

## TTB ANNOUNCES PROPOSED RULE TO CREATE SPECIAL CLASSIFICATION FOR AMERICAN SINGLE MALT WHISKY



By: [Richard M. Blau](#), Chair  
Nationwide Alcohol Industry Team

The Alcohol and Tobacco Tax and Trade Bureau (TTB), under the U.S. Department of Treasury, just published a long-awaited [notice of proposed rulemaking](#) to establish **American Single Malt Whisky** as a type of whisky that is a distinctive product of the U.S. If adopted, this proposed rule would create a new **standard of identity** defining what can be labeled as an “American Single Malt Whiskey.”

[Notice No. 213, Proposed Addition of American Single Malt Whisky to the Standards of Identity for Distilled Spirits](#), was published in the [Federal Register](#) on July 29, 2022. In that notice, TTB proposes to amend the regulations in [27 CFR part 5](#) that set forth the standards of identity for distilled spirits to include “American single malt whisky” as a type of whisky that is a distinctive product of the U.S.

### Standards of Identity: What and Why They Are

TTB administers regulations regarding the labeling of distilled spirits that include setting forth “standards of identity.” The authority to establish these standards is based on Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the U.S. Code at 27 U.S.C. §205(e). That section authorizes the Secretary of the Treasury to prescribe regulations relating to the “*packaging, marking, branding, and labeling and size and fill*” of alcohol beverage containers “*as will prohibit deception of the consumer with respect to such products*” and “*as will provide consumers with adequate information as to the identity and quality of the products...*”

Subpart I of part 5 of the TTB regulations, codified as 27 CFR part 5, establishes standards of identity for distilled spirits products and categorizes these products according to various classes and types. As used in 27 CFR §5.141, the term “class” refers to a general category of spirits.

Currently, there are 12 different classes of distilled spirits set out in §§5.142– 5.156, such as whisky, rum, gin, and brandy. As used in § 5.141, the term “type” refers to a subcategory within a class of spirits. For example, “Cognac” and “fruit brandy” are types of brandy, and “Cachaca” is a type of rum.

The TTB labeling regulations at 27 CFR §5.63(a)(2) require that the class and type of distilled spirits appear on the product’s label. These regulations provide that the class and type must be stated in conformity with Part 5, Subpart I of the TTB regulations.

### Classification of Malt Whisky

27 CFR §5.143(a) sets forth the standard of identity for **whisky** as follows:

(a) The class whisky. “Whisky” or “whiskey” is distilled spirits that is an alcoholic distillate from a fermented mash of any grain distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to whisky, stored in oak barrels (except that corn whisky need not be so stored), and bottled at not less than 40 percent alcohol by volume (80° proof), and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

In 27 CFR §5.143, paragraphs (c)(1) through (18) categorize the specific types of whisky, such as Bourbon whisky, spirit whisky, and Scotch whisky. Currently, “**malt whisky**” is found in paragraph (c)(2) and is described as whisky produced at not more than 160° proof from a fermented mash of not less than 51 percent malted barley and stored at not more than 125° proof in charred new oak barrels. Under 27 CFR 5.143(c)(5), malt whisky, if stored in charred new oak barrels for a period of two years or more, may optionally be further designated as “straight.”

### Why the Need for A Separate Standard of Identity for American Single Malt Whisky?

27 CFR §5.143(c)(7) sets forth the standard for **whisky distilled from malt mash**, which is whisky produced in the U.S. at not exceeding 160°, proof from a fermented mash of not less than 51 percent malted barley and stored in used oak barrels. As a result, the labeling regulations provide standards for identifying whisky as “**malt whisky**” and “**whisky distilled from malt mash**” but do not further specify standards for “single malt whisky.”

Likewise, 27 CFR §5.154(a)(3) provides that geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, may not be used unless the product is produced in the particular place or region indicated in the name. Accordingly, a product designated as “American whisky” (or “American single malt whisky”) must have been produced in the U.S. However, many distilled spirits industry members lobbied the federal government to further limit the scope of what could be labeled an “American Single malt whisky,” arguing that consumer fascination with single malt whisky is at an all-time high and establishing a clear definition for those spirits produced in the U.S. will drive innovation and help maintain the integrity of this category as more products enter the market.

On April 28, 2022, a coalition representing nearly 100 large and small single malt whiskey producers from across the U.S. urged the TTB to establish the new standard of identity for American Single Malt Whisky, asserting that a new standard would establish trust in the

category, clarify label declarations, and equip consumers with the necessary information to make informed purchasing decisions. According to the coalition's advocates, the Distilled Spirits Council of the U.S. (DISCUS) and the American Single Malt Whiskey Commission (ASMWC), American Single Malt Whisky is as unique as other American staples, such as Bourbon, and deserves to be similarly defined and protected. Desiring parity, the American distillers note that standard of identity protections have been in place for Scotch Whisky for generations, and believe that, to protect the developing American Single Malt category here in the U.S., such regulations should be in place here as well.

### What the New Rule Will Mean for Distillers

Under TTB's proposed regulation, in order to be labeled an "American single malt whisky," the product must be (i) distilled entirely at one U.S. distillery and (ii) mashed, distilled, and aged in the U.S. The product also must be:

- sourced from a fermented mash of 100% malted barley,
- at a distillation proof of 160° or less, and
- stored in oak barrels not exceeding 700 liters.

In addition, allowable coloring, flavoring, and blending materials would be permitted.

### Opportunity for Public Comment

Because this is a proposed regulation, TTB is seeking public comment before publishing a final version. Comments are due to the TTB on [September 27, 2022](#). To view all documents and comments received related to this notice of proposed rulemaking, see [Docket No. TTB-2022-0007](#) at [Regulations.gov](#). See [Notice No. 213](#) for complete instructions on how and where to comment. To comment electronically, use the [Regulations.gov comment form](#) for this proposal.

If you have questions regarding TTB's proposed rule creating a new standard of identity for American Single Malt Whisky, or if you would like assistance in preparing a comment for submission to TTB, please contact the GrayRobinson [Nationwide Alcohol Industry Team at 866.382.5132](#) or [beveragelaw@gray-robinson.com](mailto:beveragelaw@gray-robinson.com).



[Richard M. Blau](#) leads the GrayRobinson [Nationwide Alcohol Industry Team](#), focusing on the laws that govern the production, importation, marketing, distribution, and sale of alcohol beverages throughout America. Richard works with all levels of the alcohol industry's "three-tier system," as well as providers who are not licensees. He has represented international alcohol beverage importers and domestic manufacturers, statewide wholesaler trade groups and regional distributors, and retailers (including multistate on- and off-premises chains). Richard has achieved numerous peer-related accolades for his legal work, including **Chambers and Partners** - Nationally ranked as "Band 1" for Alcohol Beverage Law & Food Law; **Best Lawyers in America** - Nationally listed for Food and Beverage Law.