

ATF Suspends McCormick's Distillery Basic Permits \$2 million in penalties assessed

By Tami Light (202) 927-3580

On July 1, 2000, the Bureau of Alcohol, Tobacco and Firearms (ATF) suspended for seven days the distillery basic permits of McCormick Distilling Company, Weston, Missouri. The suspension was part of a settlement agreement that also included McCormick's payment of a \$1 million Offer-in-Compromise to resolve alleged violations of the Federal Alcohol Administration Act. The suspension and Offer-in-Compromise stem from McCormick's failure to comply with Federal record keeping requirements relating to the production, shipment, and exportation of distilled spirits.

In a related criminal case, McCormick pled guilty in United States District Court in Newark, New Jersey, to making false entries in required Internal Revenue Code distillery records by

characterizing potable distilled spirits as industrial products. The false entries aided other parties who were allegedly involved in a scheme to smuggle distilled spirits disguised as windshield washer fluid and other solvents into the Ukrainian Republic and Russia. As part of the guilty plea, McCormick paid an additional \$1 million in tax restitution to the Ukrainian Republic, and a fine of \$10,250 to the U.S. Justice Department. On June 1, 2000, Assistant Attorney General James Robinson presented the Ukrainian Ambassador with the \$1 million paid by McCormick in restitution for lost Ukrainian excise taxes.

The suspension of McCormick's permits, the \$1 million Offer-in-Compromise, and the criminal investigation that resulted in an additional \$1 million fine represent ATF's continued emphasis on investigating and taking action against alcohol and tobacco permittees involved in illegal diversion schemes. □

Offers-in-Compromise

By Karen Lopez (415) 744-7011

On June 6, 2000, the Director, Industry Operations, San Francisco Field Division, accepted an Offer-in-Compromise of \$2,500 from Marion Trading Ltd., Fresno, California. Marion Trading was found to be selling, offering for sell and contracting for sale, distilled spirits, without holding a wholesaler's basic permit.

On June 9, 2000, the Director, Industry Operations, San Francisco Field Division, accepted a \$70,000 Offer-in-Compromise from Golden State Vintners, St. Helena, California. The winery was found having two Joliesse Reserve brand wines with unapproved neck capsule labels depicting the words "Napa Valley". Neither brand was entitled to claim the Napa Valley appellation of origin. □

Distilled Spirits Plants Regulated by ATF

By Allen McClaskey (513) 684-3334

ATF has currently issued permission to operate to a total of 373 Distilled Spirits Plants (DSP), which includes 36 permits issued in Puerto Rico. Depending on the specific type of permit issued, these plants can conduct a variety of operations involving such distilled spirits products as whisky, gin, vodka, rum, flavored liquors, etc. Operations can include production of the spirits, storage, blending, processing and bottling. Only about two-thirds of the qualified DSP's actually pay excise tax. Those which do not file tax returns are primarily warehouse storage facilities. While forty-two of the fifty states have at least one distilled spirits plant, California, Kentucky and Texas are the states with the most DSP's. Approximately one fourth of ATF's excise tax collections last year came from distilled spirits plants. □

Alcohol Labeling and Formulation Branch becomes a Division!

By Linda Evans (202) 927-8140

On July 30, 2000, the Alcohol Labeling and Formulation Branch (ALFB) becomes the Alcohol Labeling and Formulation Division (ALFD). The new division will operate within the Office of Alcohol and Tobacco. We will announce the Division Chief and two assistants to the Division Chief in a later issue of this newsletter. □

Calendar

August 7-11

National Diversion Conference
Memphis, Tennessee

Director Bradley Buckles and Assistant
Director Arthur Libertucci will attend.

August 17

U.S. OIV Coordinating
Committee Meeting
Washington, DC

August 27-30

Federal Tax Administrators
Tobacco Tax Conference
Pittsburgh, Pennsylvania
Revenue's Division Chief Susan
McCarron, Branch Chief, Tom Stewart,
and Tobacco's Industry Analyst J.R.
McCollum will attend.

Questions or suggestions relating to the Alcohol & Tobacco Newsletter should be directed to the Editor by fax at (202) 927-5611 or by mail at the following address: Bureau of ATF, 650 Massachusetts Avenue, NW, Room 8110, Attention: Donna Smith, Editor, Alcohol & Tobacco Newsletter, Washington, DC 20226.

Petition to Establish “West Elks” Viticultural Area



By Lisa Gesser (202) 927-8210

On July 3, 2000, the Regulations Division received a petition to establish a viticultural area located in Delta County, Colorado to be called “West Elks.” The proposed area is approximately 75 square miles and currently has over 84 acres of grapes planted by 16 different growers. The petition is being reviewed. □

To Correct or Not to Correct...That's the Mistake!



By Sean Harris (202) 927-8140

In addition to the restructuring that the Alcohol, Labeling and Formulation Division (ALFD) has recently undergone, the Formula Specialists have recently instituted a Correction Notice that will assist industry members who have submitted applications for Statements of Process, Formulas and Lab Analysis that do not meet the requirements for approval. The purpose of this form is to provide guidance to the applicant by explaining the necessary changes that are required or to request additional information in order to complete the processing of their application. Upon receipt of this notice, the applicant has 30 days to submit the changes or to supply the additional information that's being requested. If we do not receive the requested information within 30 days we will abandon your application and you must then resubmit a new application. The Alcohol, Labeling and Formulation Division will continue to make changes that will provide clear and concise guidance to our customers. □

Label “Use-Up” And Temporary Approval Requests

By Linda Evans (202) 927-8140

ATF understands that there are circumstances when a company may request to “use-up” labels that do not strictly comply with the labeling requirements of the Federal Alcohol Administration (FAA) Act. Reasons may include the sale of a brand to another company or a change of address of the certificate holder. While ATF does not encourage the use of these labels, we realize that situations arise when temporary approval should be considered. We make our decision about use-up requests or temporary approvals on a case-by-case basis. We restrict approval to situations when consumers are not likely to be misled as to the identity and quality of the contents of the bottle. In order to facilitate the processing of these requests, please submit a written request containing the following information:

1. Information identifying the affected label(s), including the brand name, serial number or CFM ID number. Please attach the written request to the COLA(s).
2. The reason(s) you are requesting permission to “use-up” existing labels (i.e., explain what is wrong with the labels.)
3. The reason you have incorrect/non-compliant labels (i.e., how did this happen.)
4. The steps you will take to ensure that this does not happen again in the future.
5. The quantity of labels you have on hand that you wish to “use-up.”
6. The length of time you need to “use-up” these labels (bottle/remove).
7. Suggested alternatives to using incorrect/non-compliant labels, such as the addition of a strip label.

Please provide any additional information that you feel might be pertinent during our review of your request, such as the dollar amount of the economic impact you would suffer if you had to destroy or could not “use-up” these labels.

Please be advised that if you do not include all the above in your letter, that we must then contact you for the additional information. This will increase the time it takes us to process your request. We also suggest that you submit separate written requests when more than one COLA is involved if the circumstances or amount of labels or time needed varies. Written requests should be mailed to:

Bureau of Alcohol, Tobacco & Firearms
Alcohol, Labeling and Formulation Division, Room 5250
Washington, DC 20226

After we review all the circumstances as you have presented them, we will make a determination as to whether or not we will grant permission to “use-up” existing label stock and for how long. Again, our main concerns are that consumers are not likely to be misled as to the identity of the product, and that we can determine the company responsible for the product.

If you have any questions regarding label “use-up” or temporary approval, please call the Alcohol, Labeling and Formulation Division's customer service desk at (202) 927-8140, or e-mail us at alfb@atfhq.atf.treas.gov. □