



September 27, 2022

Director, Regulations and Rulings Division
Alcohol and Tobacco 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))

In response to the Notice of Proposed Rulemaking dated July 29th, 2022 proposing to amend the regulations to include a new Standard of Identity for American Single Malt Whiskey, the American Single Malt Whiskey Commission (ASMWC)—a national association representing more than 100 producers of American Single Malt Whiskey across the United States and over 400 trade, media and consumer supporters—would like to formally support the proposed Standard of Identity and its final ratification in the C.F.R.

For the past decade, the American whiskey category has been growing dramatically and continues to expand and exceed all expectations. Recognition of U.S.-produced whiskey, including American Single Malt Whiskey, is now at an all-time high, with U.S. distillers winning awards and competitions nationally and around the world. The formal establishment of this category signals to the world that not only do we believe in and support our own distilleries, but we also recognize that American Single Malt Whiskey is unique (as Bourbon is) and deserves to be defined and protected. These protections have been in place for Scotch Whisky for generations and other regions across the world have been installing similar regulations that align to global standards and expectations, serving to support and protect their unique regional contribution. To do the same here for the developing category of single malt in the U.S. is of paramount importance and the urgency is pressing.

Beyond our ranks, there are another 100+ distilleries actively producing single malt in this country that conform with the Standard of Identity proposed in the NPRM. A great deal of investment has been made in this emerging category with the expectation that this Standard of Identity will be established according to the petition set forth several years ago. The ratification of this proposal would serve to support these growing businesses,

lead to the widespread creation of jobs in agriculture, distilling, bottling, distribution, and retailing, increase competition in the spirits sector, and deliver higher tax revenues realized at the national and local levels.

STANDARD OF IDENTITY FOR AMERICAN SINGLE MALT WHISKEY

We applaud TTB for hearing the industry and proposing a Standard of Identity that aligns with what distillers themselves have outlined. We support the following addition to 27 C.F.R. part §5.143(c) as proposed in the NPRM:

“American Single Malt Whiskey is whisky distilled entirely at one United States distillery, mashed, distilled, and matured in the United States of America, distilled to a proof not exceeding 160° proof from fermented mash of 100% malted barley, stored in oak containers not exceeding 700 liters, and bottled at not less than 80° proof.”

Ultimately, adding this Standard of identity to the C.F.R. will benefit consumers, both domestic and abroad, by providing a clear definition of what constitutes a single malt whiskey produced in the United States. It will establish trust in the category, clarify label declarations, allow our distilleries to compete on the global stage, and equip consumers with the necessary information to make informed decisions so they can have confidence in the product they are choosing to buy.

Rationale for the Proposed Standard of Identity

The proposed Standard of Identity aligns with the fundamental definition and consumer understanding established across the world for single malt whiskey without unnecessarily inhibiting innovation for our distillers here in America.

- *Distilled entirely at one United States distillery:* The “single” in single malt whiskey has been defined globally for generations now as whiskey distilled at a single distillery (as opposed to a blend, or vatting, of whiskeys from two or more facilities). Of course, that distillery should be in the United States to be called American Single Malt Whiskey.
- *Mashed, distilled and matured in the United States of America:* The rest of the production process should also take place in the United States for the whiskey to be called American Single Malt Whiskey.
- *Distilled from 100% malted barley:* “Malt” specified on its own refers to malted barley exclusively. This meaning has been established and understood by the industry and consumers worldwide and even in U.S. regulations for a long time under the Malt Whisky Type in the C.F.R.
- *Distilled to a proof not exceeding 160° proof:* This is an important provision designed to ensure the flavor and character of the grain remains after distillation. It aligns with all but one of the whiskey Types currently in the C.F.R. (“Spirit

Whisky” is the only Type that doesn’t have a maximum distillation proof of 160° as well as with the intent of Scotch whisky regulations for single malt (see “Pot Still Requirement” below). It should be extended to American Single Malt Whiskey for the same purposes.

- *Stored in oak containers not exceeding 700 liters:* Maturing single malt in oak containers (i.e. barrels/casks) is an accepted and fundamental stipulation for single malt whiskey, understood and embraced by the industry and consumers across the globe. The capacity limit serves to ensure that the influence of the oak is present. It is a standard first set by Scotch and Irish whiskey regulations and one that makes sense to uphold in our Standard of Identity as well. The 700-liter limit is substantial and leaves distillers with plenty of room for creativity and innovation while still maintaining the integrity of the category broadly.
- *Bottled at not less than 80° proof:* This is a requirement for the entire Class of whiskey in the United States as defined in the C.F.R.

There are three key points of differentiation between the Scotch Whisky regulations for single malt and TTB’s proposed Standard of Identity for American Single Malt Whiskey that should be addressed. Those are the omissions in the latter of requirements for (1) a minimum age, (2) the use of a pot still during distillation and (3) mashing and fermentation to happen at the facility of distillation. These three provisions are not necessary given the regulatory structure and precedent in America for whiskey Types in the C.F.R. broadly and are also not practical for the American whiskey industry to adopt. More importantly, these omissions do nothing to compromise the integrity of the definition for single malt globally but does allow for American Single Malt to contribute a unique voice in the world of single malt whiskey.

1. *Minimum Age Requirement:* Scotch Whisky regulations require a minimum maturation time of three (3) years. That is a requirement designed for their specific industry and their specific locale. Globally, transparency for the consumer should be the most important factor so consumers can make informed decisions based on the relative importance and merits they place on age statements. American whiskey regulations already require this transparency. Whiskeys matured for two (2) years or more may be labeled as Straight whiskey (if they meet all the requirements). In addition, any whiskey matured for less than four (4) years is required to include a statement of minimum age on the label. Because American regulations address age statements in this way, there is no precedent in other whiskey Types that specifically state a minimum age requirement. In addition, Scotland has a much different climate reality than does the United States. Theirs is a small and very uniform climate from one end of the country to the other. America, conversely, has a much broader and more varied regional climate reality that impacts whiskey-making in profound ways from region to region and even state to state. Imposing an arbitrary minimum age requirement for the entire country would not only be unprecedented and unfair, but also impractical.

2. *Pot Still Requirement:* Scotch Whisky regulations require single malt whiskey to be distilled using pot stills. The purpose of this requirement is to help ensure that more grain flavor is retained in the final distillate than distillations up to the 94.8% ABV maximum they require for the broader Scotch Whisky category. In America, specific whiskey Types already achieve this end by lowering the maximum distillation strength to 80% ABV (160° proof) as the proposed Standard of Identity for American Single Malt Whiskey does in TTB's NPRM. While some American distillers use traditional pot stills, the reality is that the whiskey industry in this country has developed over generations with a wide array of still configurations. It is impractical to require a limiting, wholesale re-engineering to traditional "pot stills", especially when other measures can be implemented to achieve the same end. Through different equipment, configurations and techniques, and most importantly the maximum distillation proof requirement, the American whiskey industry does just that.

3. *Mashing & Fermentation Requirement:* Like most other regions globally, the single malt category in the U.S. has evolved over time with many distillers partnering with breweries and other facilities to produce their mash. This has been a practice employed by distilleries and approved on labels bearing "single malt whiskey" since the category's infancy in America in the 1990s. While UK regulations require mashing and fermentation to happen at the same facility, no such requirements exist in the European Union or many other prominent single malt whiskey-making regions across the world where practices similar to those found in the U.S. have become critical components of emerging single malt categories. Distillation is the key to defining the "single" component of single malt whiskey globally, a requirement understood and embraced by consumers worldwide. The rest of the "production" process doesn't have the same customarily employed expectations. For instance, while UK regulations for Scotch whisky require mashing and fermentation to happen at the same facility as distillation, they do not require other aspects of production to take place at the same facility, specifically malting and maturation/aging. (It should be noted that the UK mashing and fermentation requirement applies to *all* Scotch whisky, not just the subcategory of single malt. Certainly there is no precedence for this in U.S. regulations for the broader Class of Whiskey.) Aside from distillation—the provision at the heart of the definition for single malt—it would be confusing to consumers worldwide for more and more regions to pick and choose which other parts of the production process are necessary to require.

ADDITIONAL QUESTIONS REGARDING THE STANDARD OF IDENTITY FOR AMERICAN SINGLE MALT WHISKEY

In the six years since the ASMWC was founded, we've received a number of questions regarding the viability and implications of a new Standard of Identity, most of which were also posed in TTB's NRPM. Our comments in response to those questions are as follows:

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

A1: As reviewed above, the 700-liter limit is a precedent set globally for single malt whiskey, so in this case it makes sense to adopt it for American Single Malt Whiskey even though there is no precedent for it within other American whiskey standards. Because consumers have come to expect this provision in single malt, we believe it to be both necessary and appropriate to include here.

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

A2: To our knowledge, there are not more than a handful of whiskeys bottled, labeled and sold under the “Malt Whisky” Type designation. A new Standard of Identity for American Single Malt Whiskey should have no impact to the producers of those products, nor should it preclude any producer in this country from producing a Malt whiskey product. We believe consumers deserve more definition, not less. Both Types can live side-by-side and give consumers more choice and more information with which to decide how they want to spend their money. The impact that this new Standard of Identity will have on the single malt category industry specifically, and the individual producers that make it, couldn’t be more profound. It will immediately lend the category legitimacy and credibility worldwide, helping U.S. producers compete in one of the fastest growing and most premium categories of spirits. It will protect the consumer by clearly identifying the category and it will protect the interests of these distillers across the globe. It will transform the marketplace as trade partners design dedicated shelf and menu space for the category, giving consumers a clearer understanding and basis for choice. It will lead to increased attention and validation for American Single Malt producers and their products as spirits competitions and publications group American single malt whiskeys and media outlets dedicate more and more coverage to the category. It will lead to new entrants, increased competition, innovation, and more choice for the consumer. And finally, it will ensure that there is a level playing field for all producers of single malt whiskey with respect to production requirements and the labeling implications that follow.

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 whiskey that do not meet the new standard of identity before they are revoked by operation of regulation?

A3: To our knowledge, there are very few products on the market today (again less than a handful) that are labeled as American Single Malt Whiskey but don’t meet the requirements as outlined in the proposed Standard of Identity. It is important that the integrity of the category is solidified as quickly as possible

once the Standard of Identity is ratified to prevent further confusion in the marketplace. That said, we are certainly conscious of and sympathetic to the implications this will have on any of our colleagues' businesses that will need to make changes to their process or products. The ASMWC would not want to encourage undue hardship. It is perfectly reasonable to provide a grace period to allow for the sell through of products either already on the market or with TTB-approved packaging already designed and purchased for upcoming bottlings. We believe that these products are limited in quantity. With that in mind, we would propose that a year grace period is reasonable, but we would trust the judgement of TTB if it were to field compelling appeals for a longer period based on specifics of individual distillery situations.

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

A4: It is not only appropriate that the new Standard of Identity allow for the use of a variety of oak casks, but critical. The definition for American Single Malt Whiskey must be written to align with the global consumer understanding and expectations for single malt while allowing for creativity and innovation at the same time. Requiring only charred new oak containers for maturation would not only confuse consumers, but also serve to stifle innovation in America. We need to acknowledge that, by the very nature of the grain, barley (and single malt as a style of whiskey) is distinct from corn (Bourbon), rye and other historically prevalent grains used in America and the Types that were defined as a result. We must protect our distilleries' ability to compete both domestically and abroad by allowing the same (if not expanded) freedom of choice in oak during maturation that other regions provide by not imposing or prescribing a type of oak that can be used.

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

A5: The ASMWC would support allowing whiskey to be labeled "Straight American Single Malt Whiskey" provided it is limited only to the 2-year aging requirement. We would suggest that most consumers equate "straight" to simply mean aged for a minimum of two (2) years and that the understanding of the two other provisions installed for other straight whiskey types is minimal. In the regulations, "straight" whiskey Types include a charred new oak container requirement and allows mixtures of two or more straight whiskeys provided that they are all from the same state. Including the first requirement of new charred oak would confuse the marketplace and have a negative impact on the integrity of the category as a whole, as mentioned above. Allowing blends from multiple facilities, even within the same state, would contradict the fundamental meaning of "single" malt whiskey which is defined worldwide as a whiskey distilled at one distillery. If TTB is not willing to adapt and customize the straight requirements to

fit the needs of the American Single Malt Whiskey category, we would strongly advocate for not allowing the straight designation at all.

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

A6: We appreciate TTB raising this topic in the NPRM. The ASMWC would support prohibiting Coloring, Flavoring or Blending Materials for American Single Malt Whiskey. This would put the category on the same footing as Bourbon (and straight whiskeys) and on a similar one as Scotch Single Malt Whisky which only allows for caramel coloring but no further adulteration. Arguments for allowing adulteration hinge on the perspective that it gives American single malt producers an advantage by allowing for more innovation. We would argue that it would in fact put our distillers at a distinct disadvantage in the marketplace by allowing for competitive categories such as Scotch single malt and even Bourbon to claim superiority, or at least plant unfair seeds of doubt amongst consumers that the American single malt category should be viewed as inferior or with suspicion. Our industry does not need to rely on adulteration for innovation. There are still lifetimes worth of exploration to be done in single malt within the guidelines of the proposed Standard of Identity. We consider the following practices to be customarily employed in the production of American Single Malt Whiskey: 1) the addition of caramel color, which the Scotch Whisky industry has established as a customarily employed practice in single malt production, and 2) finishing with woods in addition to barrel aging, which at least one of our members has established as a customarily employed practice for the past fifteen years. Many concepts and practices could be debated but gaining consensus would be challenging and time-consuming. Should TTB want to entertain that debate at a later date, under separate petition, the ASMWC and its members would happily participate, but we would ask that it does not delay the ratification of a Standard of Identity, even if that means allowing adulteration for now under the current guidelines outlined in the Beverage Alcohol Manual. Our preference, however, would be to use this opportunity to prohibit all Coloring, Flavoring and Blending Materials from the outset if it would not delay ratification.

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

A7: The ASMWC would fully support an amendment to add a new Type of blended whiskey to the C.F.R. We believe that a blended malt tradition, similar to what is done in Scotland and beyond, is an inevitable evolution for the American

whiskey industry. That said, the word “single” must not and cannot be included in any amendment including the word “blended”. This is fundamental to the definition of single malt whiskey globally. For comparison, a whiskey cannot be labeled “Blended Scotch Single Malt Whiskey”. No such Type exists, in Scotland or beyond, and labeling a whiskey as such in America would not only irreparably damage the category of American Single Malt Whiskey but also confuse consumers both domestically and abroad. Given that the C.F.R. already includes a Standard of Identity for “Blended Whisky” broadly and “Blended Malt Whisky” that is specifically related to the Malt Whisky Type, this topic deserves further consideration to ensure proper nomenclature and consumer clarity and should be addressed under an entirely separate petition and review process. The ASMWC would gladly participate in this process at a future date.

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 Whiskey affect competition in the alcohol beverage market?

A8: The new Standard of Identity for American Single Malt Whiskey will do a great deal to encourage increased competition in the spirits category, and specifically whiskey, of course. Most tangibly, the ratification will precipitate new entrants to the marketplace giving consumers more options across the country. This includes more distilleries producing single malt and more products and volume coming from existing producers. Increased production volume will also expand competition upstream and downstream. Upstream, grain and materials suppliers will be competing for more business. Distilleries will be competing for talent. Downstream, on- and off-premise buyers will be competing for access to an increasing number of products and the establishment of American Single Malt Whiskey shelf and menu designations will spur further competition across whiskey categories. All of this is good for the end consumer and helps respond to the Executive Order with positive expansion in the spirits sector.

Q9: Should the new Standard of Identity allow for any type of malted grain?

A9: Across the globe (i.e., Scotland, Japan, India, Australia, etc.), the term “single malt whiskey” means 100% barley. Also, in the current TTB framework, when “malt” is used alone it is already defined as barley through the Malt Whisky Type. The definition for American Single Malt Whiskey should be the same. While some make the argument again that including other types of malted grain paves the way for America to have more innovative offerings, that would in fact put the category at a disadvantage since it will confuse consumers domestically and abroad while giving other single malt regions reason to dismiss American Single Malt Whiskey. We take no issue with other grains being added (i.e.

“American Single Malt Rye Whiskey”) so long as the grain is clearly specified in labeling, just like the Rye Malt Whisky Type already included in the C.F.R.

Q10: Why not require all the barley to be grown in the U.S.?

A10: There is no precedent in the C.F.R., nor in Scotch or Irish whiskey regulations for that matter, for stipulating the provenance of the grain used. The truth is, the barley marketplace is a global one with grain grown and shipped across the world. American distillers should have the same choice, like distillers do in other whiskey-making regions, to decide which malted barley they want to use based on their own creative and/or financial criteria for their whiskey.

CONCLUSION

Single malt whiskey has been made in America for over 30 years. It is critical that a definition be established now to protect the category that has evolved over that time. There are already more distilleries making single malt whiskey in America in accordance with the proposed Standard of Identity than there are in all of Scotland. TTB is currently approving labels bearing American Single Malt Whiskey. The proposed Standard of Identity establishes a clear and accurate definition that identifies exactly what is in the bottle and the process used to create the whiskey. It is complementary to long-standing definitions that exist in the U.S. for other Types of whiskey but also distinctive enough to add value to the consumer as a new Type. It meets the expectations consumers worldwide have for what single malt whiskey means without limiting the ability for American producers to innovate. It has widespread industry and consumer support, both in the U.S. and internationally.

We respectfully urge TTB to ratify the proposed definition as quickly as possible. If there is anything we can do to help finalize this addition to the C.F.R., please do not hesitate to contact us directly.

With best regards,
The American Single Malt Whiskey Commission

* Note to the reader: For the sake of simplicity, the spelling of whiskey used in this Comment includes the “e” unless referencing Scotch whisky or existing Types specifically. We understand that from a regulatory standpoint, “whisky” is the spelling that will be used in the C.F.R. but that both “whiskey” and “whisky” are valid and interchangeable in America.