



September 27, 2022

Mr. Christopher M. Thiemann
Regulations and Rulings Division
Tax and Trade Bureau
1310 G Street, N.W., Box 12
Washington, D.C. 20005

Re: Notice No. 213/Notice of Proposed Rulemaking: Proposed Addition of American Single Malt Whisky to the Standards of Identity for Distilled Spirits (87 Fed. Reg. 45727 (July 29, 2022))

Dear Mr. Thiemann:

On behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing producers and marketers of distilled spirits sold in this country, we once again commend the Bureau for listening to industry calls and releasing this “Proposed Addition of American Single Malt Whisky to the Standards of Identity for Distilled Spirits” notice of proposed rulemaking. DISCUS greatly appreciates the opportunity to provide our views in response to the Bureau’s proposal to develop a standard for this growing category.

As previously conveyed, we believe that, by securing a formal Standard of Identity for American Single Malt Whisky, consumers will benefit from a clear definition of what constitutes a single malt whisky produced in the U.S., resulting in global growth and the development of yet another sought after American whiskey product to compete in both domestic and international markets. This new standard will establish trust in the category, clarify label declarations, and equip consumers with the necessary information to make informed purchasing decisions. Establishing this definition will also place an important marker down around the industry that will inspire competition between all tiers of producers, as they seek to innovate and create the next great American Single Malt Whisky brand.

The formal establishment of this category will also signal to the world that not only do we trust in and support our own distilleries, but we recognize that American Single Malt Whisky is as unique as other American staples, such as Bourbon, and deserves to be similarly defined, recognized and protected. These protections have been in place for Scotch Whisky for generations and similarly uniform standards are critically important to protect the developing American Single Malt category in the U.S. as well. As DISCUS and others seek to promote the protection of this category through free trade agreements with nations around the world, having an established definition in the U.S. is imperative for the development of greater international recognition and protection going forward.

Discussion of the Proposed Standard of Identity for American Single Malt Whisky

DISCUS commends the Bureau for proposing a standard closely aligning with what American Single Malt Whisky distillers are producing already and the general industry understanding of the category around the world. We largely support and agree with the definition as proposed, with the following suggested revisions that will further enhance the quality of the category and foster greater innovation as the class develops.

- *Use of other grains if denoted on label:* As we noted in our June 26, 2019 submission in response to the Modernization rulemaking, DISCUS strongly urges that any definition for American Single Malt Whiskey must also enshrine the ability for producers to create brands in this category that are distilled from grains other than barley, provided that those grains are clearly denoted on the label (e.g., American Single Malt Rye Whisky). We agree that the exact terminology “American Single Malt Whisky” should be reserved exclusively for products produced from 100% malted barley, but the ability to utilize other malted grains is critical to the overall success of the category and will enable the development of revolutionary brands that are distinctly American in nature.

Therefore, we urge the Bureau to allow distillers to label their products, for example, as “American Single Malt Rye Whisky” or “American Single Malt Wheat Whisky,” provided these products adhere to the other tenets of the American Single Malt Whisky definition and use a 100% malted grain, as defined under 27 C.F.R. Part 5.

Allowing the use of “other grain” innovations will create a category true to what makes American whiskey special and will benefit all U.S. whiskey distillers and consumers. Any grain can be malted, be it barley, rye, corn, or wheat, and the U.S. has a rich history of producing whiskey from a wide variety of grains, particularly rye, going back hundreds of years. In fact, many American distillers have long been producing and marketing Single Malt Whiskey from other grains. If the new standard precluded the use of any grain but barley, those long-standing brands would be irreparably damaged.

It is not just existing brands that would benefit from a more expansive definition. Permitting grains other than barley is in line with the American spirit of innovative whiskey-making, and to place a restriction on the choice of grain would stymie future innovative expressions.

- *“American single malt whisky” must be distilled entirely at one U.S. distillery, and must be mashed, distilled, and aged in the United States:* DISCUS fully agrees that American Single Malt Whisky must be distilled entirely at one U.S. distillery and aged in the U.S., as this aligns with how single malt whisky has been defined globally for hundreds of years and meets with consumer expectations for the category. We do believe, however,

that in order to further align with consumer understanding of single malt whisky and the practices traditionally required for this category, the mashing component must also take place at the same facility as the distillation.

The absence of such a requirement for mashing and distillation undermines the close connection between use of the term "single malt" and its place of production. This is a long-established element of traditional practice in the international single malt industry and requiring this for American Single Malt Whisky will ensure that this growing premium category is on equal footing with those other products in the global market. Such a requirement would further the reputation of the category as it develops and avoid any potential consumer confusion around single malt whiskies produced at multiple sites.

DISCUS Responses to the Questions Posed by TTB in the NPRM

In the NPRM, the Bureau specifically raised several questions regarding the American Single Malt Whisky definition for industry feedback. Our comments in response to those questions are set forth below.

Q1: Noting that other whisky standards do not incorporate size restrictions for barrels, is a 700-liter limit for oak barrels for aging American single malt whisky necessary or appropriate?

- DISCUS supports the proposed 700-liter oak barrel limit for American Single Malt Whisky. The 700-liter maximum size is consistent with international practice for single malt whiskies and will help meet consumer expectations for these products. This limitation on barrel size helps ensure there is sufficient interaction between the whisky and the wood, which is a critical component in creating the depth of flavor this whisky category is known for globally.

While we support this barrel size limitation for American Single Malt Whisky, which we understand would be unique for whiskies in TTB regulations, we urge that this limitation should not apply to secondary casks used for finishing. Applying the 700-liter limit to these secondary casks will stifle innovation and place unnecessary barriers and hurdles for producers to overcome when creating distinctive brands.

We would also like to note that barrel size limitations for other whisky categories, such as Bourbon or rye whisky, are not applicable and would prove unnecessary and inappropriate. The characteristics of this whisky type, the use of other types of barrels, and the grain involved all contribute to a unique circumstance in which a barrel size limitation for whisky is warranted.

Q2: What impact, if any, would this new standard of identity have on current producers of malt whisky?

- A new standard of identity for American Single Malt Whisky should benefit current U.S. malt whisky producers by providing a new category of whiskey that will create additional opportunities in the domestic and global markets. There should be no negative impact on the production of Malt Whisky in the U.S., as American Single Malt Whisky will be a separate class/type under the whisky category, possess a different flavor profile, and feature several distinct elements in its definition that differ greatly from the requirements for malt whisky, such as the ability to use various types of barrels and restrictions around production site. If anything, the creation of this class may positively influence the malt whisky category by fostering further awareness of American malt whiskies generally. Both types of malted whiskies can coexist and provide consumers with different products with diverse flavor profiles and styles.

Q3: If TTB adopts this proposed amendment, and if any previously approved labels are impacted, for how long should TTB allow the use of previously approved labels for American single malt whisky that do not meet the new standard of identity before they are revoked by operation of regulation?

- Given that one of the major reasons for advocating for a standard of identity for American Single Malt Whisky was to address the growing number of distillers labeling their products with this term without any formal TTB requirements in place for the category, it will be critical to standardize products in the marketplace and implement the new definition as quickly as possible to begin to build consumer awareness around the requirements for this burgeoning new category. Even with this important goal in mind, however, we understand that some distilleries may currently be producing or about to launch products that might not fully meet the eventual American Single Malt Whisky definition and it is our view that these distilleries should have a reasonable period of time to deplete their existing stocks and bring their products into compliance with the new standard. With many producers of American Single Malt Whisky being smaller craft distilleries, the financial hardships associated with an abrupt revocation of COLAs and inability to sell their products either already produced or in production might be significant and unnecessary.

For these reasons, DISCUS would support a 24-month use-up period for existing American Single Malt Whisky labels that do not meet the eventual definition. This timeframe should provide distillers enough runway to sell through their products and avoid undue financial burdens.

Q4: Is it appropriate that the new standard of identity allows the use of used, uncharred new, and charred new oak barrels?

- DISCUS strongly supports the ability to age American Single Malt Whiskey in used, uncharred new, and charred new oak barrels. Such use is critically important because it aligns with global consumer understanding for single malt products generally and allows for future product innovation that will create a further distinctiveness for this important category over the coming years. As the vast majority of international single malt whisky is granted this flexibility, it is important for American distillers to also have this ability to make innovative barrel choices.

Single malt whisky as a category is distinct from other whisky classes/types (e.g., Bourbon or malt whisky), and should be treated as such. Requiring the use of only new charred oak barrels would have a detrimental effect on the growth of the class and require many producers to alter their aging practices. Allowing use of used casks also provides the ability to minimize the environmental impact and will help avoid further exacerbating reported shortages of new charred oak barrels.

American Single Malt Whisky products, however, should include a reference to the type of barrel used on the label per §5.74(b)(4) to promote greater consumer transparency and showcase the different varieties of barrels used, as well as their impact on the flavor profiles of the whisky.

Q5: Should TTB amend its regulations to allow for the designation “straight” to be used with American Single Malt Whisky?

- Use of the designation “straight” with American Single Malt Whisky would be complicated, as certain exemptions to the current definition of “straight” would need to be integrated into existing TTB regulations to accommodate this new category. While most consumers may recognize “straight” as a term only indicating that a whisky is aged for at least two years, other aspects of the definition may make it incompatible with the proposed standard of identity for American Single Malt Whisky. For example, the use of the term “straight” indicates that the whisky was aged in a new, charred oak barrel and permits the mixing of other straight whiskies made in the same state.

These components of the “straight” definition clearly would not easily fit with the proposed American Single Malt Whisky definition and would create confusion, both among consumers and distillers. While there is precedent for TTB creating an exception to the new charred oak barrels aging requirement for straight corn whisky, providing a similar exception for American Single Malt Whisky to cover both the use of used and new uncharred barrels and to prohibit the mixing of other straight whiskies made in the

same state may dilute the meaning of the designation across other American whisky categories and not be an efficient way to simply disclose that the product is aged two years.

In lieu of the use of the designation “straight,” several DISCUS members believe that the American Single Malt Whisky standard should include a 2-year minimum maturation period, citing that a specific aging requirement is necessary to properly align with established quality standards in the international single malt industry, ensure that the category as a whole will maintain the reputation as a premium product, enable American producers to fairly compete on an international level, and improve the long-term export potential of "American Single Malt Whisky." Other DISCUS members are not supportive of implementing a minimum maturation period, noting that requiring a two-year maturation period for just one type of American whisky will result in consumer confusion on aging requirements in the U.S., could disadvantage other existing categories, and is unnecessary given the differences in climate between the U.S. and other single malt producing nations, such as Scotland.

While DISCUS takes no position on a maturation requirement in this submission, we do urge the Bureau to apply the existing TTB whisky age statement regulations to this category and to be vigilant in enforcing these rules to ensure all whisky products aged under 4 years are labeled accordingly to promote fair competition and mitigate the risk of consumer confusion in relation to maturation.

Q6: Should the use of coloring, flavoring, or blending materials be allowed in the production of American single malt whisky? If so, what coloring, flavoring, or blending materials are “customarily employed” in the production of American single malt whisky, in accordance with [27 CFR 5.155](#)? Please provide any available evidence of their use.

- DISCUS supports prohibiting the use of coloring, flavoring, or blending materials in association with American Single Malt Whisky. We believe the addition of coloring, flavoring or blending materials would undermine the reputation of the category as a natural product, which derives its characteristics from the raw materials used and the distiller’s expertise. This decision would align the category with other distinct American whiskies, such as Bourbon, where the addition of flavoring, coloring, or blending materials is not permitted.

If TTB decides to permit the use of harmless flavoring, coloring, and blending materials in relation to this new category, we respectfully urge that only the use of caramel coloring be permitted and that its use be stated on the label. This allowance comports with the allowance permitted for Single Malt Scotch Whisky, which only allows for caramel coloring but no further additives.

It is critical to protect this important class from the outset by allowing these whiskies to compete based on the inherent qualities of the product and processes.

Q7: Should TTB amend its regulations to allow for mixtures of American single malt whisky to be labeled as “blended American single malt whisky,” similar to how TTB regulations allow for blended Scotch whisky and blended Canadian whisky to be labeled, respectively, “blended Scotch whisky” and “blended Canadian whisky”?

- DISCUS does not support use of the term “Blended American Single Malt Whisky.” This proposed type would not reflect traditional single malt practices around the world and is contrary to the critical component of the definition requiring that a single malt is distilled at one distillery. For example, blends of Single Malt Scotches are labeled as “Blended Malt Scotch Whisky,” not “Blended Single Malt Scotch Whisky.”

DISCUS would not be opposed, however, to the introduction of a “Blended American Malt Whisky” or “American Blended Malt Whisky” category, as this would allow for an accurate characterization of blends of these products and mirror the traditions of other single malt producing regions. If TTB did establish such a category, we would ask that the addition of neutral spirits be prohibited to maintain quality and category standards.

Q8: On February 9, 2022, the Department of the Treasury released a report, “Competition in the Markets for Beer, Wine, and Spirits,” which was produced in response to [Executive Order 14036](#), “Promoting Competition in the American Economy” ([86 FR 36987](#), July 9, 2021). Would the addition of a standard of identity for American Single Malt Whisky affect competition in the alcohol beverage market?

- Adopting a new standard of identity in this growing category will undoubtedly have a positive impact on competition in the U.S. beverage alcohol market. Adding a definition for American Single Malt Whisky will generate new competitive benefits domestically, as producers invest more in bringing new and more choice to consumers. This new standard will also increase competition globally, as American producers will be able to compete overseas more effectively with other single malt products and utilize the US standards to protect the overall category by enforcing international trade agreements and laws. The competitive benefits from this new standard would apply to new entrants and existing competitors, as well as provide consumers with new options on store shelves. DISCUS strongly supports the creation and codification of this new class and type and firmly believes it will contribute positively to industry competition on all levels as advocated in the Executive Order Report on Competition.

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Conclusion

We commend and applaud TTB for proposing a standard of identity for American Single Malt Whisky, which will establish clear standard practices for the production of this category around the country and ensure consumers have a firm understanding of what American Single Malt Whisky means and the quality it signifies.

It is critically important to get this definition correct from the outset—ensuring that these products will be able to effectively compete with traditional single malt whiskies, but also allowing for American innovation to flourish. This new category could easily become America’s next distinctive whisky export and the right standards can facilitate fully realizing this potential.

We respectfully request that the Bureau adopt our recommendations, which will serve to further enhance these goals and support future innovations that will drive the category forward.

As always, if you have any comments regarding our submission, please do not hesitate to call and we look forward to working with you in this important endeavor.

Best regards,

A handwritten signature in black ink, appearing to read "Courtney Armour". The signature is fluid and cursive, with a large initial 'C' and 'A'.

Courtney Armour
Chief Legal Officer
Distilled Spirits Council