

public, you should not include it in the comments.

### XIII. Regulatory Analyses and Notices

#### *A. Does the Paperwork Reduction Act Apply to This Proposed Rule?*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because we are not proposing any new or revised recordkeeping requirements. We are only proposing to clarify when a formula must be filed with TTB and, for the purpose of efficiency, we propose to change the place where within TTB these formulas are filed. In the future, we may develop a specific form for this information collection.

The Office of Management and Budget has previously approved the information collection and recordkeeping provisions contained in proposed §§ 25.55 through 25.58 under OMB control number 1512–0045, in accordance with the requirements of the Paperwork Reduction Act. This information collection and the related recordkeeping requirements are currently contained in §§ 25.62 and 25.67.

#### *B. Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this notice will not have a significant impact on a substantial number of entities. We believe that 10 or fewer qualified small breweries actually manufacture flavored malt beverages subject to this rule. We specifically solicit comments on the number of small breweries that may be affected by this rule and on the impact of this rule on those breweries. We ask that any small brewery that believes that it would be significantly affected by this rule to let us know and tell us how it would affect you.

Pursuant to § 7805(f) of the Internal Revenue Code of 1986, we have submitted this regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### *C. Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment because no effect of \$100 million or more flows from this rule and because any effect

flows directly from the underlying statutes.

### XIV. Drafting Information

Various personnel of the Alcohol and Tobacco Tax and Trade Bureau and the Department of the Treasury drafted this document.

#### List of Subjects

##### *27 CFR Part 7*

Advertising, Authority delegations, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

##### *27 CFR Part 25*

Beer, Claims, Electronic fund transfers, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

#### The Proposed Rule

For the reasons set forth in the preamble, the Department of the Treasury and the Alcohol and Tobacco Tax and Trade Bureau propose to amend the regulations in title 27, Code of Federal Regulations, as follows:

### PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

1. The authority citation for 27 CFR part 7 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. We amend § 7.10 by revising the definition of “malt beverage” to read as follows:

#### **§ 7.10 Meaning of terms.**

\* \* \* \* \*

*Malt beverage.* A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to malt beverages appear in § 7.11.

\* \* \* \* \*

3. We amend Subpart B by adding a new § 7.11 to read as follows:

#### **§ 7.11 Standards for malt beverages.**

The following standards apply to a fermented product that is considered a malt beverage under this part.

(a) Alcohol flavoring materials and other ingredients containing alcohol may be used in producing a malt beverage provided these alcohol ingredients constitute less than 0.5 percent alcohol by volume (0.5% alc/vol) of the finished malt beverage. For example, a finished malt beverage of 5.0% alc/vol must derive more than 4.5% alc/vol from the fermentation of barley malt and other materials, and must derive less than 0.5% alc/vol from the addition of alcohol flavors or other ingredients containing alcohol.

(b) A malt beverage may be filtered or processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

4. We amend § 7.22 by adding a new paragraph (a)(5) to read as follows:

#### **§ 7.22 Mandatory label information.**

There shall be stated:

(a) On the brand label:

\* \* \* \* \*

(5) Alcohol content in accordance with § 7.71, for malt beverages that contain any alcohol derived from added flavors or other ingredients containing alcohol.

\* \* \* \* \*

5. We amend § 7.29 by revising paragraph (a) and by adding a new paragraph (a)(7) to read as follows:

#### **§ 7.29 Prohibited practices.**

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other material accompanying such containers to the consumer must not contain:

\* \* \* \* \*

(7)(i) Any statement, design, device, or representation which tends to create the impression that a malt beverage:

(A) Contains distilled spirits; or

(B) Is similar to a distilled spirit; or

(C) Has intoxicating qualities.

(ii) A label statement of alcohol content in conformity with § 7.71 is not considered a prohibited practice in violation of this section. Use of a brand name of a distilled spirits product as a malt beverage brand name is permitted. Use of a cocktail name as a brand name or fanciful name is permitted if the overall malt beverage formulation and label do not present a misleading impression about the identity of the product.

\* \* \* \* \*

6. We amend § 7.31 by adding paragraph (e) to read as follows: