

spirits or contain distilled spirits. ATF also restated the holdings made in Ruling 96–1 concerning the use of alcohol flavorings in producing flavored malt beverages and concerning the requirements for filing statements of process for malt beverages. With respect to labeling and advertising of malt beverages, Ruling 2002–2 held:

- Held, for brand names.
- The use of a brand name of a distilled spirits product as the brand name of a malt beverage is not in itself misleading.
- The use of a distilled spirits term found in the standards of identity in 27 CFR part 5 such as whisky, rum, vodka, brandy, gin, and so forth, as the brand name for a malt beverage is misleading. ATF will not approve labels where a distilled spirits term is used as the brand name for a malt beverage.
- The use of a coined term that is similar to or resembles a class and type of distilled spirits as part of the brand name for a malt beverage will be examined on a case-by-case basis to determine if it is misleading as to the identity of the product.
 - Held, for class and type statements including statements of composition and fanciful names.
- The use of a distilled spirits terms found in the standards of identity in 27 CFR part 5, or the use of a distilled spirits brand name, in the statement of composition or in the fanciful name for a flavored malt beverage is misleading as to the identity of the product. ATF will no longer approve labels where distilled spirits terms or brand names appear in the fanciful name or the statement of composition for a malt beverage.
- Use of a cocktail term as the fanciful name of a malt beverage is not misleading if there is no misleading impression about the identity of the product, based on the overall labeling and advertising of the product.
 - Held, for all other labeling and advertising statements.
- The use of any distilled spirits terms found in the standards of identity in 27 CFR part 5, or of distilled spirits brand names, appearing in any other place on a malt beverage label or in an advertisement for a malt beverage will be presumed to be misleading. Examples of statements that will be presumed to be misleading include:
 - + “Tastes like rum.”
 - + “The flavor of brandy.”
 - + “Serve like a liqueur.”
 - + “Made by Old Sourmash Whisky Company, City, State.”

—Use of cocktail terms on a label or advertisement for a malt beverage is not in itself misleading if there is no misleading impression about the identity of the product, based on the overall labeling or advertising of the product.

C. Proposal for Labeling and Advertising

We propose to amend §§ 7.29 and 7.54 to incorporate the provisions of Ruling 2002–2. Although brewers and importers have revised their labels and advertising to comply with the ruling, we wish to place these provisions in our part 7 regulations. By doing so, you may more easily refer to, and comply with, these labeling and advertising provisions. Moreover, by proposing these requirements, the public, the alcohol beverage industry, and State regulatory agencies will have the opportunity to comment and provide input on these regulations.

In 1968, ATF added provisions to the regulations in Part 4, Labeling and Advertising of Wine, to prohibit labeling and advertising statements that imply that wine products are similar to distilled spirits, or imply that wine is made with or contains distilled spirits. (See §§ 4.39 and 4.64.) We propose to add similar language to the malt beverage regulations at §§ 7.29 and 7.54. These proposed part 7 regulatory provisions would prohibit a labeling or advertising statement or representation which tends to create the impression that a malt beverage:

- Contains distilled spirits (other than from “nonbeverage” flavors containing alcohol),
- Is similar to a distilled spirit, or
- Has intoxicating qualities.

A statement of alcohol content on a malt beverage label is permitted under this proposal. In accord with Ruling 2002–2, the use of a brand name of a distilled spirits product as the brand name of a malt beverage is permitted. However, the use of a distilled spirits brand name in any other malt beverage labeling or advertising contexts would be prohibited under this proposal. The use of a cocktail name would not be considered a reference to distilled spirits if the overall formulation, label, or advertisement does not present a misleading impression about the identity of the product.

We welcome comments on this proposal.

IX. Filing Formulas for Fermented Beverages

A. Current Statement of Process Requirement

Existing regulations at 27 CFR 25.67 require you to file a statement of process

with TTB’s National Revenue Center in Cincinnati, Ohio as part of your Brewer’s Notice for any fermented beverage that you intend to market under a name other than “beer,” “lager,” “ale,” “porter,” “stout,” or “malt liquor.” Under § 25.76, you must file an amended Brewer’s Notice if you make changes to an approved statement of process.

When you file a statement of process with the National Revenue Center, a specialist at TTB’s Advertising, Labeling and Formulation Division in Washington, DC examines the proposed statement of process in order to ensure that authorized materials will be used, to determine the correct class and type, and to ensure that the fermented product may be made at a brewery.

B. Regulatory Proposal for Filing a Formula

We wish to describe more clearly the fermented products for which you must file a formula. Additionally, we believe that all brewers should be able to file their statements of process or formulas directly with our Advertising, Labeling and Formulation Division in Washington, DC. For these reasons, we propose to replace the statement of process requirement found at §§ 25.62 and 25.67 with a formula requirement.

1. Requirements for Filing Formulas

We believe current §§ 25.62 and 25.67, which require you to file a statement of process for any product not marketed as a “beer,” “ale,” and so forth, are vague and lead to questions as to when a formula is required. For example, if you intend to produce a flavored beer, you have been required to file a formula although this requirement is not clear in the current regulation. Similarly, if you add coloring or flavoring material to a product that you intend to market as a beer, it is unclear if you are required to file a statement of process when, in fact, you are required to file one because of the use of these added materials.

Proposed § 25.55 requires you to file a formula with TTB for certain fermented products that you intend to make at your brewery. For the purposes of tax classification and label evaluation, products for which you must file a formula include: saké, flavored saké, and sparkling saké, products to which you add any material containing alcohol such as nonbeverage flavors, products to which you add coloring or natural or artificial flavors, or any product to which you add fruits, herbs, spices, or honey.

Under this proposed rule, you must also file a formula for any fermented