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(c) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(f) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

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AUTHORITY: 27 U.S.C. 205.

SOURCE: T.D. 6521, 25 FR 13859, Dec. 29, 1960, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 7 appear by T.D. ATF-425, 65 FR 11891, Mar. 7, 2000.

Subpart A—Scope

§ 7.1 General.

The regulations in this part relate to the labeling and advertising of malt beverages.

§ 7.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

§ 7.3 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information

called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. ATF-92, 46 FR 46912, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5956, Feb. 27, 1987; T.D. 372, 61 FR 20723, May 8, 1996; T.D. ATF-425, 65 FR 11891, Mar. 7, 2000; T.D. TTB-44, 71 FR 16922, Apr. 4, 2006]

§ 7.4 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 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

[T.D. ATF-483, 67 FR 62858, Oct. 8, 2002, as amended by T.D. TTB-91, 76 FR 5477, Feb. 1, 2011]

§ 7.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR Part 7, Labeling and Advertising of Malt Beverages. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National

Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16922, Apr. 4, 2006]

Subpart B—Definitions

§ 7.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this subpart.

Act. The Federal Alcohol Administration Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Advertisement. See § 7.51 for meaning of term as used in subpart F of this part.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR Part 7, Labeling and Advertising of Malt Beverages.

Brand label. The label carrying, in the usual distinctive design, the brand name of the malt beverage.

Bottler. Any person who places malt beverages in containers of a capacity of one gallon or less.

Container. Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail.

Gallon. A U.S. gallon of 231 cubic inches of malt beverages at 39.1 °F (4 °C). All other liquid measures used are subdivisions of the gallon as defined.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without

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other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. Standards applying to the use of processing methods and flavors in malt beverage production appear in §7.11.

Other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Packer. Any person who places malt beverages in containers of a capacity in excess of one gallon.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

United States. The several States, the District of Columbia, and Puerto Rico; the term "State" includes the District of Columbia and Puerto Rico.

[T.D. ATF-48, 43 FR 13534, Mar. 31, 1978; 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF-66, 45 FR 40550, June 13, 1980; T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-344, 58 FR 40354, July 28, 1993; T.D. ATF-425, 65 FR 11892, Mar. 7, 2000; T.D. TTB-21, 70 FR 234, Jan. 3, 2005; T.D. TTB-44, 71 FR 16923, Apr. 4, 2006]

§7.11 Use of ingredients containing alcohol in malt beverages; processing of malt beverages.

(a) *Use of flavors and other nonbeverage ingredients containing alcohol—*

(1) *General.* Flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage. Except as provided in paragraph (a)(2) of this section, no more than 49% of the overall alcohol content of the finished product may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0% alcohol by volume must derive a minimum of 2.55% alcohol by volume from the fermentation of barley malt and other materials and may derive not more

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than 2.45% alcohol by volume from the addition of flavors and other nonbeverage ingredients containing alcohol.

(2) In the case of malt beverages with an alcohol content of more than 6% by volume, no more than 1.5% of the volume of the malt beverage may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

(b) *Processing.* Malt beverages may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

[T.D. TTB-21, 70 FR 234, Jan. 3, 2005]

Subpart C—Labeling Requirements for Malt Beverages

§7.20 General.

(a) *Application.* This subpart shall apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(b) *Marking, branding, and labeling.* No person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, shall sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from Customs custody any malt beverages in containers unless the malt beverages are packaged, and the packages are marked, branded, and labeled in conformity with this subpart.

(c) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law. The appropriate TTB officer may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his

judgment, the facts show that the additional labeling or relabeling is for the purpose of compliance with the requirements of this subpart or of State law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-66, 45 FR 40551, June 13, 1980; T.D. ATF-425, 65 FR 11892, Mar. 7, 2000]

§ 7.21 Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20 through 7.29 and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20 through 7.29.

(c) If the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§ 7.22 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 7.23.

(2) Class, in accordance with § 7.24.

(3) Name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in paragraph (b) of this section.

(4) Net contents (except when blown, branded, or burned, in the container) in accordance with § 7.27.

(5) Alcohol content in accordance with § 7.71, for malt beverages that contain any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol.

(b) On the brand label or on a separate label (back or front):

(1) In the case of imported malt beverages, name and address of importer in accordance with § 7.25.

(2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with § 7.25.

(3) Alcoholic content, when required by State law, in accordance with § 7.71.

(4) A statement that the product contains FD&C Yellow No. 5, where that coloring material is used in a product bottled on or after October 6, 1984.

(5) A statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name (“cochineal extract” or “carmine”), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: “Contains Cochineal Extract” or “Contains Carmine” or, if applicable, “Contains Cochineal Extract and Carmine”). The statement that the product contains the color additive cochineal extract or the color additive carmine may appear on a strip label or a neck label in lieu of appearing on the brand label or back label.

(6) *Declaration of sulfites.* The statement “Contains sulfites” or “Contains (a) sulfiting agent(s)” or a statement identifying the specific sulfiting agent where sulfur dioxide or a sulfiting agent is detected at a level of 10 or more parts per million, measured as total sulfur dioxide. The sulfite declaration may appear on a strip label or neck label in lieu of appearing on the front or back label. The provisions of this paragraph shall apply to:

(i) Any certificate of label approval issued on or after January 9, 1987;

(ii) Any malt beverage bottled on or after July 9, 1987, regardless of the date

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of issuance of the certificate of label approval; and,

(iii) Any malt beverage removed on or after January 9, 1988.

(7) Declaration of aspartame. The following statement, in capital letters, separate and apart from all other information, when the product contains aspartame in accordance with Food and Drug Administration (FDA) regulations:

“PHENYLKETONURICS: CONTAINS PHENYLALANINE.”

(Paragraph (b)(6) approved by the Office of Management and Budget under Control No. 1512-0469)

[T.D. 6521, 25 FR 13859, Dec. 29, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §7.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§7.22a Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section the following terms have the meanings indicated.

(1) *Major food allergen.* Major food allergen means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived.* Name of the food source from which each major food allergen is derived means the name

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of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts); and

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names “egg” and “peanuts”, as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the name “soy”, “soybean”, or “soya” may be used instead of “soybeans”.

(b) *Voluntary labeling standards.* Major food allergens (defined in paragraph (a)(1) of this section) used in the production of a malt beverage product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the malt beverage product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under §7.22b. The major food allergens declaration must consist of the word “Contains” followed by a colon and the name of the food source from which each major food allergen is derived (for example, “Contains: egg”).

(c) *Cross reference.* For mandatory labeling requirements applicable to malt beverage products containing FD&C Yellow No. 5, sulfites, and aspartame, see §§7.22(b)(4), (b)(6), and (b)(7).

[T.D. TTB-53, 71 FR 42269, July 26, 2006]

§7.22b Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of §7.22a. The burden is on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.22(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information—(1) General.* TTB will promptly post to its public Web site, <http://www.ttb.gov>, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request

that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

- (i) The request must be in writing;
- (ii) The request must clearly identify the information to be kept confidential;
- (iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;
- (iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and
- (v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB-53, 71 FR 42269, July 26, 2006]

§ 7.23 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 7.24 Class and type.

(a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.

(b) Malt beverages which have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide shall for the purpose of this part be labeled in the same manner as malt beverages which have not been concentrated and reconstituted, except that there shall appear in direct conjunction with, and as a part of, the class designation the statement "PRODUCED FROM _____ CONCENTRATE" (the blank to be filled in with the appropriate class designation). All parts of the class designation shall appear in lettering of substantially the same size and kind.

(c) No product shall be designated as "half and half" unless it is in fact composed of equal parts of two classes of malt beverages the names of which are conspicuously stated in conjunction with the designation "half and half".

(d) Products containing less than one-half of 1 percent (.5%) of alcohol by volume shall bear the class designation

"malt beverage," or "cereal beverage," or "near beer." If the designation "near beer" is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background. No product containing less than one-half of 1 percent of alcohol by volume shall bear the class designations "beer", "lager beer", "lager", "ale", "porter", or "stout", or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

(e) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale," "porter," or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall bear any of these class designations.

(f) Geographical names for distinctive types of malt beverages (other than names found under paragraph (g) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word "type" or the word "American", or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic; Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, Pilsen (Pilsener and Pilsner): *Provided*, That notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as "Pilsen," "Pilsener," or "Pilsner" without further modification, if it conforms to such type.

(g) Only such geographical names for distinctive types of malt beverages as the appropriate TTB officer finds have by usage and common knowledge lost their geographical significance to such

an extent that they have become generic shall be deemed to have become generic, e.g., India Pale Ale.

(h) Except as provided in § 7.23(b), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

[T.D. 6672, 28 FR 9637, Aug. 31, 1963, as amended at 29 FR 3572, Mar. 20, 1964; T.D. ATF-249, 52 FR 5956, Feb. 27, 1987; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF-425, 65 FR 11892, Mar. 7, 2000; T.D. TTB-91, 76 FR 5477, Feb. 1, 2011]

§ 7.25 Name and address.

(a) *Domestic malt beverages.* (1) On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. The bottler's or packer's principal place of business may be shown in lieu of the actual place where bottled or packed if the address shown is a location where bottling or packing operation takes place. The appropriate TTB officer may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the beer.

(2) If malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu of), the name and address of such other person immediately preceded by the words "bottled for," "distributed by," or other similar appropriate phrase.

(b) *Imported malt beverages.* On labels of containers of imported malt beverages, there shall be stated the words "imported by," or a singular appropriate phrase, and immediately thereafter the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition there may, but need not, be stated unless required by State or foreign law or regulation the name and principal place of business of the foreign

manufacturer, bottler, packer, or shipper.

(c) *Post-office address.* The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless (1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

(Approved by the Office of Management and Budget under control number 1512-0474)

[T.D. 6551, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-225, 51 FR 8492, Mar. 12, 1986]

§ 7.26 Alcoholic content [suspended as of April 19, 1993; see § 7.71].

(a) The alcoholic content and the percentage and quantity of the original extract shall not be stated unless required by State law. When alcoholic content is required to be stated, but the manner of statement is not specified in the State law, it shall be stated in percentage of alcohol by weight or by volume, and not by proof or by maximums or minimums. Otherwise the manner of statement shall be as specified in the State law.

(b) The terms "low alcohol" or "reduced alcohol" may be used only on malt beverage products containing less than 2.5 percent alcohol by volume.

(c) The term "non-alcoholic" may be used on malt beverage products, provided the statement "contains less than 0.5 percent (or .5%) alcohol by volume" appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(d) The term "alcohol-free" may be used only on malt beverage products containing no alcohol.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF-339, 58 FR 21231, Apr. 19, 1993]

EFFECTIVE DATE NOTE: By 58 FR 21231, Apr. 19, 1993, § 7.26 was suspended indefinitely.

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§ 7.27 Net contents.

(a) Net contents shall be stated as follows:

(1) If less than 1 pint, in fluid ounces, or fractions of a pint.

(2) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(3) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof.

(b) All fractions shall be expressed in their lowest denominations.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

§ 7.28 General requirements.

(a) *Contrasting background.* All labels shall be so designed that all statements required by this subpart are readily legible under ordinary conditions, and all the statements are on a contrasting background.

(b) *Size of type*—(1) *Containers of more than one-half pint.* Except for statements of alcoholic content, all mandatory information required on labels by this part shall be in script, type, or printing not smaller than 2 millimeters. If contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(2) *Containers of one-half pint or less.* Except for statements of alcoholic content, all mandatory information required on labels by this part shall be in script, type, or printing not smaller than 1 millimeter. If contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a

size substantially more conspicuous than that of the descriptive or explanatory information.

(3) *Alcoholic content statement.* All portions of the alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color. Unless otherwise required by State law, the statement of alcoholic content shall be in script, type, or printing:

(i) Not smaller than 1 millimeter for containers of one-half pint or less, or smaller than 2 millimeters for containers larger than one-half pint; or

(ii) Not larger than 3 millimeters for containers of 40 fl. oz. or less, or larger than 4 millimeters for containers larger than 40 fl. oz.

(c) *English language.* All information, other than the brand name, required by this subpart to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if the statements do not conflict with, or are contradictory to, the requirements of this subpart. Labels on containers of malt beverages bottled or packed for consumption within Puerto Rico may, if desired, state the information required by this subpart solely in the Spanish language, in lieu of the English language, except that the net contents shall also be stated in the English language.

(d) *Labels firmly affixed.* All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) *Additional information.* Labels may contain information other than the mandatory label information required by this subpart if the information complies with the requirements of this subpart and does not conflict with, or in any manner qualify, statements required by this part.

[T.D. ATF-66, 45 FR 40552, June 13, 1980, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-339, 58 FR 21231, Apr. 19, 1993]

§ 7.29 Prohibited practices.

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written,

printed, graphic, or other material accompanying such containers to the consumer, must not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation that tends to create a false or misleading impression that the

malt beverage contains distilled spirits or is a distilled spirits product. This paragraph does not prohibit the following on malt beverage labels:

(i) A truthful and accurate statement of alcohol content, in conformity with § 7.71;

(ii) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall label does not present a misleading impression about the identity of the product; or

(iii) The use of a cocktail name as a brand name or fanciful name of a malt beverage, provided that the overall label does not present a misleading impression about the identity of the product.

(b) *Simulation of Government stamps.* No label shall be of such design as to resemble or simulate a stamp of the United States Government or of any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, Federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State, or municipal, law or regulation, or is required or specifically authorized by the laws or regulations of the foreign country in which such malt beverages were produced. If the municipal or State government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by State law.

(c) *Use of word "bonded", etc.* The words "bonded", "bottled in bond", "aged in bond", "bonded age", "bottled under customs supervision", or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing, shall not be used on any label for malt beverages.

(d) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise,

any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(e) *Health-related statements*—(1) *Definitions*. When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health (other than the warning statement required by §16.21 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied spe-

cific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for labeling*—(i) *Health-related statements*. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(ii) *Specific health claims*. (A) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a malt beverage label. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on a malt beverage label.

(B) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects

on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement the following disclaimer: “This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;” or

(2) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(f) *Use of words “strong,” “full strength,” and similar words.* Labels shall not contain the words “strong,” “full strength,” “extra strength,” “high test,” “high proof,” “pre-war strength,” “full oldtime alcoholic strength,” or similar words or statements, likely to be considered as statements of alcoholic content, unless required by State law. This does not preclude use of the terms “low alcohol,” “reduced alcohol,” “non-alcoholic,” and “alcohol-free,” in accordance with § 7.71 (d), (e), and (f), nor does it preclude labeling with the alcohol content in accordance with § 7.71.

(g) *Use of numerals.* Labels shall not contain any statements, designs, or devices, whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcoholic content, unless required by State law, or as permitted by § 7.71.

(h) *Coverings, cartons, or cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement or any graphic pictorial, or emblematic representation, or other matter, which is

prohibited from appearing on any label or container of malt beverages.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-66, 45 FR 40552, June 13, 1980; T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF-339, 58 FR 21232, Apr. 19, 1993; T.D. TTB-1, 68 FR 10105, Mar. 3, 2003; T.D. TTB-21, 70 FR 234, Jan. 3, 2005]

Subpart D—Requirements for Withdrawal of Imported Malt Beverages From Customs Custody

§ 7.30 Application.

Sections 7.30 and 7.31 shall apply to withdrawals of malt beverages from customs custody only in the event that the laws or regulations of the State in which such malt beverages are withdrawn for consumption require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20 through 7.29.

§ 7.31 Label approval and release.

(a) *Certificate of label approval.* No imported malt beverages in containers shall be released from Customs custody for consumption unless there is deposited with the appropriate Customs officer at the port of entry the original or a photostatic copy of an approved certificate of label approval, TTB Form 5100.31.

(b) *Release.* If the original or photostatic copy of TTB Form 5100.31 has been approved, the brand or lot of imported malt beverages bearing labels identical with those shown thereon may be released from U.S. Customs custody.

(c) *Relabeling.* Imported malt beverages in U.S. Customs custody which are not labeled in conformity with certificates of label approval issued by the appropriate TTB officer must be relabeled, prior to release, under the supervision and direction of the U.S. Customs officers of the port at which the malt beverages are located.

(d) *Formula and samples.* The appropriate TTB officer may require an importer to submit a formula for a malt beverage, or a sample of any malt beverage or ingredients used in producing

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a malt beverage, prior to or in conjunction with the filing of a certificate of label approval on TTB Form 5100.31.

(e) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF-66, 45 FR 40552, June 13, 1980, as amended by T.D. ATF-94, 46 FR 55097, Nov. 6, 1981; T.D. ATF-242, 51 FR 39525, Oct. 29, 1986; T.D. ATF-359, 59 FR 42160, Aug. 17, 1994; T.D. ATF-406, 64 FR 2129, Jan. 13, 1999; T.D. TTB-21, 70 FR 235, Jan. 3, 2005]

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

§ 7.40 Application.

Sections 7.40 through 7.42 shall apply only to persons bottling or packing malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State, the laws or regulations of which require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20 through 7.29.

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person may bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless an approved certificate of label approval, TTB Form 5100.31, is issued.

(b) *Cross reference.* For procedures regarding the issuance, denial, and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

[T.D. ATF-406, 64 FR 2129, Jan. 13, 1999, as amended by T.D. ATF-425, 65 FR 11892, Mar. 7, 2000]

§ 7.42 Exhibiting certificates to Government officials.

Any bottler or packer holding an original or duplicate original of a certificate of label approval shall, upon demand exhibit such certificate to a duly authorized representative of the United States Government or any duly authorized representative of a State or political subdivision thereof.

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Subpart F—Advertising of Malt Beverages

§ 7.50 Application.

No person engaged in business as a brewer, wholesaler, or importer, of malt beverages directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or in any other printed or graphic matter, any advertisement of malt beverages, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 7.50–7.55 of this part. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of this Treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that §§ 7.50–7.55 of this part shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State. And provided further that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such retailer or publisher or radio or television broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages, directly or indirectly, or through an affiliate.

[T.D. ATF-180, 49 FR 31675, Aug. 8, 1984]

§ 7.51 Definitions.

As used in §§ 7.50 through 7.55 of this part, the term “advertisement” includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade

booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the container, representations made on cases, or in any billboard, sign, or other outdoor advertisement, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail which constitute a part of the labeling under §§ 7.20 through 7.29 of this part.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any brewer, and which is not written by or at the direction of the brewer.

[T.D. ATF-180, 49 FR 31675, Aug. 8, 1984]

§ 7.52 Mandatory statements.

(a) *Responsible advertiser.* The advertisement shall state the name and address of the brewer, bottler, packer, wholesaler, or importer responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class.* The advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

(c) *Exception.* (1) If an advertisement refers to a general malt beverage line or all of the malt beverage products of one company, whether by the company name or by the brand name common to all the malt beverages in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of malt beverage is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the com-

pany name or brand name of the product.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-180, 49 FR 31675, Aug. 8, 1984]

§ 7.53 Legibility of mandatory information.

(a) Statements required under §§ 7.50 through 7.55 of this part that appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information shall be so stated in both the print and audiovisual media that it will be readily apparent to the persons viewing the advertisement.

[T.D. ATF-180, 49 FR 31675, Aug. 8, 1984]

§ 7.54 Prohibited statements.

(a) *General prohibition.* An advertisement of malt beverages must not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of

falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) Any statement that the malt beverages are brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulation; and if a municipal or State permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) The words “bonded”, “bottled in bond”, “aged in bond”, “bonded age”, “bottled under customs supervision”, or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing.

(8) Any statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product. This paragraph does not prohibit the following in advertisements for malt beverages:

(i) A truthful and accurate statement of alcohol content, in conformity with §7.71;

(ii) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall advertisement does not present a misleading impression about the identity of the product; or

(iii) The use of a cocktail name as a brand name or fanciful name of a malt beverage, provided that the overall advertisement does not present a misleading impression about the identity of the product.

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Alcoholic content.* (1) Advertisements shall not contain the words “strong,” “full strength,” “extra strength,” “high test,” “high proof,” “full alcohol strength,” or any other statement of alcoholic content, or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, figures, or similar words or statements, likely to be considered as statements of alcoholic content, unless required by State law. This does not preclude use of the terms “low alcohol,” “reduced alcohol,” “non-alcoholic,” and “alcohol-free,” as used on labels, in accordance with §7.71 (d), (e), and (f).

(2) An approved malt beverage label which bears a statement of alcoholic content permitted under §7.71 may be depicted in any advertising media. The statement of alcoholic content on the label may not appear more prominently in the advertisement than it does on the approved label.

(3) An actual malt beverage bottle showing the approved label bearing a statement of alcoholic content permitted under §7.71 may be displayed in any advertising media.

(d) *Class.* (1) No product containing less than one-half of 1 per centum of alcohol by volume shall be designated in any advertisement as “beer”, “lager beer”, “lager”, “ale”, “porter”, or “stout”, or by any other class or type designation commonly applied to fermented malt beverages containing one-half of 1 per centum or more of alcohol by volume.

(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to “ale,” “porter,” or “stout” and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall be designated in any advertisement by any of these class designations.

(e) *Health-related statements*—(1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol,

malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for advertising*—(i) *Health-related statements*. In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must ap-

pear as prominent as the health-related statement.

(ii) *Specific health claims*. A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(1) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: “This statement should not encourage you to drink or increase your alcohol consumption for health reasons;” or

(2) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(f) *Confusion of brands*. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or a newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply

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to the other or others, and if as to such latter the representations contravene any provision of §§ 7.50 through 7.54 or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. "Subliminal or similar techniques," as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

[T.D. 6521, 25 FR 13859, Dec. 29, 1960, as amended by T.D. ATF-180, 49 FR 31675, Aug. 8, 1984; T.D. ATF 280, 54 FR 3594, Jan. 25, 1989; T.D. ATF-339, 58 FR 21232, Apr. 19, 1993; T.D. TTB-1, 68 FR 10106, Mar. 3, 2003; T.D. TTB-21, 70 FR 235, Jan. 3, 2005]

§ 7.55 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods*, ASTM Special Technical Publication 434, published by the American Society

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for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68-15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

[T.D. ATF-180, 49 FR 31676, Aug. 8, 1984]

Subpart G—General Provisions

§ 7.60 Exports.

This part shall not apply to malt beverages exported in bond.

Subpart H—Interim Regulations for Alcoholic Content Statements

§ 7.71 Alcoholic content.

(a) *General.* Alcoholic content and the percentage and quantity of the original gravity or extract may be stated on a label unless prohibited by State law. When alcoholic content is stated, and the manner of statement is not required under State law, it shall be stated as prescribed in paragraph (b) of this section.

(b) *Form of statement.* (1) Statement of alcoholic content shall be expressed in percent alcohol by volume, and not by percent by weight, proof, or by maximums or minimums.

(2) For malt beverages containing 0.5 percent or more alcohol by volume, statements of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by paragraph (c) (1) and (2) of this section. For malt beverages containing less than 0.5 percent alcohol by volume, alcoholic content may be expressed in one-hundredths of a percent, subject to the tolerance permitted in paragraph (c)(3) of this section.

(3) Alcoholic content shall be expressed in the following fashion: "alcohol—percent by volume," "alcohol by volume—percent," "—percent alcohol by volume," or "—percent alcohol/volume." The abbreviations "alc" and "vol" may be used in lieu of the words "alcohol" and "volume," and the symbol "%" may be used in lieu of the word "percent."

(c) *Tolerances.* (1) For malt beverages containing 0.5 percent or more alcohol by volume, a tolerance of 0.3 percent

will be permitted, either above or below the stated percentage of alcohol. Any malt beverage which is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance.

(2) For malt beverages which are labeled as “low alcohol” or “reduced alcohol” under paragraph (d) of this section, the actual alcoholic content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c)(1) of this section.

(3) For malt beverages containing less than 0.5 percent alcohol by volume, the actual alcoholic content may not exceed the labeled alcoholic content. A malt beverage may not be labeled with an alcoholic content of 0.0 percent alcohol by volume unless it is also labeled as “alcohol free” and contains no alcohol.

(d) *Low alcohol and reduced alcohol.* The terms “low alcohol” or “reduced alcohol” may be used only on malt beverages containing less than 2.5 percent alcohol by volume.

(e) *Non-alcoholic.* The term “non-alcoholic” may be used on malt beverages, provided the statement “contains less than 0.5 percent (or .5%) alcohol by volume” appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

(f) *Alcohol free.* The term “alcohol free” may be used only on malt beverages containing no alcohol.

[T.D. ATF-339, 58 FR 21232, Apr. 19, 1993]

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.

[T.D. ATF-483, 67 FR 62858, Oct. 8, 2002]

PART 8—EXCLUSIVE OUTLETS

Subpart A—Scope of Regulations

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- 8.2 Territorial extent.
- 8.3 Application.
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- 8.51 Exclusion, in general.
- 8.52 Practices which result in exclusion.
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- 8.54 Criteria for determining retailer independence.

AUTHORITY: 15 U.S.C. 49-50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

SOURCE: T.D. ATF-74, 45 FR 63256, Sept. 23, 1980, unless otherwise noted.

Subpart A—Scope of Regulations

§ 8.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are exclusive outlets under section 105(a) of the Act and criteria for determining whether a practice is a violation of section 105(a) of the Act. This part does not attempt to enumerate all of the practices prohibited by section 105(a) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF-364, 60 FR 20425, Apr. 26, 1995]