

Drafting Information

The principal author of these regulations is Craig Gerson, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended in part as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

2. Section 1.704-1 is amended as follows:

1. Paragraph (b)(2)(iv)(f)(5)(iii) is redesignated as paragraph (b)(2)(iv)(f)(5)(iv).

2. New paragraph (b)(2)(iv)(f)(5)(iii) is added.

§ 1.704-1 Partner's distributive share.

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(b) * * *

(2) * * *

(iv) * * *

(f) * * *

(5) * * *

(iii) In connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after the date final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

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Judith B. Tomaso,

Acting Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 4 and 24**

[Notice No. 13]

RIN 1512-AC48

Production of Dried Fruit and Honey Wines (2001R-136P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) requests comments on two proposed amendments to the regulations relating to the production of dried fruit and honey wines. The first amendment will allow the production of dried fruit wines with an alcohol by volume content of more than 14 percent. The second will lower the minimum starting Brix of 22 degrees to 13 degrees in the production of honey wines. These proposals are the result of two petitions submitted by producers of raisin and honey wines. We also correct a technical error in the wine labeling regulations by raising the maximum limit on alcohol content derived from fermentation from 13 to 14 percent for ameliorated agricultural wines.

DATES: Submit written comments on or before September 2, 2003.

ADDRESSES: You may view copies of the proposed regulations, related documents, and any comments received on this notice by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 13);

- (202) 927-8525 (facsimile);
- nprm@ttb.gov (e-mail); or
- <http://www.ttb.gov> (online). A comment form is available with the copy of this notice posted on our Web site.

See the Public Participation section of this notice for specific instructions and requirements.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, PO Box 18152, Roanoke, VA 24014; or telephone (540) 344-9333.

SUPPLEMENTARY INFORMATION:

Background

Has Passage of the Homeland Security Act Affected Department of Treasury Rulemaking?

Effective January 24, 2003, the Homeland Security Act of 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. Regulation of wine production is the responsibility of the new TTB. References to ATF and TTB in this document reflect the timeframe, before or after January 24, 2003, of the rulemaking process.

What Is TTB's Authority To Regulate the Production of Dried Fruit and Honey Wines?

The Internal Revenue Code (IRC) of 1986 (26 U.S.C. 5387) states that wines made from agricultural products other than the juice of fruit must be made "in accordance with good commercial practice," as prescribed by the Secretary of the Treasury through regulations. We define wines made according to these regulations, including those made from dried fruit and honey, as "standard agricultural wines." The IRC specifies these production limitations:

- You may not add wine spirits to agricultural wines;
- You may not add coloring or flavoring materials to agricultural wines, with the exception of hops to honey wine; and
- You may not blend wines from different agricultural commodities.

Title 27 CFR part 24, Wine, Subpart I—Production of Agricultural Wine, contains regulations under the jurisdiction of TTB that implement these statutory requirements.

What Are the Current Regulatory Requirements for the Production of Dried Fruit and Honey Wines?

Subpart I contains provisions for the production of agricultural wines, including some derived from the IRC's "good commercial practice" provision. Sections 24.202 and 24.203 contain provisions specific to dried fruit wine and honey wine, respectively. Section 24.204 contains requirements for all agricultural wines other than dried fruit and honey wines. Among other requirements, all three of these sections prohibit the production of any agricultural wine with an alcohol content of more than 14 percent by volume after complete fermentation or complete fermentation and sweetening. The IRC does not specify this limitation,

which has been in the regulations since 1954. Rather, the limitation derives from the law's "good commercial practice" provision.

In addition to the provisions on alcohol content, §§ 24.202, 24.203, and 24.204 also contain limits on starting Brix for agricultural wines. The regulations define Brix as the quantity of dissolved solids in a wine, expressed as grams of sucrose in 100 grams of solution at 60 degrees Fahrenheit, *i.e.*, the percent of sugar by weight. The regulations permit the addition of water, and sugar in the case of § 24.204, during the production of agricultural wines, in order to facilitate fermentation if the density of the fermenting mixture is not reduced below 22 degrees Brix. This limitation, like that on alcohol content discussed above, was placed in the wine regulations in 1954 and is based on "good commercial practice" standards and not on a specific statutory prohibition.

Petitions

Dried Fruit Petition

Bruno and George Wines, Inc., in Beaumont, Texas, petitioned us to propose that the regulations at § 24.202, Dried fruit, be amended to allow for the production of a standard dried fruit wine that contains more than 14 percent alcohol by volume. Because of the current prohibition in § 24.202 against dried fruit wines with a higher alcohol content, we now classify such a wine as an "other than standard" wine. Mr. Shawn Bruno, the president of Bruno and George, Inc., states that he wishes to produce and market a raisin wine made according to his grandfather's traditional Sicilian recipe. The resulting wine would have an alcohol content greater than 14 percent alcohol by volume. Mr. Bruno points out that, if we lift this prohibition, his wine could be classified as a dessert raisin wine. In fact, the wine labeling regulations at § 4.21(f)(3) allow for agricultural wines with an alcohol content greater than 14 percent but less than 24 percent to be designated as agricultural dessert wines. Mr. Bruno comments that he sees no logical reason for exclusion of his raisin wine from this category.

Honey Wine Petition

Redstone Meadery in Boulder, Colorado, petitioned us to propose that we amend the regulations at § 24.203, Honey wine, to allow for the production of a standard honey wine with a starting Brix below 22 degrees. As discussed above, § 24.203 currently states that water may be added in the production of honey wine to facilitate fermentation,

as long as the density of the honey and water mixture is not reduced below 22 degrees Brix. We currently classify honey wines with a lower starting Brix as "other than standard" wines. Mr. David Myers of Redstone Meadery states that he wishes to make a lower alcohol honey wine that will require that the starting Brix be below 22 degrees. Mr. Myers argues that, because such a wine would still have honey as its primary fermentable ingredient, we should classify it as honey wine. Mr. Myers suggests the creation of a new category for low-alcohol honey wines, if the minimum starting Brix cannot be lowered. He proposes the names "light honey wine" or "honey wine varietal" for this new category, which would encompass honey wines with a starting Brix of between 22 degrees and 13.3 degrees, or roughly 7 percent alcohol by volume.

What Was the Result of TTB's Analysis of the Proposals?

Our research into the history of the requirements for agricultural wines reveals that both section 5387 of the IRC and its implementing regulations in §§ 24.202, 24.203, and 24.204 date from 1954. Section 5387 includes the following explanation:

These wines are not specifically referred to in existing law. This addition to the law enables the setting up by regulations of standards of agricultural wines after experience has shown to what extent provisions of law relating to natural wines should be considered applicable. Uniform limitations cannot be prescribed for all agricultural wines. Limitations consistent with good commercial practices in respect to the production of rice wines could not be prescribed for other wines, such as honey wine, rhubarb wine, etc. (H. Rept. 1337, 83rd Cong., 2nd Sess. (1954), reprinted at 1954 U.S. Code Cong. & Admin. News 3, 4518.)

This explanation shows that the law recognizes that agricultural wines are unique, with production standards that may vary significantly from one type of wine to another. While these standards may be guided by those for natural wine, defined in the law as wines made from sound, ripe grapes or other sound, ripe fruit, they may also vary significantly from natural wine standards. Thus, in 1954, the Internal Revenue Service established regulations that were based on standards of good commercial practice at that time. Because these standards can change over time as a result of technical developments and consumer preferences, we feel it is reasonable to reexamine these regulations in light of current industry practice and consumer understanding of these products.

During our research into these requirements, we were unable to determine the rationale for the alcohol content limit of 14 percent for agricultural wines. The initial implementing regulations in 1954 do not explain why the limitation of 14 percent alcohol content was determined to be a good commercial practice for agricultural wines. See 19 FR 7642, Nov. 27, 1954, and 19 FR 9633, Dec. 31, 1954. While the IRC places similar limits on sweetened grape and sweetened fruit and berry wines (*see* 26 U.S.C. 5383(a) and 5384(a)), we feel that it may be unreasonable to apply standards for fruit and berry wines to all agricultural wines, since agricultural products typically have different requirements for fermentation.

Also, as noted by the petitioner, § 4.21(f)(3) permits a dessert wine classification for agricultural wines that are 14 to 24 percent alcohol by volume. Currently, only producers of imported agricultural wines can legally call their products "dessert agricultural wine." Some dessert raisin wines are imported into the United States. Because domestic raisin wine producers must comply with the production provisions in part 24, they cannot take advantage of § 4.21(f)(3) and also label their wines as dessert wines. Changing § 24.202 will put domestic dried fruit wines on an equal footing with imported products. In addition, the importation of these dessert dried fruit wines evidences that the higher alcohol content is a good commercial practice that produces wines that meet consumer preferences. For these reasons, we propose to amend the regulations to allow for the production of dried fruit wines that are greater than 14 percent alcohol by volume.

We were also unable to document a reason for the 22 degrees Brix limitation, but we believe it derives from the limitations placed on grape and fruit wines. Section 5382(b)(1) of the IRC states that the juice or must of grape and fruit wines may not be reduced with water to less than 22 degrees. We believe it may be inappropriate to apply this same standard to all agricultural wines, since source products such as honey, raisins, and dandelions, etc., often contain far less natural water than do grapes and other fruits. Because they do, vintners must add water in order to achieve fermentation. Also, our research into the production of honey wines unearthed references to a category of low-alcohol honey wine called "hydromel." The fact that a recognized category already exists for a lower alcohol honey wine

indicates that such a wine is consistent with good commercial practice.

For these reasons, we propose to lower the minimum Brix from 22 degrees to 13 degrees in 27 CFR 24.203, Honey wine. We also propose to amend this section to make it clear that sugar may be added only after fermentation for the purpose of sweetening. This restriction will ensure that the alcohol in honey wine is derived from honey and not added sugar.

We are not proposing the creation of a separate category for low-alcohol honey wines, as suggested by Redstone Meadery. No separate category exists for grape or fruit wines that are, for example, 7 percent alcohol by volume. We, therefore, see no need to have one for agricultural wines.

Also, the terms proposed by Mr. Myers, "light honey wine" and "honey wine varietal," have other connotations when used in labeling wine that could cause consumer confusion. Title 27 CFR 4.21(a)(2) currently allows use of the term "light" on labels of grape wines that are less than 14 percent alcohol by volume. This authorization encompasses wines that are not usually considered low-alcohol. Creating a different meaning for "light" honey wines could confuse consumers.

In addition, we feel that the consumer associates the word "varietal" with grape varieties, not with agricultural products. We will, however, reconsider the creation of a separate category if we receive sufficient comments that favor such a change over the lowering of the minimum Brix.

As noted earlier, we were unable to determine the original reason for the regulatory limits on alcohol content and starting Brix. However, the intent may have been to restrict the quantity of sugar and water additions that would result in alcohol through fermentation. In other words, the regulation writers intended that the alcohol result primarily from the sugar in the agricultural winemaking material, rather than from both sugar and water. This intent would be consistent with the same restriction on natural wines from grapes and from berries. Accordingly, we are particularly interested in comments on whether this increased allowance for sugar and water additions to dried fruit and honey wines is consistent with good commercial practice.

What Technical Error Is TTB Correcting?

While reviewing the regulations relating to agricultural wines, we noted a technical error in § 4.21(f)(1)(i), which states that ameliorated agricultural

wines may not have an alcohol content derived from fermentation of more than 13 percent by volume. This 13 percent limit is inconsistent with the IRC's treatment of other types of ameliorated wines. While the IRC does not contain a limit on alcohol content for ameliorated agricultural wines, it gives a 14 percent limit for ameliorated fruit and berry wines. Until corrected by T.D. ATF-458, § 4.21(d)(1)(i) and (e)(1)(i), the standards of identity for citrus and fruit wines, respectively, also contained an incorrect limit of 13 percent. In order to establish consistency for all classes of wine, we propose to amend § 4.21(f)(1)(i) to raise the alcohol content limit on ameliorated agricultural wines to 14 percent. Note that § 4.21(f)(1)(i) addresses only *ameliorated* agricultural wines and does not prohibit the production of nonameliorated agricultural wines that are greater than 14 percent alcohol by volume.

Public Participation

We request comments on these two proposals. We specifically request comments from producers and consumers of dried fruit and honey wines on whether these two proposals conflict with current standards of good commercial practice, and of what constitutes a raisin wine or honey wine. We also request comments regarding the increases of sugar in dried fruit wines and water in honey wines that will be allowed as a result of these revisions.

All comments must include your name and mailing address, reference this notice number, and be legible and written in language generally acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

What Is a Comment?

To be considered a comment, your submission must relate specifically to this proposed rule. For example, you might be for or against all or part of this proposed rule, or you might express neutrality. We find comments that use reasoning, logic, and, if applicable, good science to explain your position most persuasive in the formation of a final rule.

How Should I Submit Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed

in the **ADDRESSES** section. We require a legible, written signature.

- *By facsimile:* You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—
 - (1) Be on 8.5- by 11-inch paper;
 - (2) Contain a legible, written signature; and

- (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to nprm@ttb.gov. Comments transmitted by electronic-mail must—
 - (1) Contain your e-mail address; and
 - (2) Be legible when printed on 8.5- by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this proposed rule on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. At this site, select "Send comments via e-mail" under this notice number.

You may also write to the Administrator to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

What Information Will TTB Disclose About This Notice?

You may see copies of the proposed regulations, related information, and any comments on this notice by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also get copies at 20 cents per page. Telephone the ATF librarian at (202) 927-7890 if you want to schedule an appointment or request copies of comments.

For your convenience, we will post comments received in response to this notice on the TTB Web site. All comments posted on our Web site will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access online copies of the comments on this rulemaking, visit <http://www.ttb.gov/alcohol/rules/index.htm> and select "View Comments" under this notice number.

Will TTB Keep My Comments Confidential?

We cannot recognize any material in comments as confidential. We will disclose all information on comments and commenters. In addition, we will summarize and discuss pertinent

comments in the preamble to the final rule or to any subsequent notices that are published as a result of the comments. Do not present any material you consider confidential or inappropriate for disclosure.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply.

Does the Regulatory Flexibility Act (RFA) Apply to This Proposed Rule?

As required by the RFA, we certify that implementation of this proposed regulation would not have a significant economic impact on a substantial number of small business entities. We expect no negative impact on small entities and propose no new reporting, recordkeeping, or other administrative requirements. Accordingly, the RFA does not require a regulatory flexibility analysis.

Does Executive Order 12866 Define This NPRM as a Significant Regulatory Action?

This proposed rule fits none of the criteria of significant regulatory actions, as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations and Procedures Division (Roanoke), Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wines.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Authority and Issuance

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.21 is amended by removing the phrase “13 percent” where it appears in the proviso in paragraph (f)(1)(i) and adding in its place the phrase “14 percent”.

PART 24—WINE

3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

4. Section 24.202 is amended by revising the last sentence to read as follows:

§ 24.202 Dried fruit.

* * * After complete fermentation or complete fermentation and sweetening, the finished product may not have a total solids content that exceeds 35 degrees Brix. (26 U.S.C. 5387)

5. Section 24.203 is revised to read as follows:

§ 24.203 Honey wine.

In the production of wine from honey, the winemaker may add water to facilitate fermentation, provided the density of the honey and water mixture is not reduced below 13 degrees Brix; hops in quantities not to exceed one pound for each 1,000 pounds of honey; pure, dry sugar or honey for sweetening; and sugar only after fermentation is completed. After complete fermentation or complete fermentation and sweetening, the wine may not have an alcohol content of more than 14 percent by volume or a total solids content exceeding 35 degrees Brix. (26 U.S.C. 5387)

Signed: February 5, 2003.

Arthur J. Libertucci,
Administrator.

Approved: March 11, 2003.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Baltimore Harbor Anchorage Project

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the geographic coordinates and modify the regulated use of the anchorages in Baltimore Harbor, MD. This amendment is necessary to ensure changes in depth as resulting from an Army Corps of Engineers anchorage-deepwater project and that the dimensions of the Baltimore Harbor anchorages are reflected in the Federal regulations and on NOAA charts. This proposed regulated uses modification will accommodate changes to ships' drafts and lengths since the last revision of this regulation in 1968 and will harmonize the anchorage regulation throughout the Fifth Coast Guard District.

DATES: Comments and related material must reach the Coast Guard on or before September 2, 2003.

ADDRESSES: You may mail comments and related material to Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA, 23704–5004. The Aids to Navigation and Waterways Management Branch (oan) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Aids to Navigation and Waterways Management Branch office between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJg Anne Grabins, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6559.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–040), indicate the specific section of this document to which each comment