

§ 7.42

§ 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.

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

27 CFR Ch. I (4–1–12 Edition)

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 company 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, sci-

entific 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 appear 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 bev-

erages 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 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; TTB T.D.-1, 68 FR 10106, Mar. 3, 2003; TTB T.D.-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 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).