

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 7 and 25****[Notice No. 4]****RIN 1512-AC11****Flavored Malt Beverages and Related Proposals (2001R-136P)****AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau are proposing changes to the beer and malt beverage regulations related to the production, taxation, composition, labeling, and advertising of alcohol beverages marketed as “flavored malt beverages.” We are proposing these changes in response to the numerous questions raised by the States and others concerning these alcohol beverages.

The proposed regulation permits the addition of flavorings and other materials containing alcohol to malt beverage products only if the alcohol from such materials constitutes less than 0.5% by volume of the finished product. This document solicits comments on other approaches, including one requiring that a majority of a product’s alcohol derives from fermentation at the brewery and also seeks comment on the amount of time necessary to comply with the proposed standards.

By proposing these changes, we seek to ensure that flavored malt beverages comply with the requirements of the Internal Revenue Code of 1986 with respect to their composition, premise where produced, appropriate tax rate, and system of distribution. We also wish to ensure the proper classification of these alcohol beverages under the Federal Alcohol Administration Act so that their labeling and advertising conform to the applicable requirements of the Act and to ensure consumers are adequately informed, and not misled, as to the identity of these products. We believe the proposed changes will clarify the status of flavored malt beverages under these two Federal statutes and will provide guidance to the State regulatory and tax agencies that oversee their taxation and distribution.

DATES: Written comments must be received by June 23, 2003.**ADDRESSES:** Send written comments to: Chief, Regulations and Procedures

Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 4). See the Public Participation section of this notice for alternative means of commenting.

Copies of this document and the written comments received will be available for public inspection by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-7890. Copies of this document and of the comments received will also be posted on the TTB Web site at <http://www.ttb.gov>. See the Public Participation section of this notice for further details.

FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 10 Causeway Street, Room 701, Boston, MA 02222; telephone 617-557-1323.

SUPPLEMENTARY INFORMATION:**Table of Contents****Notes to Readers**

- A. ATF-TTB Transition
- B. Use of Plain Language
- I. Background Information
 - A. What Are Flavored Malt Beverages?
 - B. What Is Our Authority to Regulate Beer and Breweries?
 - C. What Is Our Authority to Regulate Malt Beverages?
 - D. What Is Our Authority to Regulate Distilled Spirits?
 - E. Why Are We Concerned with the Production, Labeling, and Taxation of Flavored Malt Beverages?
- II. Alcohol Beverage Production
 - A. Fermentation
 - B. IRC Definition of Beer
 - C. What Are Nonbeverage Distilled Spirits?
 - D. How Are Flavored Malt Beverages Different than Other Malt Beverages?
- III. Flavored Malt Beverages Study
 - A. What Was the Study’s Intent?
 - B. What Were the Study’s Findings?
 - C. What Conclusions Have We Drawn from this Study?
- IV. Establishing a Standard for Added Alcohol
 - A. ATF Ruling 96-1
 - B. Standard for Added Alcohol and Alcohol From Fermentation
 - C. What is the Significance of 0.5% Alcohol by Volume?
- V. Proposed Rule Language for Beer
 - A. Proposal for Alcohol Flavors in Beer
 - B. Comments Sought on Beer Definition
- VI. Proposed Standards for Flavored Malt Beverages
 - A. How Does the Presence of Alcohol Flavors Affect Malt Beverages?
 - B. Proposal for Alcohol Flavors in Malt Beverages
- VII. Proposed Alcohol Content Labeling Statement for Flavored Malt Beverages
 - A. Differentiation of Flavored Malt Beverages from other Alcohol and Nonalcohol Beverages

- B. Alcohol Content Statement on Brand Label
- C. Form of Alcohol Content Statement and Tolerances
- D. Effect of State Law
- E. Discussion of Alcohol Content Labeling for All Malt Beverages
- VIII. Use of Distilled Spirits Terms in Malt Beverage Labeling and Advertising
 - A. Background
 - B. ATF Ruling 2002-2
 - C. Proposal for Labeling and Advertising
- IX. Filing Formulas for Fermented Beverages
 - A. Current Statement of Process Requirement
 - B. Regulatory Proposal for Filing a Formula
 - C. Comments Sought on Formula Proposal
- X. Samples
- XI. Formulas and Samples for Imported Malt Beverages
- XII. Public Participation
 - A. Comments Requested
 - B. What Is a Comment?
 - C. How May I Submit Comments?
 - D. How Does TTB Use the Comments?
 - E. May I Review Comments Received?
 - F. Will TTB Keep My Comments Confidential?
- XIII. Regulatory Analyses and Notices
 - A. Does the Paperwork Reduction Act Apply to this Proposed Rule?
 - B. Does the Regulatory Flexibility Act Apply to this Proposed Rule?
 - C. Is this a Significant Regulatory Action as Defined by Executive Order 12866?
- XIV. Drafting Information
- XV. List of Subjects
- XVI. The Proposed Rule

Notes to Readers**A. ATF-TTB Transition**

Effective January 24, 2003, the Homeland Security Act of 2002 (Public Law 107-296, 116 Stat. 2135 (2002)) divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to the former ATF and the new TTB in this document reflect the time frame, before or after January 24, 2003.¹

B. Use of Plain Language

In this document, “we,” “our,” and “us” refers to the Department of the Treasury and/or the Alcohol and Tobacco Tax and Trade Bureau (TTB). “You,” “your,” and similar words refer to members of the alcohol beverage

¹ The new Bureau of Alcohol, Tobacco, Firearms, and Explosives continues to use the “ATF” abbreviation and continues to provide some support services to TTB. References to the “ATF Reference Library” in this document are to the new bureau’s library, which currently supports TTB.