

We welcome comments on other limits that may be appropriate for the addition of alcohol through flavoring or other materials to beer or malt beverage products. For example, we believe that IRC section 5052 also would support the issuance of a regulation requiring that a beer or malt beverage product must directly derive a majority of the alcohol in a product taxed as beer from fermentation. In other words, less than 50% of the alcohol in a beer or malt beverage could come from alcohol added through flavoring or other materials. We would also welcome comments relating to the affect of our proposed regulation on the viability of products currently on the market. We are particularly interested in comments addressing whether products on the market could be made currently under our proposed standard, or if not, on the time required to implement such a standard.

V. Proposed Rule Language for Beer

A. Proposal for Alcohol Flavors in Beer

The Treasury Department and TTB propose to establish a new production standard for beer in their regulations issued under the IRC. Under proposed 27 CFR 25.15, to be taxed as "beer" a product must contain less than 0.5% alc/vol derived from added materials, including flavorings, that contain distilled spirits. An alcohol beverage containing 0.5% or more alc/vol derived from distilled spirits in flavors or other materials will be considered distilled spirits. Such an alcohol beverage must be produced at a distilled spirits plant, must be taxpaid at the rate applicable to distilled spirits products, must be labeled and advertised as a distilled spirits specialty, and must be distributed by persons holding basic permits as wholesalers of distilled spirits.

B. Comments Sought on Beer Definition

We request comments on this proposed standard for beer. Specifically, we solicit any studies, laboratory trials, or other empirical data that may exist for added alcohol in flavored malt beverages. We seek comments on how adoption of this proposed added alcohol standard would affect taste, shelf life, stability, or other characteristics of these products.

We also seek comments on whether production practices are available to produce flavored malt beverages with the desired product profile and still comply with the proposed standard. Finally, we seek comments on whether another standard, such as a standard requiring that a minimum of 51% of the

alcohol in a malt beverage be derived from fermentation at the brewery, would be more appropriate for these products. Any suggestions or comments for differing added alcohol standards should be backed with data, facts, or studies to support the suggestion. We also encourage you to provide any other useful information or opinions on this issue.

Since any standard applied would be a substantial change from existing regulations and policy, we also seek comment on the amount of time required to comply with any new rule that limits the amount of alcohol that may be added to products taxed as beer. Comment should be directed toward the amount of time necessary to develop and implement new formulas for these products, and possible costs involved.

VI. Proposed Standards for Flavored Malt Beverages

A. How Does the Presence of Alcohol Flavors Affect Malt Beverages?

The FAA Act definition of "malt beverage" was intended to cover all products made by brewers at the time of the FAA Act's enactment in 1935. This definition requires that a malt beverage be made from the fermentation of malted barley with hops, with or without the addition of "other wholesome food products." For years brewers have used many substances including starches, sugars, honey, fruits, flavors (including those containing alcohol), colors, and adjuncts to aid in fermentation, clarification, and preservation of malt beverages. Federal alcohol regulation and tax agencies, including the former ATF and the new TTB, have allowed these ingredients in malt beverage products.

Federal administrators of the FAA Act have seldom examined the question of what constitutes "wholesome food products" other than to state that the substances added to malt beverages must be sanctioned as safe for food use by the Food and Drug Administration and have some intended purpose in the production of a malt beverage. We and our predecessors have considered flavorings containing distilled spirits to be wholesome food products and have allowed their use in producing malt beverages.

The extensive use of flavors containing distilled spirits introduces a significant amount of distilled spirits into a malt beverage. Adding alcohol or distilled spirits in this fashion reduces the need to use fermented malt in the production of a malt beverage in order to acquire alcohol content. When carried to extremes, the result is a

product in which much of its alcohol content comes from added flavorings rather than from fermentation at a brewery and a product in which less than half of its overall volume is a result of fermentation.

We believe that the definition of flavored malt beverages in the FAA Act supports limiting the amount of alcohol in the beverage that is not "made by the alcoholic fermentation * * * of malted barley with hops * * *." Further, we believe that to label a beverage that derives most of its alcohol content from added alcohol flavors as a malt beverage is inherently misleading since consumers would expect that malt beverages derive a significant portion of their alcohol content from fermentation of barley malt and other ingredients at the brewery.

B. Proposal for Alcohol Flavors in Malt Beverages

Thus, the Department of the Treasury and TTB propose to adopt a standard for malt beverages that limits the alcohol content derived from alcohol flavorings and other materials to less than one-half of one percent alcohol by volume (0.5% alc/vol). We propose to add a new section, § 7.11, Standards for malt beverages, that specifies this limit. We welcome comments on this proposed standard and on other possible standards, which are consistent with the FAA Act definition of malt beverage, such as requiring that the alcohol content of a malt beverage be "predominantly;" i.e.; at least 51%, derived from fermentation at the brewery. We further seek comments on the time required to implement any such added alcohol standard for malt beverages.

VII. Proposed Alcohol Content Labeling Statement for Flavored Malt Beverages

A. Differentiation of Flavored Malt Beverages From Other Alcohol and Nonalcohol Beverages

Due to the unique character of these new types of flavored malt beverages many consumers have limited experience with them. At the same time, due to their label appearance and the use of the brand names of well-known distilled spirits, we believe that consumers are likely to be confused as to their actual alcohol content. We believe that consumers are likely to assume that some flavored malt beverages are high in alcohol content like the distilled spirits whose brand names they bear. Likewise, while other brands of flavored malt beverages are not labeled with distilled spirits brand names, their labeling or packaging,