/WWTG-wine%20Labelling%20Agreement.pdf>.

These negotiations proceeded from the view that common labeling requirements would provide industry members with the opportunity to use the same label when shipping wine to each of the WWTG member countries.

In the course of the negotiations, it was recognized that certain items of information are considered mandatory by most members. Referred to as ``Common Mandatory Information`` in the WWTG Agreement (hereinafter CMI), these four items are country of origin, alcohol content (by percentage of volume), net contents, and product name. The negotiated Agreement also incorporates the ``Single Field of Vision`` concept for the placement of the CMI. A ``Single Field of Vision`` is any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container. Under this approach, as long as all four of the CMI elements are visible at the same time, they will meet the placement requirements (if any) of each member country. According to the terms of the Agreement, each country must permit the CMI for an imported wine to appear on any label anywhere on the wine container (except the base or cap), provided all four CMI items are in a Single Field of Vision.

Conforming TTB Regulations to the WWTG Agreement

The United States will not be in compliance with the Agreement if the TTB regulations are in conflict with the CMI terms of the

Agreement. Accordingly, TTB has reviewed its regulations to determine if any change is necessary in order for the United States to meet its obligation to permit these four pieces of information to appear in a single field of vision on labels of imported wines, as outlined in the Agreement. The TTB regulations do not require the inclusion of the country of origin on wine labels. This requirement is contained in statutory and regulatory provisions administered by the U.S. Bureau of Customs and Border Protection (CBP; see 19 U.S.C. 1304 and 19 CFR part 134). Consistent with these requirements, the country of origin may appear on any label affixed to a container of imported wine. The product name under the Agreement is the word ``wine'' and the TTB regulations contain no specific requirements for, or restrictions on, the use of ``wine'' alone on wine labels. As already noted in this document, the TTB regulations permit net contents to appear on any label affixed to the container. Thus, the only conflict that the TTB wine label regulations have with the CMI terms of the Agreement is in the regulatory requirement for alcohol content to appear on the brand label.

Although the Agreement applies only to imported wine, we note that the provisions in the TTB regulations described above that concern the labeling of wine, distilled spirits, and malt beverages all contain similar provisions regarding the placement of alcohol content on the brand label. TTB considered the question of whether allowing alcohol content to appear on a label other than the brand label for all three beverage groups would continue to provide consumers with adequate information regarding product identity and quality, as required under the FAA Act. In this regard, TTB notes that consumers currently may have to look beyond the brand label for alcohol beverage product identity and quality information. Specifically, under Sec. 4.32, the required FD&C Yellow No. 5 statement may appear on a brand label or back label, the required declaration of sulfites may appear on a front, back, strip, or neck label, and the net contents generally may appear on any label affixed to the container. Under Sec. 5.32, the required FD&C Yellow No. 5 statement may appear on the brand label or back label, the required declaration of sulfites may appear on a strip label or neck label in lieu of appearing on the front or back label, and the net contents may appear on the brand label or on a back label in the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in Sec. 5.47 or Sec. 5.47a. Under Sec. 7.22, the required FD&C Yellow No. 5 statement may appear on the brand label or on a separate label on the back or front.

We believe that it is preferable, to the greatest extent possible, to have consistency among the labeling regulations for wine, distilled spirits, and malt beverages. Accordingly, we are proposing corresponding changes to all of those provisions regarding alcohol content statements on brand labels.

In this document, we are proposing to move the alcohol content

requirements from paragraph (a) of Sec. Sec. 4.32, 5.32, and 7.22 (label information required to appear on a brand label) to paragraph (b) of each of those sections, which prescribes in each case mandatory label requirements for information that need not appear on the brand label. The change in Sec. 4.32 will allow industry members to apply the WWTG ``Single Field of Vision'' concept concerning the placement of CMI on labels. The additional changes in Sec. Sec. 5.32, and 7.22 will foster consistency in the labeling requirements among all TTB-regulated alcohol beverage products.

This proposal is limited to removing the placement requirement for alcohol content. All other formatting requirements, such as type size and legibility, would remain the same. As previously noted, consumers are already looking beyond the brand label for product information. Moreover, the proposed rule would provide industry members with the flexibility to place alcohol content on container labels in close proximity to other consumer information, such as sulfite and FD&C Yellow No. 5 information.

[[Page 51734]]

Finally, we note that alcohol beverage industry members would not be required to make any changes to their current labels as a result of this regulatory change because, under the proposal, alcohol content information could still be placed on the brand label. The Agreement does not require that U.S. wine producers or importers place the four CMI elements in a Single Field of Vision, only that each country accept imported wines labeled in that way. The Single Field of Vision concept is an optional labeling format and the proposed changes to our regulations will accommodate those who wish to label their wines in that manner.

Effect on Currently Approved Labels

Sections 4.40, 4.50, 5.51, 5.55, 7.31 and 7.41 of the TTB regulations (27 CFR 4.40, 4.50, 5.51, 5.55, 7.31 and 7.41) generally require that regulated industry members obtain a certificate of label approval (COLA) from TTB prior to the bottling or removal of domestic wines, distilled spirits, or malt beverages, or the release of imported wines, distilled spirits, or malt beverages, in containers, from customs custody for consumption. No COLA is required for alcoholic beverages labeled for export. It is the position of TTB that, if the proposed regulatory amendment is adopted as a final rule, a new COLA would not be required if the only change made to the labels appearing on a previously issued COLA is moving the alcohol content to a label other than the brand label.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

Submitting Comments

You may submit comments on this notice by one of the following two methods:

Federal e-Rulemaking Portal: To submit a comment on this notice using the online Federal e-rulemaking portal, visit <http://www.regulations.gov>.

and select ``Alcohol and Tobacco Tax and Trade Bureau'' from the agency drop-down menu and click ``Submit.'' In the resulting docket list, click the ``Add Comments'' icon for the appropriate Docket number and complete the resulting comment form. You may attach supplemental files to your comment. More complete information on using Regulations.gov., including instructions for accessing open and closed dockets and for submitting comments, is available through the site's ``User Tips'' link.

Mail: You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

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.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity's name in the

``Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

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 whether to hold a public hearing.

Confidentiality

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

Public Disclosure

On the Federal e-rulemaking portal, we will post, and you may view, copies of this notice and any electronic or mailed comments we receive about this proposal. To view a posted document or comment, go to <http://www.regulations.gov>.

and select ``Alcohol and Tobacco Tax and Trade

Bureau'' from the agency drop-down menu and click ``Submit.'' In the resulting docket list, click the appropriate docket number, then click the ``View'' icon for any document or comment posted under that docket number.

All submitted and posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Analysis and Notices

Executive Order 12866

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

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The propose rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ``Labeling and Advertising Requirements Under the Federal Alcohol

Administration Act,' and assigned control number 1513-0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

Drafting Information

Maria Mahone of the Knowledge Management Staff drafted this document.

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 5

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

[[Page 51735]]

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

Amendment to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, parts 4, 5, and 7, as follows:

PART 4--LABELING AND ADVERTISING OF WINE

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

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

2. In Sec. 4.32:

a. Paragraph (a)(3) is removed and reserved; and

b. A new paragraph (b)(3) is added to read as follows:

Sec. 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with Sec. 4.36.

* * * * *

PART 5--LABELING AND ADVERTISING OF DISTILLED SPIRITS

3. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

4. In Sec. 5.32:

a. Paragraph (a)(3) is removed and reserved; and

b. Paragraph (b)(6) is added to read as follows:

Sec. 5.32 Mandatory label information.

* * * * *

(b) * * *

(6) Alcohol content, in accordance with Sec. 5.37.

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PART 7--LABELING AND ADVERTISING OF MALT BEVERAGES

5. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

6. In Sec. 7.22:

a. Paragraph (a)(5) is removed and reserved; and

b. Paragraph (b)(3) is revised to read as follows:

Sec. 7.22 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with Sec. 7.71, when required by State law or for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

* * * * *

Signed: January 8, 2007.

John J. Manfreda,
Administrator.

Approved: May 21, 2007.

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

Editorial Note: This document was received at the Office of the
Federal Register on September 6, 2007.

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