

# Needs Correction:

## 9 Common Label & Formula Controversies for Spirits at TTB

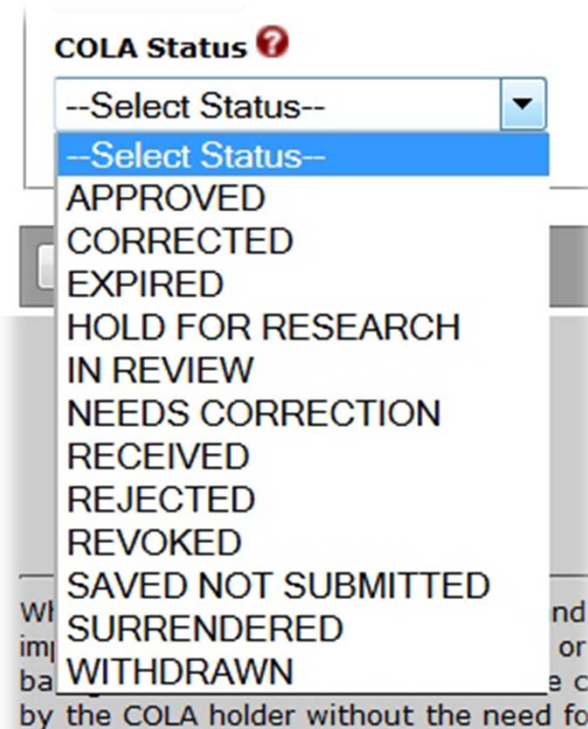


American Distilling Institute • April 2, 2014 • Seattle

**Robert C. Lehrman**  
Lehrman Beverage Law, PLLC  
Washington, DC

# Needs Correction

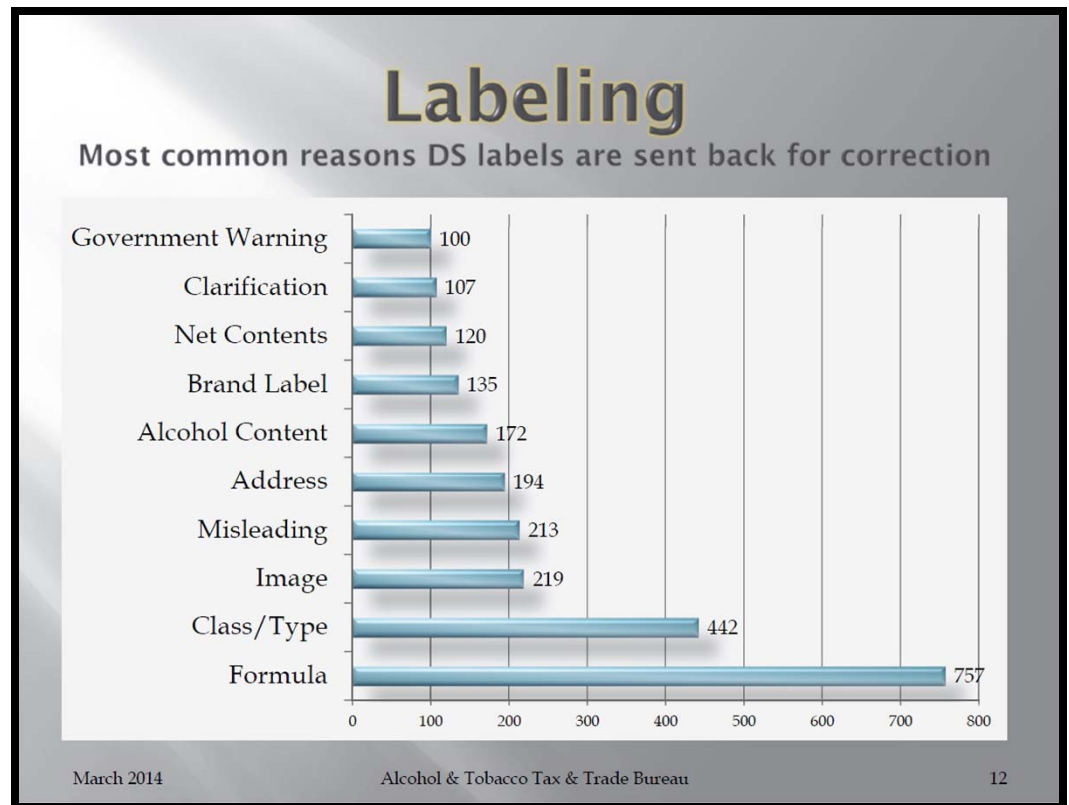
1. NC is term commonly used by TTB in recent years
2. As opposed to



# Needs Correction

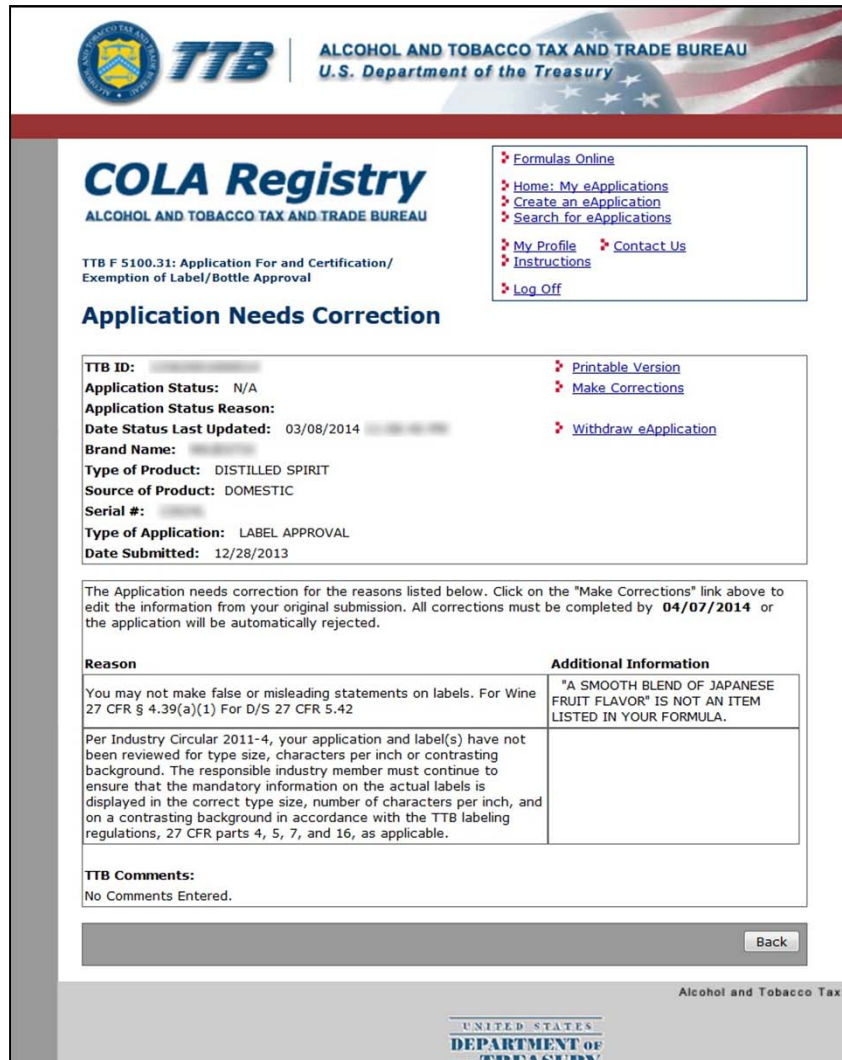
## 1. Something like 43% of labels get NC

- a. May be even  
higher for spirits
  - i. Higher still on  
"formula"  
products



# Needs Correction

1. Typically about 30 days to fix and resubmit
  - a. Stay at front of long line



**ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**  
U.S. Department of the Treasury

**COLA Registry**  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

TTB F 5100.31: Application For and Certification/  
Exemption of Label/Bottle Approval

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**Application Needs Correction**

TTB ID: [REDACTED] [Printable Version](#)  
Application Status: N/A [Make Corrections](#)  
Application Status Reason: [REDACTED]  
Date Status Last Updated: 03/08/2014 [Withdraw eApplication](#)  
Brand Name: [REDACTED]  
Type of Product: DISTILLED SPIRIT  
Source of Product: DOMESTIC  
Serial #: [REDACTED]  
Type of Application: LABEL APPROVAL  
Date Submitted: 12/28/2013

The Application needs correction for the reasons listed below. Click on the "Make Corrections" link above to edit the information from your original submission. All corrections must be completed by **04/07/2014** or the application will be automatically rejected.

Reason	Additional Information
You may not make false or misleading statements on labels. For Wine 27 CFR § 4.39(a)(1) For D/S 27 CFR 5.42	"A SMOOTH BLEND OF JAPANESE FRUIT FLAVOR" IS NOT AN ITEM LISTED IN YOUR FORMULA.
Per Industry Circular 2011-4, your application and label(s) have not been reviewed for type size, characters per inch or contrasting background. The responsible industry member must continue to ensure that the mandatory information on the actual labels is displayed in the correct type size, number of characters per inch, and on a contrasting background in accordance with the TTB labeling regulations, 27 CFR parts 4, 5, 7, and 16, as applicable.	

TTB Comments:  
No Comments Entered.

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Alcohol and Tobacco Tax

UNITED STATES  
DEPARTMENT OF  
TREASURY

# Labels

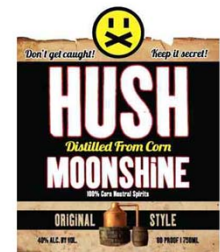
1. Moonshine
2. S
3. Number of Distillations
4. Craft, Distilled
5. Age, Aged Gin



# Label NC 1

## 1. Moonshine

- a. Or White Dog, White Whiskey, White Lightning
  - i. Not really a class/type
  - ii. So term is ok but not sufficient
    - OK with or without flavors



# Label NC 1

## 1. Size of true C/T compared to other

- a. Corn Whiskey compared to Moonshine
- b. Not ok on Absinthe

## 2. Things near true C/T

- a. Puff terms





# Label NC 2

## 1. Formula to label match

- a. GNS v. Vodka
- b. Flavor v. Flavorsg
- c. Caramel v. Certified Colors v. FD&C Yellow #5





# Label NC 3

## 1. Number of distillations and filtrations

a. Prove it

i. Continuous or pot still, plates



Hand-Made in **INDIANA**

Ultra Smooth  
from all-natural Rye

Copper Pot Distilled **18** Times


40% Alc./Vol (80 proof)  
375ml

# Label NC 4

## 1. Craft

- a. Not much defined by TTB
  - i. Hard to define
  - ii. ADI program and seal
- b. Other ideas, *optional*



CRAFT INDEX			
	Yes	No	
ADI Member	•		
ADI Code of Ethics	•		
Named Founders Onsite at Named DSP Majority of Worktime	•		Jim Eason
Named DSP at Named Place Distilled			All of the potable spirits
Named DSP Grew/Produced			Majority of the Corn
Majority of Ingredients Sourced within __ Miles of Named DSP			30
Hipster Mustache		•	
DSP's Total Annual Production Less than			50,000 Proof Gallons



# Label NC 4

## 1. Distilled, Produced, Bottled

- a. Easier to define
- b. See Revenue Ruling 69-496, [www.ttb.gov/rulings/69-496.htm](http://www.ttb.gov/rulings/69-496.htm)
  - i. Distilled: "A bottler who actually redistills neutral spirits in the production of vodka or who is the proprietor of the bonded production facilities where the eligible neutral spirits were distilled may use on labels the term 'distilled by.'"
  - ii. Produced: "A bottler who treats neutral spirits [or vodka] (1) with a least one ounce of activated carbon for each 100 wine gallons of neutral spirits or (2) by any other approved method of purifying or refining neutral spirits for the purpose of producing vodka may indicate on labels that the vodka was 'produced by' him."

# Label NC 5

## 1. Age claims

- a. Not allowed on  
Vodka, Gin,  
Liqueurs, DSS
  - i. 27 CFR 5.40(d)
- b. Required sometimes
  - i. Whiskey under 4
  - ii. Brandy under 2



— years in oak containers.”

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.*

(1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar

# Label NC 5

## 1. Age claims (continued)

### c. Straight

- i. At least 2
- ii. Bourbon, Rye, Corn Whiskey
- iii. No additives "whatsoever," 27 CFR 5.23(a)(3)
- iv. "Shall" be designated "straight"

### d. The youngest, oak

# Formulas

1. Timing
2. FDA
3. Liqueur
4. Vodka



# Formula NC 1

## 1. Formula missing

- a. Or does not match
- b. Even “Whiskey” needs formula
  - i. Anything with a flavor
- c. Check
  - i. BAM
  - ii. Formula Tool,  
[www.ttb.gov/tutorials/ic2007-4\\_help.shtml](http://www.ttb.gov/tutorials/ic2007-4_help.shtml)
  - iii. 27 CFR 5.27

TTB.GOV  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU  
U.S. Department of the Treasury

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Home/Obtaining Formula Approval

### Alcohol and Tobacco Tax and Trade Bureau

#### How Do I Obtain Formula Approval?

For many alcohol beverage products, TTB must evaluate the product and approve its formula before issuing a Certificate of Label Approval (COLA) to determine whether a proposed label identifies the product in an adequate and non-misleading way. We refer to this requirement as a Pre-COLA Product Evaluation.

There are four types of pre-COLA product evaluation. The type of pre-COLA product evaluation required for a particular product depends on that product's formulation and origin.

TTB regulations require formulas most commonly when flavoring or coloring materials are added to an alcohol beverage product. Since TTB does not have access to foreign plants, some imported products are subject to laboratory analysis or pre-import formula approval. For further information, visit the Formulation page.

#### Do I Need Formula Approval for My Product?

To determine if your product requires formula approval and/or laboratory analysis, please use the drop down menus to first select your industry, and then the alcohol beverage product for which you are seeking label approval. Please identify whether the product is domestic or imported, and then click on SHOW ME.

If a formula approval is required, please follow the instructions provided on how to obtain this approval. If no formula approval is required, you are ready to submit your application for label approval.

INDUSTRY Distilled Spirits Industry  
BEVERAGE Whisky  
☒ Domestic ☐ Imported

**FORMULA APPROVAL REQUIRED**  
Submit TTB Form 5100.51 to our Advertising, Labeling and Formulation Division.



# Formula NC 1

1. It can take a huge amount of time to get the formula
  - a. So start early
    - i. Best thing you can do
  - b. Something like 8 weeks
    - i. See [www.ttb.gov/formulation/processing-times.shtml](http://www.ttb.gov/formulation/processing-times.shtml) or [www.ttb.gov/labeling/processing-times.shtml](http://www.ttb.gov/labeling/processing-times.shtml)
    - ii. This is before label and after flavors and permit
  - c. Not at all easy to get expedite
    - i. It is at least feasible to get expedite on labels but less so on formulas
  - d. Won't even review let alone approve without

# Formula NC 2

## 1. Liqueur or Flavored Vodka

- a. Each flavor has to be "natural"
- b. Need a FIDS to show it
- c. Watch use-rates
  - i. Sugar, not 1-10%

**FLAVOR INGREDIENT DATA SHEET**  
Flavor Producer Information

(A) TTB Co. Code: Prolig (C) Company Name: Pro-Liquitech International (E) ADDRESS: 809 South 8th Street Louisville, KY 40203 (H) Flavor Name: N&A Honey Type Flavor (J) TTB Number (Form 5154.1): (K) Alcohol Range By Volume: 42.46 - 46.46% (L) Flavor Product Number:	(B) Date: 12/11/2013 (D) Phone: 502-266-7377 (F) Fax: 502-266-7336 (G) Contact Pers: Aaron Parker (M) Check Appropriate Box: Approved for Drawback (DrB) <input type="checkbox"/> Approved as No Action (N/A) <input checked="" type="checkbox"/> Approved for Export Only (Exp) <input type="checkbox"/> Submitted for TTB Approval <input type="checkbox"/> Not Yet Submitted for TTB Approval <input type="checkbox"/>
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**(N) Classification**

Natural ☐ N&A <0.1% Topnote ☒ N&A >0.1% Topnote ☐ Art ☐ Non-Flavor ☐

Total Artificial Flavor Content: 0 ppm (Excluding Synthetic Vanillin, Ethyl Vanillin, Synthetic Maltol and Ethyl Maltol)

**(O) Flavor Components**

Additive	TTB Limitation in Finished Product	Amount of additive or Agent present in flavor	Beverage label information based on functionality (Check or list label ingredients that affect the beverage label)
1. Synthetic Vanillin	40.0 ppm	85 ppm	1. FD&C Yellow #5
2. Ethyl Vanillin	16.0 ppm	0 ppm	2. FD&C Yellow #6
3. Synthetic Maltol	250.0 ppm	2500 ppm	3. FD&C Blue #1
4. Ethyl Maltol	100.0 ppm	0 ppm	4. FD&C Blue #2
5. Ester Gum	100.0 ppm	0 ppm	5. FD&C Green #3
6. BVO	15.0 ppm	0 ppm	6. FD&C Red #40
7. Sodium Benzoate	1000.0 ppm	0 ppm	7. Grapeskin Extract
8. Gum Arabic / Acacia	10000.0 ppm	0 ppm	8. Caramel Color
9. Propylene Glycol	50000.0 ppm	436304 ppm	9. Annatto
10. BHA	(≤0.5% of Essential Oil)	0 ppm	10. Elderberry Extract
11. Acetic Acid	1500.0 ppm	0 ppm	11. Beet Extract
12. Benzoic Acid	10.0 ppm	0 ppm	12. Oak Extract
13.	ppm	ppm	13.
14.	ppm	ppm	14.

**(P) Confidential Limited Ingredients Not Shown (CLI)**

Check if contained in formula ☐ Check if CLI was previously submitted ☐

Beverage Manufacturer / Importer: Pro-Liquitech International  
 Formula # / Serial Number:  
 Signature: \_\_\_\_\_ Title: Director, Development and Production Date: 12/11/2013

**(Q) Beverage Alcohol Manufacturer/Importer**

Beverage Manufacturer / Importer: \_\_\_\_\_ Formula # / Serial Number: \_\_\_\_\_  
 Flavor approved on: \_\_\_\_\_ Notified by: \_\_\_\_\_ As: \_\_\_\_\_  
 Drawback ☐  
 No Action ☐  
 Export Only ☐  
 SIGNATURE of ALCOHOL BEVERAGE REPRESENTATIVE: \_\_\_\_\_

# Formula NC 3

## 1. FDA-type limits

- a. Methanol
- b. Pits, prussic acid
- c. Thujone
- d. Caffeine
- e. Vitamins
- f. Non-GRAS

# Formula NC 4

## 1. Vodka

- a. Bottled too low, under 80
- b. Distilled too low, under 190
- c. Other than neutral spirits, sugar, water, citric acid
- d. Samples (imports or thujone)



# Learn More

1. **www.ttb.gov**
2. **BAM**, [www.ttb.gov/spirits/bam.shtml](http://www.ttb.gov/spirits/bam.shtml)
3. **CFR**
4. **FAA Act**, [www.law.cornell.edu/uscode/text/27/chapter-8/subchapter-I](http://www.law.cornell.edu/uscode/text/27/chapter-8/subchapter-I)
5. **Firm**
  - a. Labels, Formulas, Permits, Advertising, Trademark
  - b. Blog about above issues at [www.bevlaw.com/bevlog](http://www.bevlaw.com/bevlog)
6. **Questions**

# Robert C. Lehrman

## Lehrman Beverage Law, PLLC

### Washington, DC

[www.bevlaw.com](http://www.bevlaw.com)

[www.bevlaw.com/bevlog](http://www.bevlaw.com/bevlog) (blog)

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