

which often resembles that of nonalcoholic new age beverages such as juices, sodas, bottled water, and energy drinks, is likely to confuse consumers as to their identity as alcohol products.

Because of the likely consumer confusion over the actual alcohol content, or range of alcohol, in flavored malt beverages, we believe that a mandatory requirement to label these products with their alcohol content will provide substantial consumer benefit. We believe labeling flavored malt beverages with their alcohol content will help consumers identify them as malt beverages and will help consumers to understand that their alcohol content is similar to that of traditional malt beverages. Alcohol content labeling would also help draw attention to any flavored malt beverages that might lie outside the customary 4 to 6% alcohol by volume range for malt beverages. For example, if a flavored malt beverage contains 10% alc/vol, alcohol content labeling would inform consumers about this important distinction.

Since there is no regulatory provision in part 7 that uniquely identifies flavored malt beverages, we propose that mandatory alcohol content labeling apply to any malt beverage that contains alcohol from a source other than from fermentation at a brewery. For example if a brewer adds a flavoring containing alcohol to a malt beverage, whether it is labeled as a flavored malt beverage, a flavored beer or ale, or a specialty malt beverage product, the requirement to display alcohol content on the label would apply.

B. Alcohol Content Statement on Brand Label

Beyond simply requiring the alcohol content to be displayed on labels of flavored malt beverages, we believe additional benefit accrues to consumers when it appears on the brand label. Since the brand label is the most prominent label, and is the principal display panel on the package, consumers are more likely to read information, including alcohol content information, displayed on the brand label as opposed to information appearing on the back label. Thus, we propose to amend § 7.22(a) to require that you list the alcohol content of a flavored malt beverage on its brand label. This proposed requirement differs from that for alcohol content labeling for other malt beverages since, under § 7.22(b), the alcohol content statement may appear on any label.

C. Form of Alcohol Content Statement and Tolerances

We propose no changes to the form of the alcohol content statement or the tolerances provided in § 7.71, or to the type size requirements in § 7.28.

With regard to the actual statement of alcohol content, § 7.71(a)(3) requires labeling with the percentage of alcohol by volume, which may be expressed in one of several ways: (1) "Alcohol X percent by volume;" (2) "alcohol by volume X percent;" (3) "X percent alcohol by volume;" or (4) "X percent alcohol/volume." You may use the abbreviations "alc" and "vol" and the symbol "%" in lieu of "percent."

Tolerances are prescribed at § 7.71(c). This section allows alcohol content of a malt beverage to vary by plus or minus 0.3% from the stated label alcohol content.

Type size requirements for statement of alcohol content appear in § 7.28(b)(3). For containers of ½ pint or less, the minimum type size is 1 mm. For containers larger than ½ pint, the minimum size is 2 mm. Type size may not exceed 3 mm for containers of 40 fl. oz. or smaller, or exceed 4 mm for containers larger than 40 fl. oz.

D. Effect of State Law

In the case of all malt beverages, the penultimate clause of the FAA Act makes Federal labeling regulations applicable only to the extent that State law imposes similar requirements on malt beverages sold within the State. Specifically, the proposed regulations apply to malt beverage labeling and advertising in interstate commerce only to the extent that State law imposes similar requirements on malt beverages that are exclusively intrastate. You must comply with these regulations to the extent that the State imposes similar requirements on malt beverages that are to be consumed or sold within that State. For example, if a State law requires that the alcohol content statement appear in a form different than provided by Federal regulations, then State law will govern the labeling of malt beverages sold or introduced into commerce in that State.

E. Discussion of Alcohol Content Labeling for All Malt Beverages

In *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995), the U.S. Supreme Court upheld a lower court ruling in favor of Coors Brewing Co., which had challenged the provisions of the FAA Act and 27 CFR part 7 regulations prohibiting statements of alcohol content on malt beverage labels. The Court found that brewers have a right to

inform consumers of their products' alcohol content. Since this 1995 Supreme Court ruling, we added § 7.71 to the part 7 malt beverage labeling and advertising regulations to permit the optional listing of alcohol content on malt beverage labels. (See T.D. ATF-339, 58 FR 21228.)

We believe that there are good reasons to require labels of all malt beverages to bear an alcohol content statement; however, we are not proposing to do so in this notice. To the maximum extent possible, we wish to restrict this notice of proposed rulemaking to proposals concerning flavored malt beverages and not further complicate this notice with proposals that relate to all malt beverages. Thus, we propose to require mandatory alcohol content labeling only for malt beverages that contain alcohol from added flavors or other material containing alcohol. We may examine the question of mandatory alcohol content labeling for all malt beverages in a future notice of proposed rulemaking.

VIII. Use of Distilled Spirits Terms in Malt Beverage Labeling and Advertising

A. Background

Some newer flavored malt beverages use the names of well-known brands of distilled spirits as part of their own brand names. The labels of these flavored malt beverage brands are also often designed to resemble the labels of the distilled spirits brand used in their name. In addition, when first introduced, some of these flavored malt beverages bore label statements referring to the class and type of distilled spirits used in producing the nonbeverage flavoring component.

For these reasons, many State regulatory and taxing authorities questioned the classification of flavored malt beverages and requested that we take action to clarify their status as either malt beverages or distilled spirits.

B. ATF Ruling 2002-2

In response to these concerns, ATF issued Ruling 2002-2 on April 8, 2002. Please note that while the former ATF issued this ruling, it remains in effect and any references to ATF in the ruling should be considered references to TTB. This ruling may be accessed on the TTB Web site at: <http://www.ttb.gov/alcohol/info/revrule/revrulx.htm>.

ATF issued this ruling to clarify permissible labeling and advertising practices for flavored malt beverages, and to give brewers and importers labeling guidelines that would serve to prohibit the misleading impression that flavored malt beverages are distilled