

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Parts 4, 5, 7, and 13**

[T.D. ATF-483]

RIN 1512-AC87

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R-288P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.**ACTION:** Treasury decision; temporary rule.

SUMMARY: ATF amends the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National Organic Program (NOP) rules. Any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by USDA and the applicable rules administered by ATF. Elsewhere in this separate part, ATF invites comments on this temporary rule. We will accept comments during the 60-day period following publication of the rule.

EFFECTIVE DATE: The effective date is October 21, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Evanchec, Bureau of Alcohol, Tobacco and Firearms, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202-927-8140; e-mail RJEvanchec@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:**Background***ATF's Authority To Regulate Labeling and Advertising*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information about a product's identity and prohibits the use of deceptive information on such labels. At 27 U.S.C. 205(f), the FAA Act prohibits deceptive advertising. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions. Regulations in 27 CFR parts 4, 5, and 7 set forth the rules for labeling and advertising of wine, distilled spirits, and malt beverages, respectively. Regulations in 27 CFR part 13 set forth rules for approval, denial, and revocation of labels and for appeals of our decisions on such issues.

Organic Foods Production Act of 1990

Under the Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501 *et seq.*, the USDA has authority over agricultural products sold, labeled, or represented (including those advertised) with organic claims. The OFPA applies to alcohol beverages, so producers and importers of wine, spirits, and malt beverages who comply with its rules may make organic claims about their products. The USDA office responsible for administering the OFPA is the Agricultural Marketing Service (AMS). On December 21, 2000, AMS published its final rule establishing the NOP. The final rule, beginning at 65 FR 80548, amended USDA regulations in title 7, Code of Federal Regulations, by adding a new part 205—National Organic Program.

AMS regulations apply to all domestic and imported products that make organic claims. However, in drafting their rules, the AMS used terms specific to non-alcohol food labels, such as "principal display panel," "information panel," and "ingredient list" to refer to positions on the label. On the NOP Web site (<http://www.ams.usda.gov/nop>), AMS provides guidance for placement of required and optional information related to organic claims on other types of packaging, such as alcohol beverage labels.

The OFPA and implementing regulations provide civil and criminal penalties for improper use of organic claims. AMS has sole authority to administer and enforce the NOP rules. Those rules became effective on February 20, 2001, and all labels and representations, including advertisements, that make organic claims must comply with the rules by October 21, 2002.

Prior ATF Policy on Organic Claims on Alcohol Beverages

Before the NOP regulations were published, we allowed importers and producers to claim their alcohol beverage products were made from organically grown raw materials if the applicant for label approval provided documentation of organic certification by a recognized certifying agency or State or foreign government. We enunciated our organic claims policy in our publication, Compliance Matters 95-2 (http://www.atf.treas.gov/pub/alctob_pub/comp952.htm).

After publication of the NOP regulations, we announced a new policy on organic claims in our Alcohol & Tobacco Newsletter of March 2001 (http://www.atf.treas.gov/pub/alctob_pub/mar2001newsltr02.htm). We

stated that our approval of labels with organic claims did not indicate compliance with the NOP.

Based upon the NOP-required compliance date of October 21, 2002, approval of any label that makes organic claims but does not comply with such rules will be revoked by operation of regulations as of October 21, 2002.

ATF Policy on Organic Claims on Alcohol Beverages Under the NOP

We have entered into a Memorandum of Understanding with AMS on a number of questions related to the agencies' responsibilities with respect to alcohol beverage labels and advertising that contain organic claims. ATF will refer any Certificate of Label Approval (COLA) or Certificate of Exemption from Label Approval application that makes an organic claim to AMS for a determination as to whether the label complies with NOP rules. If AMS advises us that the label complies with its rules, we will complete our customary review of the COLA or Exemption application and take appropriate action. If AMS advises us that the label does not comply with its rules, we will return the COLA or Exemption application to the applicant for correction, since the label would mislead consumers.

When ATF approves a label, we presume the contents of the bottle that uses the label will be as described on the label. If the contents do not conform to the description on the label, the product is mislabeled in violation of the FAA Act and must not be sold in interstate commerce under ATF-administered rules. This has always been true for any label claim, and we want to confirm this policy as it applies to organic claims on labels. For example, if we approve a label for a beer made from organically grown barley and the grower of the barley loses its organic certification, the brewer must not use the approved label on beer made from barley that was grown after the grower lost its certification. We will take action on such violations under the FAA Act and will refer the labels and pertinent information to AMS. Aside from whether a label or advertisement conforms with the NOP, ATF will continue to review labels under existing regulations to ensure that organic claims, as presented, are not likely to mislead or deceive consumers as to the identity of the products.

Products Without COLAs or Certificates of Exemption From Label Approval

There are certain situations when ATF does not issue a COLA or a Certificate of Exemption from Label

Approval. Examples are malt beverages that are bottled in or shipped into a State that does not have similar State law to the FAA Act and wines that contain less than 7 percent alcohol by volume, since such wines are not covered under the FAA Act. In these cases, the NOP rules continue to apply.

Advertising

ATF also has jurisdiction over advertising of alcohol beverages, but does not require pre-approval of advertising. If we discover any misleading use of organic claims in alcohol beverage advertising, we will treat these violations the same as any other violations involving misleading information in advertising. We will also refer our findings to the NOP for its further action.

Regulatory Changes

ATF amends its regulations in parts 4, 5, 7, and 13 to recognize the NOP's authority to regulate any organic claims on labels of alcohol beverages. We add 7 CFR 205 to the list of related regulations in each part. We add a new section to parts 4, 5, and 7 to confirm that we will allow organic claims in labeling and advertising of alcohol beverages as long as they conform to the requirements of the NOP.

In part 13, we add a section to reflect our reliance on AMS for determinations concerning organic claims on labels and to direct persons who wish to appeal any AMS determinations that affect labels to the proper office of AMS. We also amend § 13.51 to clarify that labels may be revoked by operation of laws and regulations other than the FAA Act and its implementing regulations. This has been ATF's policy, and the amendment to the regulation is a clarification rather than a change. Finally, we amend § 13.61 to note that we will disclose applications for approval of labels that make organic claims to the appropriate office of the USDA.

Each prohibited practices section of parts 4, 5, and 7 includes a prohibition on referring to standards or tests in a way that is misleading (§§ 4.39(a)(4), 5.42(a)(4), and 7.29(a)(4)). There is also a prohibition on the use of seals (§§ 4.39(g), 5.42(b)(7), and 7.29(d)), if they are misleading to consumers. Curative and therapeutic claims are prohibited under §§ 4.39(h), 5.42(b)(8), and 7.29(e). In its consumer information brochure on the organic rule (<http://www.ams.usda.gov/nop/consumerbrochure.htm>), the USDA stated, "USDA makes no claims that organically produced food is safer or more nutritious than conventionally

produced food. Organic food differs from conventionally produced food in the way it is grown, handled, and processed." Therefore, we do not consider organic claims to be curative or therapeutic. Since properly used organic claims, including certifying agent names and seals and the USDA organic seal, are not misleading to the consumer, we did not make any changes to the prohibited practices sections of the regulations.

No Change to Internal Revenue Code (IRC) Rules

The IRC only gives ATF authority to require labels that show compliance with the alcohol tax and qualification rules in chapter 51 of the Code. In parts 19, 24, and 25, we interpret this to mean the label must show the tax class, quantity, and responsible bottler. Because organic claims do not affect the tax classification or status of the product, we will not change the IRC regulations. Organic claims relating to alcohol beverage products that are exempt from FAA Act requirements will be entirely under the jurisdiction of the NOP.

Transition to New Rules

Any approved labels that make organic claims but do not comply with the NOP rules are revoked by operation of law and regulations, effective October 21, 2002. For products that were made from ingredients grown before October 21, 2002, bottlers and importers may submit labels to ATF for approval only until supplies of such products are exhausted. The NOP policy is articulated at <http://www.ams.usda.gov/nop/Commercestream091202.pdf>.

Regulatory Analyses and Notices

Administrative Procedure Act

Because this document merely cross-references the NOP rules as they relate to alcohol beverage labeling and because the compliance date for those rules is October 21, 2002, we find it to be impracticable to issue this Treasury Decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in § 553(d).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this temporary rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR

part 1320, do not apply to this final rule because no new requirement for collection(s) of information is contained in these regulations.

Executive Order 12866

We have determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

Marjorie D. Ruhf of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms, drafted this document. However, other employees of ATF, the Treasury Department, and the Department of Agriculture's Agricultural Marketing Service participated in developing the document.

List of Subjects

27 CFR Part 4

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

27 CFR Part 5

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

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Authority and Issuance

Title 27, Code of Federal Regulations, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

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

2. The undesignated cross-references preceding the center heading for subpart A are removed and a new § 4.5 is added to subpart A, to read as follows:

§ 4.5 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program

27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 9—American Viticultural Areas
 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 24—Wine
 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

3. A new subpart K is added to part 4 to read as follows:

Subpart K—Use of the Term “Organic”

§ 4.101 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 4.38(f).

(b) Any use of the term “organic” on a wine label or in advertising of wine must comply with the United States Department of Agriculture’s (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

5. Section 5.2 is revised to read as follows:

§ 5.2 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 19—Distilled Spirits Plants
 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands

27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

6. A new subpart I is added to part 5 to read as follows:

Subpart I—Use of the Term “Organic”

§ 5.71 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 5.33(f).

(b) Any use of the term “organic” on a distilled spirits label or in advertising of distilled spirits must comply with the United States Department of Agriculture’s (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

7. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

8. Section 7.4 is revised to read as follows:

§ 7.4 Related regulations.

The following regulations also relate to this part:

27 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 13—Labeling Proceedings
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 25—Beer
 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings

9. A new subpart I is added to part 7 to read as follows:

Subpart I—Use of the Term “Organic”

§ 7.81 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under § 7.28(e).

(b) Any use of the term “organic” on a malt beverage label or in advertising of malt beverages must comply with the United States Department of

Agriculture’s (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

PART 13—LABELING PROCEEDINGS

10. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e) and 26 U.S.C. 5301 and 7805.

11. Section 13.1 is amended by adding two sentences to the end of the section, to read as follows:

§ 13.1 Scope of part.

* * * The appeal process in this part does not apply to organic claims on alcohol beverage labels. See § 13.101.

12. A new § 13.3 is added to subpart A to read as follows:

§ 13.3 Related regulations.

The following regulations also relate to this part:

7 CFR Part 205—National Organic Program
 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits
 27 CFR Part 4—Labeling and Advertising of Wine
 27 CFR Part 5—Labeling and Advertising of Distilled Spirits
 27 CFR Part 7—Labeling and Advertising of Malt Beverages
 27 CFR Part 9—American Viticultural Areas
 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines
 27 CFR Part 16—Alcoholic Beverage Health Warning Statement
 27 CFR Part 19—Distilled Spirits Plants
 27 CFR Part 24—Wine
 27 CFR Part 25—Beer
 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands
 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer
 27 CFR Part 71—Rules of Practice in Permit Proceedings
 27 CFR Part 252—Exportation of Liquors

13. Section 13.51 is amended by revising the first sentence to read as follows:

§ 13.51 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals that their approvals have been revoked if the revocation occurs by operation of either ATF-administered law or regulation or applicable law or regulation of other agencies. * * *

14. Section 13.61 is amended by redesignating the text of paragraph (a) as paragraph (a)(1); adding a paragraph heading to newly designated paragraph (a)(1); and adding paragraph (a)(2) to read as follows:

§ 13.61 Publicity of information.

(a) *Pending and denied applications.*

(1) *General.* * * *

(2) *Labels that make organic claims.*

ATF will disclose applications for approval of labels that make organic claims to the appropriate office of the United States Department of Agriculture

to assure such labels comply with National Organic Program rules.

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15. A new subpart G is added to part 13 to read as follows:

Subpart G—Appeals Concerning Other Agencies' Rules

§ 13.101 Appeals concerning use of the term "organic."

To appeal a determination that an organic claim on a label does not comply with the National Organic Program rules in 7 CFR part 205, contact

the Program Manager, National Organic Program (NOP), Agricultural Marketing Service, United States Department of Agriculture. See the NOP appeal process in 7 CFR 205.680.

Signed: August 19, 2002.

Bradley A. Buckles,
Director.

Approved: September 6, 2002.

Timothy E. Skud,
Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).
[FR Doc. 02-25265 Filed 10-7-02; 8:45 am]

BILLING CODE 4810-31-P