Labeling of Alcoholic Beverages

By Rus Schay, The Cino Company, Cincinnati, Ohio

Early in 1975, the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department proposed regulations regarding the labeling of Wines and Distilled Spirits. These proposals followed an earlier set of regulations concerning Beer and Malt Beverages, with a hearing on this scheduled for February, 1975. Because of the inter-relationships among these classes of taxed beverages, the Beer/Malt Beverage hearings were rescheduled to be in close proximity to the others, and all finally took place during April, 1975.

With more or less bated breath, the liquor, wine and beer industries (along with suppliers to them) awaited the decision of the Director, Mr. Rex Davis. The Bureau, had, on October 8, 1974, formalized an Agreement with F.D.A. through publication in the Federal Register of a "Memorandum of Understanding," in which F.D.A. relinquished control of the labeling of all alcoholic beverage products to BATF provided that they would be labeled "consistent with" the [Food, Drug & Cosmetic] Act. In April, 1940, T.C. 224 had unilaterally ceded such supervision to the predecessor agency which, under the Federal Alcohol Act (Administration), had additional responsibilities concerning these products, although they were considered as "foods" by the F.D. & C. law.

During the hearings, very little testimony was given in favor of the promulgated revisions, and much opposition was presented. Among the many arguments against the change were (1) there is no consumer ground swell of demand, most consumers not even reading the present labels, and many consumers not even seeing the bottles from which the beverages are poured; (2) difficu'ty in policing foreign producers vis-a-vis the continual presence of on-premise Treasury agents domestically; (3) non-tariff trade barriers would be erected, against proclaimed public policy; (4) the complexity of processing is such that the identity of the ingredients used in the first place is hardly the same as those appearing in the bottled product; (5) record-keeping requirements wou'd be extremely burdensome (and eventually costly to the consumer) due to the aging process, blending and cross-blending, etc. which takes place in modern wineries, distilleries, rectifiers, et alia; and, (6) the industries are already closely controlled and watched due to the revenue-producing aspect of these "foods," unlike all other foods (they were even prohibited from consumption from 1918-1933!).

With great courage in his convictions, in spite of the many pressures put upon him, Mr. Davis, in the Federal Register of November 14, 1975, WITHDREW the proposals. F.D.A. then repudiated, as provided in it, the "Memorandum of Understanding," on November 24, 1975, and said that henceforth (and certainly by January 1, 1977), alcoholic beverages must be labeled as are foods, under 21 CFR 1.10, 1.10a, 1.12 [particularly (1)], and other applicable sections. BATF will still require other label information under 27 CFR parts 4, 5, and 7!

Meanwhile, back in Congress, laws are pending which could change the situation. Senator Ford of Kentucky (that home of Bourbon) has proposed an amendment to S641 (the food surveillance bill) which would, in effect, remove alcoholic beverages from FDA labeling regulations, and HR8283 has been introduced to clarify the usage of flavors in Special Natural Wines. As of this writing, changes are being made in committee and the final versions may bear little resemblance to the first proposals.*

Under BATF guidelines, trace quantities of "Top-note replacement" have been permitted in natural flavors without changing the "c'ass or type" of distilled spirits [27 CFR 5.22 (j)], and these same conditions were permitted in Special Natural Wines. With the advent of the revised effective date (July 1, 1975) of the flavor labeling regulations (21 CFR 1.12), flavor manufacturers who might be using such top-notes in some products are required to label [per 21 CFR 1.12 (g)] these flavors as "Natural and Artificial Flavors." The presence of *any* artificial flavor on bonded wine cellar premises is illegal under 27 CFR 240.356, and requires wines made with any artificial flavor to be called "Imitation" or "Compound" wines, the payment of the rectification tax, and the product to be made on the premises of a "distilled spirits plant." BATF has issued Industry Bulletin 75-12 (July 1975) permitting the "status quo" for wines until June 30, 1976; no comment has been forthcoming to this writing regarding distilled spirits covered in 27 CFR 5.22.

It is apparent that there is a great deal of inconsistency among the regulations. Under FDA rules, the presence of, say, vanillin in a characteristically-designated "strawberry" wine would require only that the ingredient statement reveal such an artificial ingredient, although the main label panel could say "Natural Strawberry Flavored Wine" or, if such a flavor were to be used, "Natural Strawberry With Other Natural Flavor Wine," under BATF regulations, vanillin is proscribed from natural wine (unless it is from vanilla extract or otherwise natural). Maltol, however, may be used in the "cellar treatment" of wine, under 27 CFR 240.1051, up to 250 ppm.

Continuing in a parallel vein, FDA regulations have indicated that vanillin is not characteristic of chocolate, and does not "simulate, resemble or reinforce" chocolate

* Several more pieces of legislation have been added, including HR 11781 which would require a warning on alcoholic beverages to the effect that they may be "hazardous to the health and safety of yourse'f and others," and investigation as to the ways which media encourage the abuse of alcohol.

in a chocolate bar, pudding, etc. BATF has permitted only up to 40 ppm of vanillin in domestic liqueurs and cordials, for example, under their "standards of identity" without making such products artificial, but imported products bearing "fanciful" names have not needed declaration of artificial ingredients even if they have substantially more vanillin (by analysis) present. Pragmatically, the levels found could not economically be derived from natural sources, in the writer's opinion and experience. If now the ingredient statement must reveal the presence of vanillin, will a "Creme de Cocoa" become, on the main panel, an "Artificially Flavored" cordial per 27 CFR 5.22? A flavor manufacturer must call his concentrated Cordial flavor "Natural and Artificial Flavor" under 21 CFR 1.12 (g), whether or not the artificial ingredient(s) is (are) "characteristic."

To go one step further, should there ever be (perhaps there now is) a "Maple Flavored Cordial" containing only natural ingredients (but none from sugar maple tree), BATF regulations would permit this. If it had a fanciful name, even FDA would not require it to be called "artificially flavored;" if it were characterized as "Maple," however, it would become an "artificially flavored Maple Cordial!" And, if also sufficient maple-tree derived ingredients were to be present to give the characteristic flavor, it would become "Maple With Other Natural Flavors Cordial" under FDA rules.

FDA itself has left an opening for improvement of the situation. The notice of November 24 stated that petitions may be entered for special provisions for labeling alcoholic beverage just as there are special provisions for other foods. To date, none have been forthcoming.

Alternately, consistent with FDA past practice for the labeling of standardized foods containing no optional ingredients, FDA could, by regulation and reference, simply adopt the BATF "standards of identity," already promulgated in 27 CFR 4.32 (Wines), 27 CFR 5.22 (Distilled Spirits) and 27 CFR 7.24 (Beer and Malt Beverages). Producers who choose to make nutritional claims would be bound by the 21 CFR nutritional labeling regulations. Optional ingredients would be labeled as required by FDA now. Artificial ingredients, if any, if they are not incidental additives, could be indicated on the ingredient statement. Final details and other label statements could still be left for BATF approval.

It seems to this writer that the public and industry would be best served if, by act of Congress, alcoholic beverages were declared to be not foods, but "alcoholic beverages," and not subject to the Food, Drug and Cosmetics Act, just as they (along with tobacco and firearms) are not subject to the Consumer Products Safety Act (there are other products, regulated elsewhere, that are also not subject to that Act). This would be consistent with the growing clamor for regulation reform and less, not more, interference by government. The Bureau of Alcohol, Tobacco and Firearms (and its predecessor agencies) has done an excellent job through the years in upholding its charge to "protect the revenue" as well as to protect the public. It has repeatedly stated that all ingredients must be approved for use in a regulation of the Food & Drug Administration (which would include the items on a recognized reliable published Association list of GRAS substances), and this is emphasized on the approvals of Form 1678 for drawback (non-beverage) alcohol use in flavors.

Perfumer's Notebook

By H. D'Arblay

Before Picasso painted his Cubist forms, he studied the old masters and worked in their tradition. Yet, how many perfumers attempt to create new fragrances without knowing the odor or composition of many of the classic perfumes which have given perfumery the reputation it enjoys today.

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Benzyl Acetate is one of the more economical and widely used aromatics in the perfumer's armamentary. Its cost in the formula is usually measured in small fractions of a dollar. The difference in cost between an ordinary quality and one in which the benzyl acetate fractions have been carefully distilled and selected can be counted in dimes or in quarters. The better quality is usually so superior in its effect on your compound that it is well worth the extra currency.

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A good quality guaiacwood acetate is very useful to the building of a natural character in certain low cost compounds. It will also help in toning down and blending harsh chemical notes.

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The acceptance of a false premise for an experiment can set back work for days or even weeks. Time wasted in building on an experimental error could well have been spent on the proper design of future experiments. The addition or deletion of one item at a time is a method often used, but this can be time consuming if done on a continuous basis. If two or three changes are made in the same experiment, it is important that the notes being added or deleted either bear some relationship to each other (i.e., all citrus notes, or all spice notes) or the individual items are totally disparate in order that their effect can easily be identified during evaporation or in order that their characteristics be easily distinguished. Changes of more than two or three items at the same time are seldom very productive unless the formula is in a very early stage of development. I still marvel at the ability of perfumers who plan five or six changes in one experiment and base their future olfactory decisions upon this one try. After many years of fruitful work, I still have great trepidation if I adjust more than three items at a time.

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Italian lemon oil is always more costly to use than lemon oil from the Southwest, U.S.A., but there can be no doubt that its performance in a finished cologne or perfume is superior. Try it the next time you need a significant quantity of lemon oil in a formula, assuming price is no object.