



January 5, 2023

Ms. Amy R. Greenberg
Director, Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Suite 400
Washington, DC 20005

Via Email

Dear Ms. Greenberg:

I write to submit for your consideration a number of items related to regulatory modernization compiled from a variety of past Brewers Association (BA) submissions that to date have either remained unaddressed or have been deferred for future consideration. Very much in the spirit of BA's recently submitted comments on Notice 212, *Modernization of Qualification Requirements for Brewer's Notices*, we believe there are many incremental, as well as some more substantive, updates that will provide both brewers and the Alcohol and Tobacco Tax and Trade Bureau (TTB) with increased efficiencies, reduced paperwork and a better path to compliance that can be accomplished with a minimum of time and effort.

Attached are all relevant original submissions for easy reference and following are the specific issues BA is requesting action on, along with details on TTB response, if any. Please treat the following as a petition to change rules submission under the provisions of 27 CFR § 70.701(c).

A. Labeling and Advertising Issues

- 1. Full Disclosure of Brewery Ownership in Labeling and Advertising.** The Brewers Association (BA) petitioned for full disclosure on labels and in advertising of controlled groups (related businesses that have common ownership) of breweries (see pgs. 2-3 of attached June 26, 2019 BA comment submission on Notice 176).

TTB Response: Per the final rule published in the February 9, 2022 Federal Register (Vol. 87, No. 27), TTB declined to act on this item as it is beyond the scope of this rulemaking (see 87 Federal Register (FR) pg. 7544).

We accordingly renew our request outside the context of Notice 176, which had a finite scope.

2. **Disclosure of Mandatory Label Information on the Exterior of Closed Containers.** BA supported adoption of this proposal (see pgs. 6-7 of attached June 26, 2019 BA comment submission on Notice 176).

TTB Response: Citing confusion among industry members concerning the proposal based on the comments received, TTB identified this issue for future rulemaking (see 87 FR pgs. 7540-41).

We welcome TTB to engage in further rulemaking on this issue in order to establish clear standards for the markings required on closed containers. BA takes this opportunity to clarify that any regulations should deem case cartons to fall under the category of packing that is not primarily meant for display.

3. **Alcohol Content Labeling Type Size.** BA proposed removing the type size restrictions on this information (see pg. 3 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to believe that the limitation on type size for alcohol content statements for malt beverages is unnecessary and notes that since its original comment submission the provision on type size now appears at 27 CFR § 7.53.

4. **2020 BA Petition to Modernize the Regulations Governing the Labeling and Advertising of Non-Alcoholic and Alcohol-Free Malt Beverages** (filed January 28, 2020 and attached)

- a. Rather than the already-sanctioned use on non-alcoholic and alcohol free malt beverages of the ambiguous terms “malt beverage,” “cereal beverage,” or “near beer,” TTB should mandate the use of one of two unambiguous, already defined, terms: “Non-Alcoholic” or “Alcohol Free.”
- b. TTB should permit label and advertising references to malt beverage class or type designations on non-alcoholic or alcohol free malt beverages, so long as such references are qualified by the words “non-alcoholic” or “alcohol free.”
- c. With respect to packaging designations of non-alcoholic and alcohol free malt beverages, amend Subsection 25.242(d) to conform that Subsection to the approach taken above. This would amend Subsection 25.242(a) to cross-reference Part 7 without imposing any separate Internal Revenue Code requirement on the product’s designation.

5. **Net Content Statement.** BA advocated for allowing labeling in fluid ounces for container sizes less than one quart (see pg. 3 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB addressed the issue in Phase 2 of Notice 176 rulemaking, stating that it will not adopt this suggestion, but will consider changes to the permissible formats for net contents statements in a future rulemaking (see 87FR pg. 7570).

BA requests and welcomes that TTB initiate rulemaking to replace the current obsolete and confusing (especially for consumers) rules for net contents.

6. **Consumer Specialty Items.** For clarity, BA suggested adding a general definition of “consumer specialty items” into Section 7.52(c) or add a reference to Section 6.84(b)(2) (see pg. 5 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to believe that providing a stated definition in the regulations will help industry members better understand their obligations and therefore assist in voluntary compliance efforts.

B. **Trade Practice Issue**

1. **Consignment sales - freshness dating and returns.** BA advocated for codifying TTB Ruling 2012-4, which acknowledges that the return of malt beverages that have reached their expiration date as determined by the brewer are “exchanges and returns for ordinary and usual commercial reasons,” into Part 11 regulations (see pg. 5 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA is aware of and plans to participate in TTB’s announced Advanced Notice of Proposed Rulemaking entitled *Consideration of Updates to Trade Practice Regulations*.¹ In the case of the policy on returns of out-of-code beer, however, BA sees no reason to wait for the broader update project to proceed, as TTB has already promulgated a reasoned policy that follows industry practice and helps ensure that consumers receive quality products.

C. **Beer Tax and Brewery Operations Issues**

1. **Define “consumed on brewery premises.”** BA proposed including this definition in Section 25.11 to eliminate possible confusion relating to recordkeeping requirements and operational reporting requirements (see pg. 5 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to believe that the industry would benefit from a clear definition and asks TTB to address this issue by rulemaking.

2. **Formula exemptions – ingredients.** BA suggested that TTB amend 27 CFR § 25.55 to exempt from formula requirements all malt beverages that utilize wholesome spices, fruits, and vegetables, including whole fruits and vegetables, juices, purees, extracts, or concentrates, provided that such ingredients are

¹ 87 FR 67612 (Nov. 9, 2022).

suitable for human food consumption and generally recognized as safe by the Food and Drug Administration and do not contain alcohol. Alternatively, TTB should amend Section 25.55 to direct the reader to the TTB website for additions or changes to the list of ingredients not triggering the requirement to file a formula (see pg. 6 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

- **2021 BA Petition** (filed October 27, 2021 and attached): BA has since requested that TTB determine the eleven ingredients enumerated in the petition as traditional as they have become widely used in brewing American craft beers since the BA last petitioned TTB on this subject in 2016.

3. **Formulas Online.** BA suggested updating Section 25.56(b) with a reference to TTB's Formula Online service as a filing option (see pg. 6 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA asks that TTB undertake rulemaking to update Section 25.56 as requested to improve transparency and facilitate industry self-regulatory efforts.

4. **Alternating proprietorships.** BA proposed the addition of a new section, Section 25.82 Alternating proprietorships, to Subpart G of Part 25. This new section could either contain complete rules for qualifying and operating alternating brewery proprietorships or could simply authorize their qualification and operation (see pg. 6 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

Alternating proprietorships between breweries have been an accepted practice for more than three decades. TTB should codify established policies in its regulations in the interest of transparency. The current absence of explicit rules in TTB regulations creates uncertainty and fosters an uneven playing field that favors larger companies with more legal and compliance resources.

5. **Case sizes for bottled beer.** Concerning barrel equivalents for various case sizes of bottled beer appearing in Section 25.158(a), BA suggested adding case sizes for additional beer bottle sizes of 19.2 fl. oz. (imperial pint), and 25 fl. oz. (see pg. 7 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA believes these commonplaces sizes should be reflected in TTB's equivalent table and requests rulemaking to make this common-sense change.

6. **Pay.gov reference – excise tax return.** BA suggested amending Section 25.163 to include a reference to Pay.gov is an option for tax payment by brewers not required to pay by electronic funds transfer (see pg. 7 of attached October 30,

2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

Pay.gov helps both industry and TTB conserve compliance resources, and we accordingly request that TTB engage in rulemaking to add a reference to Pay.gov to the regulations.

7. **Notice for reduced payment of tax.** BA proposed amending Section 25.167(a) to delete the reference to the requirement to file an annual notice (see pg. 7 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to view the requirement of an annual filing as an unnecessary paperwork burden and asks TTB to initiate rulemaking to amend the regulations in order to do away with the need to file.

8. **Removal of beer to a distilled spirits plant.** BA recommended revisions to Section 25.201 to authorize removals of beer without payment of tax to any distilled spirits plant and to provide guidance for removals, bonding, marking, and recordkeeping (see pg. 8 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

As TTB recognizes, Congress authorized such removals several decades ago, yet TTB has not amended its regulation to reflect the change. BA asks TTB to initiate rulemaking to amend its regulations in accordance with the applicable statutes and to provide guidance to brewers seeking to exercise this statutory privilege.

9. **Removal of beer to a customs bonded warehouse for embassy and legation use.** BA proposed revisions to Section 25.203 (Exportation without payment of tax) to add withdrawal for deposit in a customs bonded warehouse and to update Subpart G in Part 28 (Exportation of Alcohol) to incorporate removal of beer from the brewery for deposit in a customs bonded warehouse (see pgs. 8-9 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to view this change as a common-sense clarification of the regulations and accordingly asks TTB to initiate rulemaking to make this change.

10. **Removal of beer for destruction.** The Taxpayer Relief Act of 1997 provides for the removal of un-taxpaid beer from a brewery for the purpose of destruction. TTB has never incorporated this provision into Part 25 of the regulations. Brewers remove beer from the brewery for destruction when it is impossible or impractical to destroy it at the brewery. TTB has no guidance for these removals

(see pg. 9 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA views the need to update TTB's regulations to reflect statutory changes as an important step to foster transparency, voluntary compliance, and ensure an even playing field. We accordingly ask TTB to initiate rulemaking to make the necessary regulatory changes.

11. **Importation of bulk beer into a domestic brewery.** BA proposed formalizing procedures related to the importation of bulk beer and its receipt at a domestic brewery and the labeling of imported beer that is packaged at a domestic brewery by incorporating ATF Procedures 98-2 and 98-1 into Part 25 (see pg. 9 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

The requested change would, once again, codify privileges authorized by Congress in 1997. Reliance on obscure "Procedures" documents hinders transparency and favors companies with greater compliance and legal resources. BA accordingly urges TTB to engage in rulemaking to recognize and create procedures for the importation of bulk beer into a domestic brewery.

12. **Beer for use of the United States.** BA advocated for a new section within Subpart L (Removals Without Payment of Tax) authorizing the Government of the United States to purchase, without payment of tax, domestic goods subject to tax under the Internal Revenue Code (see pgs. 9-10 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to believe this regulatory change will foster transparency and voluntary compliance and accordingly asks TTB to proceed to rulemaking on this subject.

13. **Recordkeeping Requirements.** BA advanced a proposal to allow brewers to use a common storage and inventory system for all beer of the brewer's own production that has been measured and on which tax has been determined (see pg. 10 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

TTB Response: BA is not aware of a specific TTB response to this issue.

BA continues to believe that TTB's regulations do not adequately reflect today's common practice of using enterprise software systems to track product and store records. TTB regulations should recognize these new systems and we accordingly ask TTB to initiate rulemaking to amend its regulations accordingly.

14. **Pay.gov reference – Brewers Report of Operations.** BA proposed including a reference in Section 25.297(a) to Pay.gov as a method of filing the Brewers Report of Operations (see pg. 10 of attached October 30, 2017 BA comment submission on the Department of Treasury Request for Information).

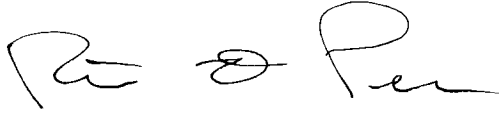
TTB Response: BA is not aware of a specific TTB response to this issue.

As explained earlier, BA views Pay.gov as an important tool for TTB and brewers and asks TTB to commence rulemaking to amend its regulations to explicitly reference the Pay.gov payment option.

* * *

Thank you for your consideration of these requests. The Brewers Association values the cooperative working relationship with TTB that we have mutually developed over the course of almost two decades and we look forward to continuing our work together in support of small brewers and the wider brewing community.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. D. Pease', written in a cursive style.

Robert D. Pease
President & CEO
Brewers Association