

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

June 23, 2015

Mr. Michael Hoover
Regulations and Rulings Division
Tax and Trade Bureau
1310 G Street, N.W., Box 12
Suite 200-E
Washington, D.C. 20005

Re: Proposed Information Collection: Streamlining the COLA Form and Process

Dear Mr. Hoover:

On behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wines sold in the United States, we welcome the opportunity to respond to the Tax and Trade Bureau's (TTB) request for comments regarding the streamlining of the Certificate of Label Approval (COLA) application and review process. (80 Fed. Reg. 23071 (April 24, 2015).)

We applaud the Bureau for its initiative to include additional circumstances in which approved labels may be modified without submitting a new COLA application, with suggested "builds" regarding same. To that end, we support these additional circumstances and also urge the adoption of further amendments to TTB Form 5100.31, which will increase the overall efficiencies of the COLA review process to the benefit of both the Bureau and industry members.

Specific Comments

I. Proposed Allowable Revisions to Approved Labels Without Obtaining a New COLA

A. Item No. 1: Allowable Deletion of Non-Mandatory Information

We support the Bureau's current action to allow the deletion of any non-mandatory information without the submission of a new COLA. We, however, oppose the new "comments" section associated with that revision stating: "If the non-mandatory information in question relates to other information that remains on the label, it is your responsibility to ensure that the remaining information is not misleading after the deletion."

TTB's label approval is a prerequisite of entering U.S. commerce and industry members rely upon that approval process for sales into each state/jurisdiction within the United States for both domestic and imported brands. As a consequence, it must be clear that TTB's approval of a

label satisfies an industry member's compliance with the laws, regulations and rulings concerning that industry member's COLA, irrespective of whether any non-mandatory information has been revised without a submittal of a new COLA.

The new "commentary" may bring peril for industry members taking advantage of not seeking a new COLA for permitted deletions despite the Bureau's intent. Consequently, we urge the deletion of the new "comments" section.

B. Item No. 17: Serving Facts Statement/Statement of Average Analysis

In the instant notice, TTB's proposed changes to the current list of allowable revisions without the submission of a new COLA includes expanding the currently allowable revision in a statement of average analysis for changes in calories, carbohydrates, protein, and fat to also allow a new Serving Facts statement, a new statement of average analysis or a Serving Facts statement to replace a statement of average analysis in that regard. We support this allowable revision and urge that any previously-approved Serving Facts statement also should not require a new COLA submission. Consequently, we urge the deletion of the "comments" section associated with this revision that currently states that a new Serving Facts statement is allowed only if it is in one of the formats set forth in the examples attached to TTB Ruling 2013-2 ("Voluntary Nutrient Content Statements in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages").

We respectfully submit that such an allowable revision is in sync with TTB's proposal and there is no basis upon which to differentiate Serving Facts statements that previously have been approved by the Bureau in terms of requiring new COLA submissions as would be the case with the proposed comments associated with this allowable revision. No statutory or public interest objective would be served by distinguishing between TTB's prior approval actions and what would constitute permissible revisions without a new COLA submission.

C. Item Nos. 1, 2 and 3: Changing/Repositioning Label Information

We recommend expressly clarifying that the permitted changes to type size, font and spelling (including punctuation marks and abbreviations) include the ability to add, delete or change from upper to lower case letters or lower to upper case letters, other than those specifically required by law or regulation. In addition, moving non-mandatory text to another label on the container also should be an allowable revision that does not require the submission of a new COLA.

II. Additional Allowable Revisions to Approved Labels Without Obtaining a New COLA

We urge that allowable revisions to an approved COLA include the addition of the signature of a Master Distiller. A new COLA also should not be required in instances where an industry member "switches out" graphics on a label associated with, for example, the founder or Master Distiller of a particular brand/distillery. Illustrations of same include depicting images on a label of his/her memorabilia (e.g., a hat, eyeglasses, etc.) that could be used without submittal of a new COLA. Another allowable revision should include a change in the formula number when it does not change the class/type of product identified on the label.

In addition, we urge the Bureau also to consider the following list of changes without requiring submission of a new COLA application: (1) adding recipes to labels; (2) changing quantities of ingredients, e.g., from “1 part” to “1 ounce” or from “1.5 ounces” to “1 ounce;” (3) changing branding of ingredients, e.g., from “Gin” to “Omlie’s® Gin;” and (4) changing the entire recipe, e.g., from “Mai Tai” to “Pina Colada.” Further, allowable revisions also should permit an industry member to delete, as well as add or change, a recipe.

Further, we recommend including the ability to change DBAs (doing business as—names and locations) as an allowable revision as long as the DBA has been added to the company’s TTB permit. In that regard, consumers use the internet to obtain information about spirits companies and use websites and/or phone numbers to contact companies. In addition, an allowable revision should cover changing “bottled by” to “produced by” or “distilled by” (or the converse) on a container if that change is consistent and complies with the provisions of 27 C.F.R. § 5.36.

We also recommend allowing changes to or adding licensing language without the submittal of a new COLA in circumstances such as “Produced under license from the brand owner” or “Under license from XYZ Company.” In addition, we urge the ability to add or change responsibility messages without the submission of a new COLA, including, but not limited to, messages such as: (1) Drink Smart, (2) Drink Responsibly and/or (3) Enjoy our Products Responsibly.

Further, we urge that changing label graphics with like graphics should be permissible without the submission of a new COLA. For example, an industry member could depict either of the following graphics on the label without refile (versus a COLA with a pineapple depiction that then would show multiple fruits that otherwise were not identified on the product’s label):



Apropos of same, an industry member should have the ability not only to update images of flavors, but also to update, change or delete glassware graphics without submitting a new COLA; for example, a recipe accompanied by a lowball glass instead of a martini glass.

Regarding bottle deposit information, an industry member should be able to add, delete and/or change recycling information, the recycle symbol or a statement regarding “recycled with colored glass” without submitting a new COLA. This allowable revision could be part of current item No. 22.

Regarding flavor extensions, we urge the Bureau to consider including flavor extensions of existing products covered by an approved label in its list of when label changes can be accomplished without a new COLA. In that regard, a COLA could cover a generic “flavored

vodka,” for example, and producers could change the flavors of that product provided that all of its flavor components are GRAS. The need to file for new COLAs for flavor extensions is burdensome and inconsistent with the current goal of streamlining the COLA process. At a minimum, the COLA application form should include a check box in Part I as to whether or not the COLA is for a flavor extension as discussed below.

III. Conditions of this Certificate

Section II. A. of Part III under the “Conditions of this Certificate” heading provides that: “This certificate does not relieve you from liability for violations of the Federal Alcohol Administration Act, the Alcoholic Beverage Labeling Act of 1988, the Internal Revenue Code of 1986, or related regulations and rulings.” We submit that the TTB should be bound by the COLAs it issues in terms of all laws and regulations inherent and germane to that COLA.

An industry member should be able to rely upon the Bureau’s Certificate of Label Approval and the Bureau’s actions in approving that label. We urge that the provision set forth above should be revised accordingly. At a minimum, this provision should reflect that the Bureau’s approval of a label satisfies an industry member’s compliance with the laws, regulations and rulings referenced in that provision concerning that industry member’s COLA.

IV. Proposed Amendment to Part I of the COLA Application

To streamline the label review process, we urge that the Bureau include a new entry box in Part I of the application where an industry member could identify in its application to TTB at the time of submission as to whether the application is for (1) a brand new label; (2) a use-up request; (3) a set of changes to an already approved label; or (4) a flavor extension to an already approved label. This entry box would expedite label reviews and streamline the process with great benefits to TTB’s label specialists and industry members.

In that regard, if a prior COLA already has been obtained, TTB would be able to refer to the previously-approved label for quick reference; thereby, expediting the approval process with its commensurate benefits of greater efficiencies and lesser expenditures of manpower resources.

In addition, we also urge the Bureau not to require translations of foreign language text on a label as currently provided in item no. 19/Part I of the application when the “foreign word” is obvious (e.g., “Italia”).

V. Additional Recommendations for Streamlining the Review Process

As you may know, we have underway a “blue sky” initiative with our member companies to identify additional COLA/label changes that also will streamline this important and critical function of the Bureau, such as a joint submission of formulas/COLAs and a more full explanation of “needs correction” for current COLA submissions to achieve the collective goal of the Bureau and industry to “touch it once.”

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Separately, we urge the Bureau to allow an industry member to rely upon its pre-import approval for product with no periodic submissions after a five (5)-year period or otherwise. These approvals should remain in effect until and when the importer changes the formulation of its product.

In addition, we have urged states to integrate their label approval process with the TTB COLA database providing all the requisite information that would be required by state label approvals. As you may know, Rhode Island and other states have utilized TTB's COLA Online system for their own purposes to achieve cost and business efficiencies for all affected parties; thereby, eliminating delays and providing for timely product introductions to the benefit of the consumer, the state and the industry. Such an integrated system also will result in more immediate FET and state revenues associated with the sale of these products.

As part of TTB's instant COLA initiative, we very much would like to partner with the Bureau to integrate the federal/state approval process to achieve the goals referenced above, as well as alleviate unnecessary paperwork and man-hours. We also pledge our resources to ensure that the regulators of all states fully understand and appreciate the circumstances when a new COLA is not required by the Bureau to fulfill TTB's objective in that regard.

Conclusion

Thank you for the opportunity to comment upon the Bureau's COLA initiative and we urge that the Bureau adopt our additional recommendations to achieve even greater efficiencies. As always, we stand ready to assist TTB in these important endeavors and, if you have any comments concerning our submission, please do not hesitate to call.

Best regards,



Lynne J. Omlie

LJO:cms

cc: Mr. John J. Manfreda
Administrator
Tax and Trade Bureau

Ms. Janet M. Scalese
Director of Advertising, Labeling and Formulation Division
Tax and Trade Bureau