DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 5 and 7

[Docket No. TTB–2018–0007; T.D. TTB–176; Ref: T.D. TTB–158 and Notice Nos. 176 and 176A]

RIN 1513–AB54

Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending certain of its regulations governing the labeling and advertising of distilled spirits and malt beverages to address comments it received in response to a notice of proposed rulemaking, Notice No. 176, published on November 26, 2018. On April 2, 2020, TTB finalized certain labeling amendments arising out of that proposed rule. This document finalizes the reorganization of, and addresses the remaining issues related to, the labeling of distilled spirits and malt beverages. Reorganizing the wine labeling regulations, and addressing the remaining labeling issues related to wine, as well as reorganizing and finalizing the regulations related to the advertising of wine, distilled spirits, and malt beverages, will be accomplished in future rulemaking. The regulatory amendments in this document will not require industry members to make changes to alcohol beverage labels or advertisements but instead provide additional flexibility to make certain changes going forward.

DATES: This final rule is effective March 11, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann or Kara T. Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. TTB's Statutory Authority
B. Notice No. 176
C. T.D. TTB–158
D. Scope of this Final Rule
E. Issues That Are Outside of the Scope of This Final Rule
F. Proposals Not Being Adopted
II. Discussion of Specific Comments Received and TTB Responses
A. Issues Affecting Multiple Commodities
B. Amendments Specific to 27 CFR part 5 (Distilled Spirits)
C. Amendments Specific to 27 CFR part 7 (Malt Beverages)
D. Amendments of the Advertising Regulations
E. Impact on Public Guidance Documents
III. Derivation Tables for Finalized Parts 5 and 7
IV. Regulatory Analyses and Notices
A. Regulatory Flexibility Act
B. Executive Order 12866
C. Paperwork Reduction Act
V. Drafting Information
List of Subjects
Authority and Issuance

I. Background

A. TTB's Statutory Authority

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of wine, distilled spirits, and malt beverages (referred to elsewhere in this document as ''alcohol beverages'').

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary of the Treasury (the Secretary) has delegated to the TTB Administrator various functions and duties in the administration and enforcement of this law through Treasury Department Order 120–01. For a more in-depth discussion of TTB's authority under the FAA Act regarding labeling, see Notice No. 176.

B. Notice No. 176

The TTB regulations concerning the labeling and advertising of alcohol beverages are contained in 27 CFR part 4, Labeling and Advertising of Wine; 27 CFR part 5, Labeling and Advertising of Distilled Spirits; and 27 CFR part 7, Labeling and Advertising of Malt Beverages. These 27 CFR parts are hereafter referred to as parts 4, 5, and 7, respectively.

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), ''Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.'' The principal goals of that proposed rule were to:

- Make the regulations governing the labeling of alcohol beverages easier to understand and easier to navigate. This included clarifying requirements, as well as reorganizing the regulations in 27 CFR parts 4, 5, and 7 and consolidating TTB's alcohol beverage advertising regulations in a new part, 27 CFR part 14.
- Incorporate into the regulations TTB guidance documents and current TTB policy, as well as changes in labeling standards that have come about through statutory changes and international agreements.
- Provide notice and the opportunity to comment on potential new labeling policies and standards, and on certain internal policies that had developed through the day-to-day practical application of the regulations to the approximately 200,000 label applications that TTB receives each year.

TTB requested comments from the public and all interested parties on the regulatory proposals contained in Notice No. 176. TTB stated that it was particularly interested in comments that address whether the proposed revisions to the labeling and advertising regulations will continue to protect the consumer by prohibiting false or misleading statements and requiring that labels provide the consumer with adequate information about the identity and quality of the product. Where TTB proposed substantive changes, TTB sought comments on the proposals for further appropriate improvements. With respect to the few proposed changes in Notice No. 176 that might require changes in current labeling or advertising practices, TTB sought comments on the impact that the proposed changes would have on industry members and any suggestions as to how to minimize any negative impact.

TTB also solicited comments from consumers, industry members, and the public on whether such changes would adequately protect consumers. Any regulatory proposals put forward by TTB on this issue would, of course, have to be consistent with the statutory requirements of the FAA Act.

The comment period for Notice No. 176 originally closed on March 26, 2019, but was reopened and extended at the request of commenters (see Notice No. 176A, 84 FR 9990). The extended comment period ended on June 26, 2019. TTB received and posted 1,143 comments in response to Notice No. 176. Commenters included trade associations, consumer and public interest groups, foreign entities, a Federally-recognized American Indian tribe, State legislators and members of Congress, industry members and related companies, and members of the public. The vast majority of comments addressed proposals relating to distilled spirits, with nearly 700 comments addressing the proposed amendment on the size and shape of oak barrels used to age distilled spirits.

TTB is also taking into consideration for purposes of this rulemaking earlier comments that were submitted to the Department of the Treasury in response to a Request for Information (RFI) published in the **Federal Register** on June 14, 2017 (82 FR 27212). The RFI invited members of the public to submit views and recommendations for Treasury Department regulations that could be eliminated, modified, or streamlined to reduce burdens. The comment period for the RFI closed on October 31, 2017.

Eight comments on the FAA Act labeling regulations, which included 28 specific recommendations, were submitted in response to the RFI. For ease of reference, TTB has posted these comments in the docket for this rulemaking. TTB is considering all of the relevant recommendations submitted in response to the RFI either as comments to Notice No. 176 or as suggestions for separate agency action, as appropriate.

C. T.D. TTB–158

On April 2, 2020, TTB published T.D. TTB–158 in the **Federal Register** (85 FR 18704), which finalized certain proposals from Notice No. 176, and announced its decision not to move forward with certain other proposals. Generally, the amendments that TTB adopted in T.D. TTB–158 were well-supported by commenters, could be implemented relatively quickly, and would either give more flexibility to industry members or help industry members understand existing requirements, while not requiring any current labels or advertisements to be changed. TTB did not incorporate the proposed reorganization of the regulations in T.D. TTB–158. Instead, amendments to the TTB regulations were made within the framework of the existing regulations.

D. Scope of This Final Rule

In this rulemaking, TTB is finalizing the reorganization proposed in Notice No. 176 for parts 5 and 7. This includes breaking up large existing sections into smaller sections to improve clarity and readability, resulting in a larger number of overall sections but not a larger number of regulatory requirements. TTB is also adopting many proposals that incorporate current policy into the regulations, providing improved transparency for industry and facilitating overall compliance. This final rule also addresses comments that TTB received on the proposed regulatory provisions for all of parts 5 and 7 by incorporating changes in the regulations; announcing that TTB will not move forward with some proposed changes; and identifying proposals or issues raised that will be considered for future rulemaking.

The document also includes liberalizing changes for distilled spirits or malt beverages that are either unique to a single commodity (such as the keg collar amendments, which are specific to malt beverages), or which largely bring the distilled spirits and malt beverage regulations into conformity with current policy already adopted for wine labeling (such as the liberalizing changes that allow information previously required to appear on a ''brand label'' to appear anywhere on the container, as long as certain elements of mandatory information appear in the same field of vision).

As previously indicated, this document does not contain any amendments that will require changes to distilled spirits or malt beverage labels or advertisements.

TTB is also adopting clarifying and liberalizing changes that will remove certain outdated regulatory restrictions on labeling and otherwise allow additional flexibility in labeling requirements that were proposed in Notice No. 176. Examples include providing additional flexibility in allowing the labeling of kegs with ''keg collars'' and ''tap covers'' that are not firmly affixed to the keg under certain circumstances to facilitate the reuse of kegs by different brewers; and removing some outdated restrictions on the use of ''disparaging'' statements on labels if such statements are truthful and non-misleading.

In this final rule, TTB is not amending the labeling or advertising regulations in part 4, which relate to wine. The comments on the proposed amendments to part 4 raised several issues that are unique to wine and require further analysis. Accordingly, TTB plans to address these issues in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which parts 5 and 7 are being reorganized. The future rulemaking on part 4 will also address the substantive issues raised by the commenters on the labeling and advertising of wine. At that time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176. In the interim, existing policies will continue for wines.

E. Issues That Are Outside of the Scope of This Final Rule

TTB received some comments that either asked TTB to take action with regard to separate rulemaking projects or petitioned for rulemaking on specific issues. These comments are considered to be outside of the scope of this rulemaking but will be evaluated as suggestions for future rulemaking by TTB.

1. Separate Rulemaking Initiatives

In Notice 176, TTB identified several ongoing rulemaking initiatives related to the labeling and advertising of alcohol beverages that would be handled separately from the proposed rule, stating as follows:

> There are a number of ongoing rulemaking initiatives related to labeling and advertising of alcohol beverages that will be handled separately from this proposed rule due to their complexity. For example, this document does not deal with ''Serving Facts'' statements, an issue that was the subject of a 2007 notice of proposed rulemaking (see Notice No. 73, 72 FR 41860, July 31, 2007) and TTB Ruling 2013–2. Nor does TTB address its current policy requiring statements of average analysis on labels that include nutrient content claims. Industry members should continue to rely on TTB's published rulings and other guidance documents on these issues. TTB's policy on gluten content statements is still an interim one; therefore, that issue is not addressed in the proposed rule (see TTB Ruling 2014–2). Substantive changes to allergen labeling requirements are not addressed in this document. Standards of fill requirements are not addressed in this document but TTB plans to address them in a separate rulemaking document.

Subsequent to the publication of Notice No. 176, TTB published Ruling 2020–2, which put into place updated policy on gluten content statements. Accordingly, comments that TTB received on these issues will either be treated as suggestions for future rulemaking or as comments on other current rulemaking initiatives.

a. Serving Facts and Allergen Labeling

The Center for Science in the Public Interest (CSPI), the Consumer Federation of America, and the National Consumers League submitted a joint comment to the Secretary of the Treasury, which referenced prior rulemaking initiatives relating to ''Serving Facts'' and allergen labeling. The comment asked the Secretary to instruct TTB:

> to withdraw the proposed rule and to issue a new proposal providing a mandatory, standardized declaration covering alcohol content by percentage and amount, serving size, calories, ingredients, allergen information, and other information relevant to consumers. This rule could be based on the prior regulatory dockets already underway and would provide much-needed closure to those considerable efforts.

TTB received many other comments urging the adoption of mandatory allergen labeling, mandatory ingredient labeling, and mandatory nutrient labeling.

As noted above, TTB specifically identified these issues as being outside the scope of Notice No. 176. Accordingly, TTB will consider these comments as a suggestion for future rulemaking.

b. Standards of Fill

In Notice No. 176, TTB identified standard of fill requirements as being outside of the scope of this rulemaking, and explained that TTB planned to address standards of fill in a separate rulemaking document. However, Notice No. 176 included a proposal to address ''aggregate'' standards of fill in a manner that is based on current policy. In 1988, TTB's predecessor agency started permitting bottlers and importers of wine and distilled spirits products to use containers that did not meet a standard of fill provided that the non-standard of fill containers were banded or wrapped together and sold as a single wine or distilled spirits product that, in total, met an approved standard of fill. For example, a wine or distilled spirits product sold in a package of thirty 25 mL containers to meet an authorized standard of fill of 750 mL would be an aggregate package under this policy. While this type of aggregate packaging has been permitted for some time, TTB's policy (which includes several conditions that must be met to qualify for treatment as an aggregate standard of fill) has not yet been codified in the regulations. In Notice No. 176, TTB proposed to codify the policy in the regulations, with certain revisions.

In response to Notice No. 176, TTB received 79 comments regarding standards of fill. Only a few of these comments addressed aggregate standards of fill. Instead, the comments generally focused on whether standards of fill should be eliminated entirely, and if not, what new standards of fill should be added to the wine and distilled spirits regulations. Accordingly, TTB included these comments in the rulemaking docket for its separate rulemaking project that focused on standards of fill.

On July 1, 2019, TTB published two notices of proposed rulemaking on standards of fill in the **Federal Register**. See Notice No. 182 (84 FR 31257) and Notice No. 183 (84 FR 31264). On December 29, 2020, after reviewing the comments received in response to these notices, as well as the 79 comments concerning standards of fill that were submitted in response to Notice No. 176, TTB published in the **Federal Register** T.D. TTB–165 (85 FR 85514), which amended the regulations in parts 4 and 5 to add seven new standards of fill for wine and distilled spirits. TTB also stated that it will conduct rulemaking to propose the addition of several new standards of fill for wine, including the 180, 300, 360, 550, 720 milliliters, and 1.8 L sizes.

TTB believes it would be premature to adopt final regulations on aggregate standards of fill before TTB, the industry, and the public have the opportunity to evaluate whether the expansion of the number of standards of fill available to industry members affects the merits of codifying in the regulations its aggregate standard of fill policy. Accordingly, while TTB will continue to enforce its current policy on aggregate standards of fill, it is not adopting regulations on this issue at this time, but will instead evaluate the need for further rulemaking on this question.

c. Petition on Agency Guidance

In response to Notice No. 176, TTB also received a petition from the New Civil Liberties Alliance requesting that the Treasury Department initiate a rulemaking process to promulgate regulations prohibiting any departmental component from issuing, relying on, or defending improper agency guidance. This petition is outside of the scope of Notice No. 176.

d. Comments and Petitions on Standards of Identity for New Classes of Distilled Spirits Products

TTB received several comments requesting the creation of new standards of identity for various distilled spirits products that TTB did not propose in Notice No. 176. For example, Privateer International asked that the regulations be amended to create a standard of identity for ''Straight rum.'' The comment stated that if TTB determined that the proposal was not within the scope of Notice No. 176, it should be considered as a petition under 27 CFR 70.701(c). Other commenters requesting new standards of identity for various distilled spirits products included E&J Gallo Winery (for Superior Grape Brandy), Desert Door (for Sotol), the Irish Spirits Association (for Irish Cream Liqueur), and Domeloz Spirits (for Somel).

After carefully reviewing these requests, TTB has determined that it would not be appropriate to move forward on any of these issues without first soliciting public comment on the proposed standards of identity. Accordingly, TTB will treat these comments as a request for further rulemaking and will evaluate them separately from this rulemaking.

TTB also received comments in support of petitions that had previously been filed with TTB but were not incorporated into the proposed amendments in the notice. For example, the American Single Malt Whiskey Commission submitted a comment in which it renewed its petition to include ''Single malt whiskey'' as a standard of identity in 27 CFR part 5. TTB received over 250 comments in support of this petition. Similarly, Singani63 submitted comments in support of a petition to establish a standard of identity for ''Singani,'' and SpiritsNL submitted comments in support of a petition to establish standards of identity for ''Genever.'' Because these issues were not specifically put forward for comment in Notice No. 176, the public and the industry were not given an opportunity to comment on the standards of identity suggested by the petitioners. TTB has determined that actions on these petitions would be premature without seeking public comment on the petitioned-for standards of identity. Accordingly, TTB will consider these comments for future rulemaking.

2. Other Issues Outside of the Scope

TTB also received comments on other topics that relate to regulatory provisions that are not in parts 4, 5, or 7 (such as Internal Revenue Code reporting requirements) or issues that were not aired for comment (such as regulations on private labels). TTB will treat these comments as suggestions for future rulemaking.

3. Label Approval Requirements

TTB also sought comments on whether more significant changes to the label approval process, such as expanding the categories of optional information that may be revised without TTB approval or limiting the scope of TTB's prior review of labels to certain mandatory information, should be considered. As noted earlier in this document, the FAA Act generally requires the submission of applications for label approval before bottlers or importers introduce their products into interstate commerce. As part of its label review process, TTB reviews both optional and mandatory information on labels. With regard to optional information, TTB's main goal is to ensure that such information does not mislead consumers.

While TTB received some comments with regard to the larger issue of ways to streamline the label approval process, TTB has determined that adoption of

any regulatory amendments in response to these comments is premature, without providing industry members and the general public with the opportunity to directly comment on such proposals.

F. Proposals Not Being Adopted

Some changes proposed in Notice No. 176 were opposed by commenters who provided substantive comments suggesting that the proposed policies required changes to existing labels, required industry members to incur costs, or did not have the intended result within the purpose of the FAA Act. As a result, TTB is not finalizing the following proposals:

- An amendment that proposed to clarify and somewhat expand existing requirements with regard to placing certain label information on closed ''packaging'' of wine, distilled spirits, and malt beverage containers.
- An amendment that proposed to clarify and expand current requirements that certain whisky products distilled in the United States must include the State of distillation on the label, by providing that a bottling address within the State does not suffice unless it includes a representation as to distillation.

While the proposed amendments would have provided additional information to consumers, some comments suggested that each of these proposals might also impose regulatory burdens or costs on industry members. TTB has concluded that the rulemaking record before it does not provide an adequate basis for evaluating the costs and benefits of the proposed revisions. Accordingly, TTB is not moving forward with these proposals in this rulemaking but will instead clarify current requirements with regard to labeling requirements for products in sealed, opaque cartons and the labeling of certain whiskies with information regarding the State of distillation. TTB will consider amendments to current policies for future rulemaking.

There were also some proposed clarifying changes that industry members interpreted as imposing new requirements, even where that was not the intent of the amendment. In several cases, TTB decided it was not necessary to adopt regulations on these issues. The failure to codify these policies does not represent a change in policy, but does reflect a determination by TTB that codification of these policies in the manner proposed by Notice No. 176 could be confusing to the industry and the public.

II. Discussion of Specific Comments Received and TTB Responses

For ease of navigation, TTB is setting forth the issues and comments it is addressing in this document in the following order: Issues affecting multiple commodities; amendments specific to 27 CFR part 5 (distilled spirits); amendments specific to 27 CFR part 7 (malt beverages); and amendments to the advertising regulations. Within each discussion, the order reflects generally the order the sections appear in the finalized regulations, which will aid readers in comparing the explanations in the preamble with the subsequent section setting forth the regulatory text.

The proposed changes from Notice No. 176 that were not addressed in T.D. TTB–158, and that are not addressed specifically in this preamble, are adopted without change in this final rule, and will not be discussed in this section. See Notice No. 176 for further information on those proposals.

A. Issues Affecting Multiple Commodities

1. Comments on the Need for Modernization and Reorganization

TTB received numerous comments from industry members and trade associations supporting its overall goal to reorganize and recodify the labeling regulations to simplify and clarify regulatory standards; incorporate industry circulars, rulings, and current policy into the regulations; and reduce the regulatory burden on industry members where possible. A few industry members expressed support for the overall modernization of the current regulations. For example, a comment from Big Cypress Distillery called the proposed regulations ''a most welcome and modernized improvement over the current regulations.'' A comment from Altitude Spirits stated, ''I think your updates and effort to modernize the regulations surrounding wine, beer, and spirits are a great idea and current regulations are in many cases in need of an update.'' Roulasion Distilling Company commented that the proposed changes were generally ''a great stride towards transparency and an improvement for many of my fellow producers.''

Several trade associations also praised the overall modernization of the regulations. The comment from the Texas Whiskey Association, which 117 other comments supported, stated that:

> In general, we are very supportive of the proposed changes. We think it clears up perceived ambiguities. We support a code for producers that results in more transparency and truthfulness for consumers.

The Brewers Association (BA) noted that the incorporation of existing industry circulars, rulings, and policy ''is important to achieve greater understanding and compliance among members of the BA and the broader alcohol beverage industry.'' The National Association of Beverage Importers (NABI) expressed its appreciation for the ''structure and parallelism of the three parts.'' Finally, Senator Charles Schumer expressed support for the ''streamlining'' of the regulations and urged TTB to finalize them.

Heaven Hill Brands commended TTB for taking on this project, but also asked that TTB avoid taking a ''piecemeal approach to modernization'' by finalizing the proposed rule ''in numerous'' documents. BA urged TTB ''to sustain the momentum and complete the process initiated in Notice 176.'' Finally, some commenters, including the Distilled Spirits Council of the United States (DISCUS) and Senator John Kennedy, were more critical of the overall impact of the proposed rule as well as the wording of certain clarifying language, but supported certain regulatory amendments.

TTB Response

TTB agrees with the commenters who suggested that incorporating industry circulars and rulings into the regulations promotes transparency and consistency, and believes that transparency benefits both industry members and consumers. TTB also plans to move forward with the proposed reorganization and parallelism of the parts. TTB continues to believe that proposed reorganization of the regulations will make it easier for the public and industry members to find relevant regulations and to compare regulations in the three parts.

TTB understands the concern that commenters expressed with regard to an approach that would result in numerous final rules. Nonetheless, for the reasons described earlier in this document, this final rule will reorganize only the labeling provisions in parts 5 (distilled spirits) and 7 (malt beverages). TTB believes it is important to resolve all of the outstanding labeling issues relating to distilled spirits and malt beverages in this document, while continuing to work on the some of the complex issues that pertain specifically to wine. The reorganization of the wine labeling regulations (in part 4) and the advertising regulations for wine, distilled spirits, and malt beverages (in

a new part 14) will not be addressed in this document, but will be addressed in the future.

Accordingly, TTB plans to address the reorganization of the wine labeling regulations in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which TTB is reorganizing parts 5 and 7, and which also will address the substantive issues raised by the commenters on the labeling and advertising of wine. At that time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176.

2. Subpart A—General Provisions

a. Definitions

In Notice No. 176, TTB proposed definitions for ''certificate holder,'' ''container,'' ''distinctive or fanciful name,'' and ''person'' for consistency across the regulations for wine, distilled spirits, and malt beverages.

Certificate holder: TTB proposed to add the definition of ''certificate holder'' to parts 4, 5, and 7 to read as follows: ''The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.'' TTB received one comment on this proposal, from DISCUS, which expressed support for the addition of this definition to the part 5 regulations, but suggested the elimination of the use of the term ''brewer'' because ''such references should be to a specific alcohol beverage category in its corresponding part.''

TTB Response

TTB believes that maintaining a single definition in the labeling regulations for all of the alcohol beverage commodities aids in understanding, particularly for the many industry members who engage in business in several alcohol beverage commodities. TTB also notes that the definitions of the term ''certificate of label approval'' in parts 4, 5 and 7, as amended by T.D. TTB–158, as well as the definition in part 13, which was not amended by T.D. TTB–158, currently refer to wine, distilled spirits, and malt beverages. Accordingly, TTB is finalizing the term ''certificate holder'' as proposed in parts 5 and 7.

Container: TTB proposed to amend the definition of the term ''container'' in parts 4 and 7 and to add the definition to part 5 to replace the definition of the term ''bottle.'' The proposed rule defined ''container'' in parts 4 and 7 as any can, bottle, box with an internal bladder, cask, keg, barrel, or other closed receptacle, in any size or material, that is for use in the sale of wine or malt beverages, respectively, at retail. Aside from editorial changes, this differs from the current definitions in that it specifically incorporates a box with an internal bladder, sometimes referred to as a ''bag in a box.''

Because of the restrictions on the size of distilled spirits containers, the proposed definition in part 5 did not include references to barrels. Furthermore, because there are prescribed standards of fill for both wine and distilled spirits, the proposed definitions in parts 4 and 5 included a cross reference to those standard of fill regulations, to clarify that containers must be in certain sizes.

TTB received one comment on these proposed amendments. DISCUS stated that while it recognized ''that a definition including a broader range of packages is necessary and generally agree[d] with the proposed definition of ''container[,]'' it urged that the definition include a cross-reference to proposed § 5.62 in order to clarify that a ''closed receptacle'' should ''not be construed as including secondary and tertiary packaging.''

TTB Response

TTB is finalizing the definition of ''container'' as proposed in parts 5 and 7. Because of changes that are being made to the proposed amendment regarding closed packaging, which will be discussed in further detail in this document, TTB does not find it necessary to include the cross reference suggested by DISCUS. TTB is also making a minor change to the definition, by deleting the reference to internal bladders, so that the definition covers all boxes, regardless of whether they include a bladder. TTB notes that some boxes in use today do not include bladders.

Distinctive or fanciful name: Under current regulations, the term ''distinctive or fanciful name'' refers to a name that must be used on a distilled spirits label, when a statement of composition is required. A distinctive or fanciful name is optional on other distilled spirits or malt beverage products. A distinctive or fanciful name is also optional for wine, whether or not it bears a statement of composition. Current regulations use but do not define the term.

Consistent with current policy and use of the term elsewhere in the regulations, TTB proposed to add a definition of ''distinctive or fanciful name'' to the definitions section of parts 4, 5, and 7 for the first time to mean a descriptive name or phrase chosen to identify a product on the label. The proposed definition clarifies that the term does not include a brand name, class or type designation, statement of composition, or, in part 7 only, a designation known to the trade or consumers.

Beverly Brewery Consultants supported the inclusion of the definition of ''distinctive or fanciful'' name in the regulations. However, the Brewers Association opposed the proposed definition of ''distinctive or fanciful name,'' stating that the definition, like other proposed changes to the class and type regulations, was ''based on longstanding concepts used in distilled spirits labeling and advertising regulations. These concepts are not generally understood by brewers and would necessitate many changes in existing labels and advertisements.'' Instead, the Brewers Association requested that ''TTB utilize the language currently found in § 7.24 to address class and type. If TTB sees the need to modify the current class and type regulations for beer, those issues should be address[ed] in a separate rulemaking.''

TTB Response

The Brewers Association commented that the proposed definition of the term ''distinctive or fanciful name'' would require changes to labels. However, the proposed definition simply codifies current policy with regard to the meaning of this term, and thus would not require changes to approved labels. Furthermore, as previously noted, the requirement for a distinctive or fanciful name for certain malt beverages and distilled spirits is in current regulations, and the Brewers Association comment does not appear to object to the requirement that such a name appear on labels for certain malt beverages. See current §§ 7.24(a), 7.29(a)(7)(iii), and 7.54(a)(8)(iii).

With regard to the suggestion from the Brewers Association that TTB should not modify the current class and type regulations for beer, this comment will be discussed in further detail below in Section II.C.6.a.

Person: TTB proposed to amend the definition of the term ''person'' in parts 4, 5, and 7 by adding ''limited liability company'' to specifically reflect TTB's current position that limited liability companies fall under the definition of a ''person.'' TTB also removed the language pertaining to ''trade buyer'' that read ''and the term 'trade buyer' means any person who is a wholesaler or retailer'' from the definition of ''person'' that was in part 5. The current definition of a ''person'' in part 7 did

not include the definition of a ''trade buyer.''

DISCUS commented that it supported the proposed definition of a ''person'' but urged that the definition of ''trade buyer'' (as any person who is a wholesaler or retailer) from the existing definition be retained in some manner in the labeling and advertising regulations, and that some definition of the term ''retailer'' be added. The DISCUS comment included a suggested mark-up of the proposed regulations in part 5, but it did not include regulatory language for this comment.

TTB Response

TTB removed the language pertaining to ''trade buyer'' from the definition of ''person'' in part 5 because the term ''trade buyer'' does not appear anywhere else in the part 5 regulations. The purpose of the ''Definitions'' section in each part is to define terms used elsewhere in that part. Accordingly, TTB is not adopting this suggestion from DISCUS.

3. Subpart B—Certificates of Label Approval (for Distilled Spirits and Malt Beverages) and Certificates of Exemption From Label Approval (for Distilled Spirits)

Notice No. 176 proposed a subpart B in parts 4, 5, and 7, which contained TTB's regulations implementing the statutory requirement for COLAs (for wine, distilled spirits and malt beverages) and certificates of exemption (for wine and distilled spirits). Proposed subpart B also contained three sections grouped under the heading of ''Administrative Rules,'' which set forth requirements for: (1) Presenting COLAs to Government officials; (2) submitting formulas, samples, and other documentation related to obtaining or using COLAs; and (3) applying for and obtaining permission to use personalized labels. TTB described these proposals in more detail in Notice No. 176, Section II.B.2.

a. Explanation of What a Certificate of Label Approval (COLA) Authorizes

In Notice No. 176, TTB proposed to reorganize for clarity the regulations implementing the statutory requirement for certificates of label approval (COLAs). TTB proposed to establish new §§ 4.22, 4.25, 5.22, 5.25, 7.22, and 7.25 to set out these requirements. In these sections, TTB also proposed to set forth what a COLA does and does not authorize. This information does not appear in the current regulations.

Specifically, the proposed regulations stated that a COLA, on an approved TTB Form 5100.31, authorizes the bottling of wine, distilled spirits, or malt beverages, or the importation of bottled wine, distilled spirits, or malt beverages, with labels identical to labels on the COLA or with changes authorized on the COLA or otherwise authorized by TTB. See proposed §§ 4.22(a), 4.25(a), 5.22(a), 5.25(a), 7.22(a), and 7.25(a). The proposed regulations in paragraph (b) of each of the aforementioned sections provided that, among other things, a COLA does not: (1) Confer trademark protection; (2) relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of wine, distilled spirits, or malt beverages comply with applicable requirements of the U.S. Food and Drug Administration (FDA) with regard to ingredient safety; or (3) relieve the certificate holder from liability for violations of the Federal Alcohol Administration Act (FAA Act), the Alcoholic Beverage Labeling Act (ABLA), the Internal Revenue Code (IRC), or related regulations and rulings. Proposed paragraphs (c) and (d) of the aforementioned sections discuss when a COLA must be obtained and how to apply for a COLA.

The proposed revisions reflected the longstanding policy of TTB and its predecessor agencies. Furthermore, the COLA form (TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval), currently specifically provides that the issuance of a COLA does not confer trademark protection and does not relieve the applicant from liability for violations of the FAA Act, the ABLA, the IRC, or related regulations and rulings. TTB believed that adding this information to the regulations would clarify this position for the public and industry members.

TTB received several comments in response to the proposed revisions. Some commenters, including WineAmerica and the United States Association of Cider Makers (USACM), supported the proposed language clarifying that the issuance of a COLA does not confer trademark protection or relieve the certificate holder from its responsibility to ensure that all of the ingredients used in the production of the alcohol beverage comply with applicable requirements of the FDA with regard to ingredient safety. Two commenters suggested revisions that would require more information on the COLA application regarding compliance with State law for appellations of origin. As previously indicated, however, some comments raised concerns about whether TTB was interpreting FDA regulations. TTB addressed these issues in T.D.TTB–158.

However, TTB also received many comments in opposition to the language relating to liability under the FAA Act, ABLA, and the IRC. The Wine Institute made the following comment:

> Wine Institute is concerned about the language found in § 4.22(b)(3) and § 4.25(b)(3), both of which indicate that a Certificate of Label Approval (COLA) does not relieve the certificate holder from liability for violations of the FAA Act, the Alcohol Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings. Wine Institute members rely on the COLA review process to confirm that they have placed information onto wine labels in compliance with the FAA Act, the Alcohol Beverage Labeling Act, the Internal Revenue Code, and related federal regulations and rulings. Wine Institute members understand it is their responsibility to ensure they have adequate substantiation to support the accuracy of information and claims made on labels. However, Wine Institute is concerned that § 4.22(b)(3), for wine bottled in the United States, and § 4.25(b)(3), for wine imported in containers, could be used as the basis for a permit enforcement action against a winery even when a label may have been approved in error by TTB. Wine Institute would like to better understand the implications for Wine Institute members with regard to this provision.

DISCUS also urged TTB not to finalize proposed §§ 5.22(b) and 5.25(b), arguing that it is unnecessary to repeat the statement on the COLA form that the COLA did not convey trademark protection and making the following statement:

> We urge the Bureau to expressly state that the issuance of a COLA is confirmation of compliance with TTB's labeling requirements. If TTB approves a label, misleading statements or representations should not be present on that label. TTB labeling specialists have reviewed the material and assessed it against the labeling regulations and decided whether or not to approve, as well as if any information needed to be changed. Suppliers need to be able to rely on TTB approval in this regard.

The Vermont Hard Cider Company (VCC) urged TTB ''not to render the Congressionally-mandated COLA process purely advisory and oppos[ed] any changes that undermine the legal certainty of an approved COLA.'' Several commenters, including the American Distilled Spirits Association (ADSA) and an attorney representing the USACM, suggested that the revisions propose ''to utterly destroy the certainty provided by [the] COLA, upending a system that has served both the public and the industry well and rendering the entire process advisory.'' These comments suggested that it would violate due process to punish industry members for activity that was approved through the COLA process, and that the

appropriate remedy in such a situation would be to follow the label revocation procedures contained in part 13 of the TTB regulations. The comments acknowledged, however, that a COLA would not protect an industry member who put a product in a container that did not conform to the product described on the label.

TTB Response

TTB is finalizing §§ 5.22(a) and 7.22(a) as proposed, with the clarifying changes that TTB has already adopted in T.D. TTB–158. These changes provide that an approved TTB Form 5100.31 authorizes the bottling of distilled spirits covered by the COLA, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

The proposed regulatory amendments in §§ 5.22(b) and 7.22(b) were intended to clarify current policy, not change the effect of obtaining TTB approval of a COLA. TTB agrees that, subject to the conditions set forth on the COLA form itself, TTB's approval of a COLA represents a decision by the Bureau that the approved label complies, on its face, with the requirements of the FAA Act, and industry members are entitled to rely upon that approval unless and until TTB takes appropriate action, under the provisions of 27 CFR part 13, to revoke the approval. TTB also agrees that such reliance would not be a willful violation of the FAA Act.

As previously noted, the language in the proposed sections simply repeats language from the COLA form that explicitly sets forth the conditions of a COLA. Some commenters agreed that a COLA does not convey trademark protection, relieve the industry member from FDA requirements regarding ingredient safety, or relieve the industry member from liability for violations under the FAA Act arising from a situation in which the approved COLA's language does not accurately describe the product in the container.

Sections I and II of the COLA form expressly set out these limitations, advising that the form does not constitute trademark protection, and that the applicant must ensure that all of the information on the application is ''true and correct.'' With regard to mandatory type size requirements under the regulations implementing both the FAA Act and ABLA, Section II of the COLA form also advises that TTB:

> does not routinely review submitted labels for compliance with applicable requirements for mandatory label information regarding type size, characters per inch or contrasting background. You must ensure that the mandatory information on the actual labels is legible and 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 does reserve the right to review applications for compliance with these requirements and to return non-compliant applications.

Thus, the COLA form itself expressly advises applicants that it is their responsibility to ensure that the type size of mandatory information complies with the regulatory requirements.

Furthermore, Section V of the COLA form sets out certain ''allowable revisions'' that may be made to approved labels without obtaining a new COLA, subject to the condition that the new label ''must be in compliance with the applicable regulations in 27 CFR parts 4, 5, 7, and 16, and any other applicable provision of law or regulation, including, but not limited to, the conditions set forth in the 'Comments' below.'' TTB does not approve those revisions on an individual basis, and the industry member is responsible for ensuring compliance with the regulations and the conditions set forth in Section V.

Finally, as explained in T.D. TTB–158, it is TTB's position that if FDA advises TTB that it has determined that distilled spirits, wines, or malt beverages are adulterated under the Federal Food, Drug and Cosmetic Act (FD&C Act), then those beverages are also mislabeled within the meaning of the FAA Act, even if the bottler or importer of the product in question has obtained a COLA or an approved formula for the product in question. See Industry Circular 2010–8, dated November 23, 2010, entitled ''Alcohol Beverages Containing Added Caffeine.'' In such a situation, it is the responsibility of industry members to take appropriate action after TTB has notified them that their products are mislabeled as a result of a determination by FDA that the products are adulterated under the FD&C Act. Nonetheless, after carefully evaluating the comments, TTB has concluded that it will not move forward with the proposed §§ 5.22(b), 5.25(b), 7.22(b), and 7.25(b). In the final regulatory text below, these paragraphs are removed and paragraphs (c) and (d) of each section as proposed are finalized as paragraphs (b) and (c). While TTB intended the proposed revisions to be clarifying, the revisions instead caused confusion among the commenters. Thus, TTB will evaluate all of the comments on this issue as suggestions for further action to more clearly address these issues on the COLA form itself or in the regulations in 27 CFR part 13.

TTB's decision not to move forward with the proposed amendments does not represent any change in TTB's current policy on this issue, and the limitations and conditions referenced above will continue to appear on the COLA form.

b. COLA Requirements for Alcohol Beverages Imported in Containers

In Notice No. 176, TTB proposed, consistent with current regulations, that wine, distilled spirits, and malt beverages, imported in containers, are not eligible for release from customs custody for consumption unless the person removing the products has obtained and is in possession of a COLA. The regulations allow importers, when filing TTB data electronically, to file with U.S. Customs and Border Protection (CBP) the COLA identification number(s) applicable to each such product in lieu of filing a copy of each COLA with CBP. See §§ 4.24(c), 5.24(c), and 7.24(c). Proposed §§ 4.25, 5.25, and 7.25, in addition to the provisions described above, state that importers must obtain a COLA before removing alcohol beverages in containers from customs custody for consumption.

Beverly Brewery Consultants commented that proposed § 7.24, relating to COLA requirements for malt beverages imported in containers, was poorly organized and should be separated into two sections.

TTB Response

After reviewing the editorial suggestions from Beverly Brewery Consultants, TTB has decided that the proposed §§ 5.24 and 7.24 clearly communicate requirements relating to distilled spirits and malt beverages imported in containers, and there is no need to separate each section into two sections. Accordingly, these sections are finalized, but with minor changes to certain paragraphs discussed below.

c. Transfer of COLAs

Consistent with the FAA Act and current regulations, proposed §§ 4.24, 5.24, and 7.24 provide that wine, distilled spirits, and malt beverages, imported in containers, are not eligible for release from customs custody for consumption unless the person removing the wine, distilled spirits, or malt beverages has obtained a COLA. The current regulations, as amended by the final rule facilitating the use of the International Trade Data System (ITDS)

(T.D. TTB–145, 81 FR 94186, December 22, 2016), provide importers with two options for showing compliance with this requirement—they may file with CBP the identification number assigned to the approved COLA, or they may provide a copy of the COLA to CBP at the time of entry, as was the case prior to the ITDS amendments.

As a general rule, only the importer to whom TTB issued a COLA may use that COLA to withdraw bottled alcohol beverages from customs custody for consumption. Other importers who intend to import the same distilled spirits, wine, or malt beverages are responsible for obtaining their own COLAs for such products, as approved labels bear the name and address of the importer who obtained the COLA for the product and who is responsible for compliance with the Federal labeling regulations as part of the mandatory information. An exception to this general rule is set forth in ATF Ruling 84–3 (which modified ATF Ruling 83–6), which describes circumstances in which an importer may use a COLA issued to another importer. In general, an importer may use a COLA issued to another importer if: (1) The importer to which the COLA was issued has authorized such use, (2) each bottle or individual container bears the name (or trade name) and address of the importer to which the COLA was issued, and (3) the importer to which the COLA was issued maintains records of the companies it has authorized to use its certificate.

When TTB amended §§ 4.40, 5.51, and 7.31 in T.D. TTB–145, it incorporated text to reflect the provisions of ATF Ruling 84–3 and provide that bottled wine, distilled spirits, or malt beverages may be released to an importer who is authorized by a COLA holder to import products covered by the COLA. Importers must provide proof of such authorization if specifically requested. TTB noted in T.D. TTB–145 that it did not supersede ATF Ruling 84–3 or its holding that the COLA holder, who is the importer identified on the COLA, remains responsible for the imported product and its distribution in the United States.

Readers should note that these requirements apply only in situations in which a second importer wishes to use a COLA that was issued to the first importer, to obtain the release of products bearing labels that include the name of that first importer from customs custody. TTB regulations do not prohibit several different importers from obtaining a COLA for the same foreign wine, distilled spirits product, or malt beverage, as long as the name of the responsible importer appears on each label.

Comments from Wine Institute and DISCUS questioned why the proposed regulations did not incorporate the language in our current regulations and the ATF Rulings about COLA holders authorizing other importers to remove from customs custody products covered by a COLA. Wine Institute noted that this principle seemed to be partially addressed, and suggested that the regulations be amended to refer to importations with the COLA holder's authorization. DISCUS urged TTB to incorporate all of the provisions of ATF Ruling 84–3 into the regulations, stating that these provisions are critical to the proposed regulation.

TTB Response

As indicated by the comments from Wine Institute and DISCUS, TTB failed to fully incorporate the regulations finalized by T.D. TTB–145 into Notice No. 176. Accordingly, TTB is adopting the comments from Wine Institute and DISCUS to the extent that they reflect current provisions that TTB added to the regulations in 2016 by T.D. TTB–145 regarding the use by one importer of another importer's COLA under certain circumstances. It was not TTB's intent to modify this policy. Accordingly, in this final rule, TTB is reinstating the language that allows an importer to use another importer's COLA under certain circumstances. This final rule does not supersede ATF Ruling 84–3 or its holding that the COLA holder remains responsible for the imported product and its distribution in the United States.

TTB is not adopting DISCUS's suggestion that TTB amend the regulations to incorporate all of the requirements set forth in ATF Ruling 84–3. TTB did not air that specific issue for comment in Notice No. 176, and TTB believes it would be beneficial to solicit public comments on the recordkeeping and other requirements associated with adopting such regulatory amendments. TTB will evaluate whether it should update the ruling in the future, and will treat the DISCUS comment as a suggestion for future rulemaking.

d. COLA Requirements for Imported Alcohol Beverages Released ''for Consumption''

Subject to certain exceptions, the FAA Act makes it unlawful for anyone to remove ''from customs custody, in bottles, *for sale or any other commercial purpose,* distilled spirits, wine, or malt beverages, respectively'' unless the person has obtained and possesses ''a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Secretary in such manner and form as he shall by regulations prescribe.'' [Emphasis added.] See 27 U.S.C. 205(e). That same law also provides that the substantive labeling requirements of the FAA Act apply to importers who ''remove from customs custody *for consumption,* any distilled spirits, wine, or malt beverages in bottles . . .'' [Emphasis added.] The FAA Act defines the term ''bottle'' to mean ''any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.'' See 27 U.S.C. 211(a)(8). TTB and its predecessors have consistently interpreted these statutory provisions to mean that (1) a COLA is required for imported alcohol beverages in bottles only if they are released from customs custody for consumption in the United States, and (2) that for such consumption entries, a COLA is not required if the beverage is being imported for a purpose other than for sale or any other commercial purpose.

NABI commented that the regulations in proposed §§ 4.24 and 4.25, 5.24 and 5.25, and 7.24 and 7.25, should be revised to eliminate references to requiring COLAs before wine, distilled spirits, or malt beverages, respectively, are removed in containers from customs custody ''for consumption,'' and to instead include only a reference to removals for ''sale or any other commercial purpose.'' NABI stated that this revision would be consistent with the statutory language in 27 U.S.C. 205(e), and that the language about removals for consumption was overly broad.

TTB Response

The final rule adopts the language of the proposed regulations on this issue. As explained above, TTB views the statutory requirements of the FAA Act, as implemented in the regulations since 1936, as imposing two levels of inquiry. Initially, the substantive labeling requirements of the FAA Act, as well as the COLA requirements for alcohol beverages released from customs custody in containers, apply only to products released ''for consumption'' from customs custody. Within the category of products released for consumption, there is a subcategory of products that are exempt from the COLA requirement because they are being imported for a purpose other than sale or any other commercial purpose.

Current TTB regulations at 27 CFR 4.40(a), 5.51(a), and 7.31(a), as amended by T.D. TTB–145 (the final rule facilitating the use of ITDS) include this

structure, and the final rule also includes this regulatory text in §§ 4.24(d), 5.24(d), and 7.24(d). Thus, the exemption from the COLA requirement for products imported for a purpose other than sale or any other commercial purpose is in addition to, not instead of, the provision that applies the COLA requirements only to alcohol beverages removed ''for consumption'' in containers from customs custody.

e. Electronic Filing of the COLA Identification Numbers

The proposed and current regulations allow importers, when filing TTB data electronically with CBP along with the customs entry, to file the identification number of the valid COLA applicable to each such product in lieu of filing a copy of each COLA with CBP. See §§ 4.24(c), 5.24(c), and 7.24(c).

NABI requested that TTB require only that approved COLAs be on file for CBP or TTB inspection, citing the time burden of entering each identification number for shipments that contain products covered by numerous COLAs. NABI stated that its recommendation is consistent with proposed regulations at 27 CFR 4.27, 5.27, and 7.27, which require the importer to present a copy of the approved COLA upon request.

TTB Response

With regard to the electronic filing of the COLA identification numbers, in 2016, TTB amended its regulations to provide for electronic filing of an entry with CBP, so that an importer files an identification number of the approved COLA when filing electronically, rather than submitting the COLA to customs. See T.D. TTB–145, 81 FR 94186, December 22, 2016. The importer must provide a copy of the COLA (either electronically or on paper) upon request. As stated in T.D. TTB–145, these requirements ensure compliance with the FAA Act at 27 U.S.C. 205(e), which requires, with respect to imports, that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained and being in possession of a COLA covering the products. This rule finalizes this aspect of §§ 5.24 and 7.24 in a manner consistent with current regulations.

TTB believes that submitting the identification numbers corresponding to COLAs that cover the products intended for removal from customs custody, represents the minimum requirement necessary to support compliance with label requirements and a level playing field for industry members. This approach also minimizes the number of importers TTB and/or CBP potentially would need to contact directly to identify the appropriate COLA intended to be used by the importer, which supports compliance without unnecessarily impeding the importation process.

f. Formula Requirements—Cross-cutting 27 CFR 5.28 and 7.28

Specific formula requirements for certain types of beer and wine are found in TTB's regulations under the IRC. See 27 CFR part 24 for wine and part 25 for beer. For distilled spirits, the specific formula regulations are found in both the IRC regulations (part 19) and the FAA Act regulations (part 5). However, when reviewing applications for label approval, TTB often finds it necessary to obtain formulation information about certain products (including imported alcohol beverages) that are not otherwise subject to the specific formula requirements in the regulations. TTB requires industry members to obtain formula approval for certain unusual products to enable appropriate classification of the product and ensure that producers do not use prohibited ingredients in the product.

Accordingly, current regulations in §§ 4.38(h), 5.33(g), and 7.31(d) authorize TTB to request more information about the contents of a wine, distilled spirits product, or malt beverage, but the language in part 7 is different from the language in parts 4 and 5. Sections 4.38(h) and 5.33(g) provide that, upon request of the appropriate TTB officer, a complete and accurate statement of the contents of any container to which labels are to be or have been affixed shall be submitted. The regulations in § 7.31(d) state that 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 a malt beverage, prior to or in conjunction with the filing of an application for a COLA.

The type of product evaluation required for a particular product prior to issuance of a COLA depends on that product's formulation and origin. TTB periodically updates its public guidance to include a list of the domestic and imported products for which TTB currently requires formulas or laboratory analysis prior to issuing a COLA.

In Notice No. 176, TTB proposed to standardize the regulatory language in parts 4, 5, and 7 on this issue. Accordingly, proposed §§ 4.28(a), 5.28(a), and 7.28(a) provided that the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing, and samples of the product or ingredients used in the final product, prior to or in conjunction with the review of an application for label approval. The proposed regulations also provided that TTB may request such information after the issuance of a COLA, or in connection with any product that is required to be covered by a COLA. Proposed §§ 4.28(b), 5.28(b), and 7.28(b) provided that, upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the wine, distilled spirits, or malt beverage is labeled in accordance with the TTB regulations.

Current TTB regulations and industry practice involve the submission of alcohol beverage formulas in varying forms and formats depending on the type of alcohol beverage and whether the product is domestically produced or imported. TTB believes that this multiplicity of procedures is unnecessarily complicated and burdensome for both the regulated industries and TTB. Accordingly, TTB proposed in Notice No. 176 to amend the TTB regulations in parts 4, 5 and 7 to provide that industry members may file a formula electronically by using Formulas Online or submitted on paper on TTB Form 5100.51, ''Formula and Process for Domestic and Imported Alcohol Beverages.'' TTB notes that the vast majority of industry members now use Formulas Online to submit formulas, and encourages all industry members to consider the advantages of online filing.

WineAmerica and the New York Farm Bureau commented in support of ''formula standardization for ease of submission and approval.'' A law student commented in favor of requiring more formulas to safeguard the health of consumers. However, some commenters raised concerns that the proposed regulations were too broad. For example, Wine Institute commented that proposed § 4.28(b), as drafted, attempted to expand TTB's authority to demand information from wineries outside of a formal investigation, and also noted that bottlers of wine may not always have complete information about the ingredients in formula wine produced by other wineries.

Some commenters focused on differences in laboratory analysis requirements for imported alcohol beverages. The Mexican Chamber of the Tequila Industry and DISCUS both noted that under current TTB policy (which is not addressed in the current

or proposed regulations), formulas for domestic products have no expiration date, while formulas for imported products expire after 10 years. They both urged TTB to eliminate the expiration date for imported products and to relieve formula requirements regarding samples. They also disagreed with granting authority to request formulas, laboratory testing, or samples for products that are not specifically required to submit formulas, noting that the formulation of alcohol beverages is often a closely guarded trade secret. Similarly, Federation des Exportateurs de Vins & Spiritueux de France (FEVS) commented in support of all the efforts made by TTB to simplify and streamline the pre-COLA evaluation process, especially for imported products, and stated that it understood the need for TTB officers sometimes to get more information on a specific product on a case-by-case basis. However, FEVS encouraged TTB to consider the economic costs and administrative burdens involved with formula and other pre-COLA analysis, and asked TTB to not define stricter ''Pre-COLA Evaluation modalities for imported products than those required for domestic products of the same category.'' As an example, FEVS questioned why a laboratory analysis is still required for imported flavored distilled spirits while domestic producers only have to obtain the approval of their formulas. FEVS stated that this situation creates extra costs and complexity for European Union (EU) exporters, and that these burdens were not justified because these products are also well regulated under the EU framework.

TTB Response

TTB is moving forward with its proposal to standardize in parts 5 and 7 the regulatory language regarding TTB's authority to require the submission of formulas, laboratory testing results, or samples as part of the label approval process. This is consistent with current policy and reflects the need to sometimes request, on a case-by-case basis, more information about a particular product prior to approval of a label. The final rule also standardizes the language found in the current distilled spirits regulations, which authorize TTB to require a full and accurate statement of the contents of the container. TTB is finalizing the clarifying language from the proposed rule, which provides that this authority applies after the issuance of a COLA, or with regard to any distilled spirits or malt beverages required to be covered by a COLA.

After reviewing the comments on the issue of whether the additional language in proposed §§ 5.28(b) and 7.28(b) reflected an intention by TTB to expand its authority to require information about products, TTB has revised the language to mirror more closely the language found in the current regulations. Thus, to avoid any confusion on this issue, the final rule does not include language about submission of other documentation at the time of formula submission relating to whether the alcohol beverage products comply with labeling regulations, although this change does not reflect a shift in current TTB policy regarding its authority require such information.

Finally, with regard to the commenters who requested that imported and domestic products be subject to the same requirements relating to formulas and laboratory analysis, TTB notes that it did not specially address the issues raised in the current or proposed regulations. As explained in Industry Circular 2020–1, dated February 12, 2020, TTB currently maintains guidance documents on its website, *https://www.ttb.gov,* which set forth current formula and laboratory analysis requirements. TTB periodically updates that list to reflect changes in TTB policy.

TTB will consider the comments on this issue as suggestions for future changes to its policy. However, it has been the position of TTB and its predecessor agencies that because TTB does not have access to the production records of foreign producers, it must rely upon the importer, whose basic permit is conditioned upon compliance with the FAA Act, to provide the necessary information at the time of importation. For this reason, the formula and laboratory analysis requirements for imported products may sometimes differ from those imposed on domestic products of the same class and type. TTB is continually reviewing its formula and laboratory analysis requirements to determine if it can reduce burdens on the regulated industry while fulfilling its statutory mission to protect consumers. The final rule allows TTB the flexibility to liberalize such requirements without engaging in rulemaking each time it removes a formula requirement under the FAA Act.

4. Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

Proposed subpart C of parts 4, 5, and 7 regulates the alteration of labels, relabeling, and the addition of information to wine, distilled spirit, and malt beverage labels for which TTB has already issued a COLA. As stated in Notice No. 176, these regulations are intended to implement the prohibition in section 105(e) of the FAA Act (27 U.S.C. 205(e)) that prohibits any person from altering, obliterating, or removing any mark, brand, or label except as authorized by Federal law or regulations implemented by the Secretary.

As previously noted, the COLA requirements of the FAA Act are intended to prevent the sale or shipment or other introduction in interstate or foreign commerce of distilled spirits, wine, or malt beverages that are not bottled, packaged, or labeled in compliance with the regulations. To ensure that products with proper labels are not altered once such products have been removed from bond, section 105(e) of the FAA Act (27 U.S.C. 205(e)) makes it unlawful for ''any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages'' that are held for sale in interstate or foreign commerce, or are held for sale after shipment in interstate or foreign commerce, unless authorized by Federal law or pursuant to regulations allowing relabeling for purposes of compliance with either the FAA Act or State law.

Regulations that implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in parts 4, 5, and 7, respectively. Current §§ 4.30 and 7.20 provide that someone wanting to relabel must receive prior written permission from the appropriate TTB officer. Current § 5.31 does not require prior written approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved COLA.

As described in more detail below, proposed subpart C of parts 4, 5, and 7, proposed conforming changes to the regulations that: (1) Implement the statutory prohibition discussed above; (2) set out the provisions allowing for relabeling without TTB authorization; (3) set out the provisions allowing for relabeling only with TTB authorization; and (4) provide for the use of stickers to identify the wholesaler and retailer.

a. Alteration of Labels

Proposed §§ 4.41(a), 5.41(a), and 7.41(a) set forth the statutory prohibition under 27 U.S.C. 205(e) on the alteration of labels. The proposed language provided that the prohibition applies to any persons, including retailers, holding wine, distilled spirits, or malt beverages for sale in (or after

shipment in) interstate or foreign commerce.

Proposed §§ 4.41(b), 5.41(b), and 7.41(b) provided that for purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

Proposed §§ 4.41(c), 5.41(c), and 7.41(c) contained new language that provides that authorization to relabel in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

TTB received four comments of general support for proposed §§ 4.41, 5.41, and 7.41 from Beer Institute, Heaven Hill Brands, Wine Institute, and DISCUS. However, DISCUS stated that alteration of labels should only be done with the COLA holder's approval.

TTB Response

TTB is finalizing proposed §§ 5.41 and 7.41 without change. These regulatory provisions implement the statutory language in a clearer manner than the current regulations. With regard to the DISCUS comment, TTB notes that §§ 5.41(c) and 7.41(c) explicitly provide that authorization to relabel under this subpart does not authorize the placement of labels on containers that do not accurately reflect the brand, bottler, or other characteristics or the product, nor does it relieve the responsible person from any obligation to comply with the TTB regulations and with State or local law, or to obtain permission from the owner of the brand where required under other laws. TTB believes this provision adequately addresses the concerns raised by the DISCUS comment.

b. Authorized Relabeling Activities Without Prior Authorization From TTB

The current regulations in parts 4 and 7 require persons wishing to relabel to obtain written permission from TTB, with certain exceptions, while the regulations in part 5 require persons wishing to relabel to obtain a COLA from TTB. TTB proposed to update the regulations in parts 4, 5 and 7 for consistency, and to cover all of the situations in which people need to relabel. The current regulations in part 5 allow persons who are eligible to obtain COLAs, such as bottlers and importers, to relabel the covered products even after their removal from bottling premises or customs custody, respectively, without first obtaining written approval from TTB. The proposed rule extended this provision to parts 4 and 7.

Accordingly, the proposed regulations provided that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, may relabel domestically bottled products prior to their removal from, and after their return to bond at, the bottling premises, with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. See proposed §§ 4.42(a), 5.42(a), and 7.42(a).

The proposed regulations also provided that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, may relabel domestically bottled products after removal from the bottling premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. This would allow, for example, a brewer to replace damaged labels on containers held at a wholesaler's premises, as long as a COLA covers the labels, without obtaining separate permission from TTB to remove the existing labels and replace them with either identical or different approved labels. See §§ 4.42(b), 5.42(b), and 7.42(b).

The proposed regulations also provided that, under the supervision of U.S. customs officers, imported wine, distilled spirits, and malt beverages, in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA when the products are removed from customs custody for consumption. See §§ 4.42(c) and (d), 5.42(c) and (d), and 7.42(c) and (d).

TTB received several comments of strong support in response to TTB's efforts to bring consistency to the relabeling rules between wine, distilled spirits, and malt beverages from NABI, Heaven Hill Brands, the Beer Institute, ADSA, WineAmerica, and the New York Farm Bureau.

In their comments, WineAmerica and the New York Farm Bureau noted that these proposals would reduce the regulatory burden with regard to wine. Heaven Hill Brands and ADSA expressed support for equal treatment with regard to relabeling activities between wine, distilled spirits, and malt beverages. NABI stated its appreciation for provisions that allow importers to relabel products without separate permission. The Beer Institute recommended ''that TTB allow additional flexibility in the proposed rule so that 'authorized agents' (such as distributors or co-packers) of breweries and importers are also authorized to make such changes without having to obtain approval from TTB.''

TTB Response

TTB is finalizing §§ 5.42, and 7.42 as proposed, with the modification that a domestic proprietor who enjoys these privileges must also be the certificate holder for the COLA (which, in the case of domestically bottled products, would be the bottler).

In response to the comment from Beer Institute, which suggested allowing relabeling by ''authorized agents'' of the COLA holder, TTB notes that nothing in the regulation precludes COLA holders from using either employees or ''authorized agents'' to physically conduct relabeling activities, as long as the relabeling is being done at the direction of the COLA holder. To clarify this point, the regulatory text in sections 7.42(b) and 5.42(b) is revised to provide that proprietors may relabel *(or direct the relabeling of)* domestically bottled products after removal with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

c. Relabeling Activities That Require Separate Written Authorization

In Notice No. 176, TTB stated that the language in current parts 4 and 7 allow persons who are not eligible to obtain COLAs, such as retailers, to obtain written permission from TTB to relabel products that are in the marketplace when unusual circumstances exist. The proposed rule extended this provision to part 5. It is rare that someone other than the original bottler or importer will need to relabel the product, but these situations sometimes occur. For example, sometimes bottles packed in a shipping carton break, causing damage to labels of unbroken bottles.

Thus, the proposed regulations allowed persons who are not eligible to obtain a COLA (such as retailers or permittees other than the bottler) to obtain written authorization for relabeling if the request demonstrates that the relabeling was for the purpose of compliance with the requirements of

this part or of State law. The proposed regulations provided that the written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

TTB intended that the proposed regulations enable permittees, brewers, and retailers to relabel alcohol beverage containers in the marketplace when there is a permissible reason to do so. TTB sought comments from industry on whether the proposed regulations would protect the integrity of labels in the marketplace without imposing undue burdens on the industry.

WineAmerica, NABI, Heaven Hill Brands, Williams Compliance and Consulting Group (the Williams Group), Wine Institute, and DISCUS expressed general support for these provisions.

In its comment, Heaven Hill Brands expressed support for equal treatment between wine, distilled spirits, and malt beverage regulations. In addition to providing their support for the proposed regulations, Wine Institute and DISCUS suggested that any persons engaged in relabeling who are not eligible to obtain a COLA (retailers, wholesalers, or proprietors other than the bottler) should be required to obtain authorization from the COLA holder in addition to written authorization from TTB. DISCUS commented that its suggested ''revision will provide greater certainty to industry members regarding their brand equity and the power to control what happens to their brand labels once in the marketplace.''

TTB Response

TTB is finalizing proposed §§ 5.43 and 7.43 with the clarification that those who must obtain written authorization to relabel distilled spirits and malt beverages are wholesalers and permittees other than the original bottler, not retailers. In response to DISCUS's concerns about the power of producers to control what happens to their brand labels once in the marketplace, and the comments from Wine Institute and DISCUS requesting that TTB require that persons performing relabeling activities obtain COLA holder approval, TTB is only authorizing permittees (wholesalers and proprietors other than the original bottler) to apply for authorization to relabel; however, TTB is not requiring that the applicant first obtain approval from the COLA holder. Adopting the comments from Wine Institute and DISCUS that TTB should require the person performing the relabeling activities to obtain authorization from the original COLA holder would be more restrictive than current regulations, and was not specifically aired for comment. TTB notes that distillers are also subject to the relabeling regulations under the IRC in 27 CFR part 19, which require proprietors to retain a statement of authorization to relabel products that they did not originally bottle; there is no such requirement for wine under the IRC regulations in 27 CFR part 24.

d. Adding a Label or Other Information to a Container That Identifies the Wholesaler, Retailer, or Consumer

Consistent with current regulations for wine and distilled spirits, and an intention to liberalize regulatory requirements for malt beverages, TTB proposed to allow the addition of a label identifying the wholesaler, retailer, or consumer as long as the label does not reference the characteristics of the product, does not violate the labeling regulations, and does not obscure any existing labels. The proprietor may add information identifying the wholesaler, retailer, or consumer before the wine, distilled spirit, or malt beverage leaves the premises. The wholesaler, retailers, or an agent may make such additions of information prior to the release of a product from customs custody. See proposed §§ 4.44, 5.44, and 7.44.

NABI, Heaven Hill Brands, Wine Institute, and DISCUS expressed support for proposed §§ 4.44, 5.44, and 7.44. In addition to expressing support, Wine Institute requested that any alteration of the label be conducted only with the authorization of the COLA holder and indicates that consumers could be confused about such stickers.

TTB Response

TTB will finalize §§ 5.44 and 7.44 without change. In response to Wine Institute's request that authorization from the COLA holder should be required prior to any alteration of a label, TTB notes that the proposal is consistent with current regulation, and that under this section, only information regarding the wholesaler, retailer, or consumer is being applied to the container (rather than the replacement of an entire label). The adoption of Wine Institute's request would be a significant restriction and would require rulemaking. Also, TTB has not received comments from consumers or consumer groups that stickers identifying the names of wholesalers, retailers, or consumers are confusing.

5. Subpart D—Label Standards

In Notice No. 176, TTB proposed a new subpart D in each of parts 4, 5, and 7, governing legibility of labels, type size, and language requirements for mandatory information on labels. The provisions were predominantly derived from and consistent with current regulations.

a. Affixing Labels

Proposed §§ 4.51, 5.51, and 7.51 provided, consistent with current requirements, that labels must be affixed such that they cannot be removed without the thorough application of water or other solvents. DISCUS expressed support for these provisions, but they suggested amending the regulations so that only mandatory information would be subject to the ''firmly affixed'' requirement, and to allow ''any part of the label without mandatory information to be peeled off.'' NABI recommended that the regulations allow a label to be affixed to a container over another label ''provided both labels are firmly affixed to the container and the overlapping label does not obscure any mandatory information.'' NABI suggested that this amendment would reflect current TTB policy.

TTB Response

With the exception of the keg collar exemption discussed in the part 7-specific discussion below, TTB is finalizing §§ 5.51 and 7.51 as proposed. Adoption of the DISCUS comment, which would allow optional information to be included on a peel-off label, would require broader changes to the definition of a label, which currently includes both optional and mandatory information. TTB will consider this comment as a suggestion for future rulemaking. In response to the NABI comment, TTB notes that, currently, it does not allow a bottler to place one label over another label on a container. Instead, TTB sometimes allows this as a temporary solution in a ''use-up'' situation, where circumstances do not allow another feasible solution. TTB does not believe that it should extend that option beyond temporary ''use-up'' situations, because the practice could be subject to abuse. Accordingly, TTB will not adopt the NABI suggestion at this time, but will consider the comment as a suggestion for further rulemaking on this issue.

b. Legibility and Other Requirements for Mandatory Information on Labels

The regulations in proposed §§ 4.52, 5.52, and 7.52 governing legibility of labels, type size, and language

requirements were largely based on the requirements currently found in §§ 4.38, 5.33, and 7.28. The proposed regulations clarified existing regulations and policy.

TTB set out in proposed §§ 4.52(b), 5.52(b), and 7.52(b) current regulations and existing policy that require mandatory information to be separate and apart from additional information. The proposed rule provided a few exceptions to this general rule. First, brand names are exempt from this requirement. Second, this provision would not preclude the addition of brief optional phrases as part of the class and type designation (such as ''premium malt beverage''), the name and address statement (such as ''Proudly distilled and bottled by ABC Distilling Company, Atlanta, GA, for over 30 years''), or other information required by the regulations, as long as the additional information does not detract from the prominence of the mandatory information.

Beverly Brewery Consultants, Wine Institute, WineAmerica, the New York Farm Bureau, and ADSA supported this proposal. Beverly Brewery Consultants also suggested that TTB should consider adding a requirement that mandatory information be conspicuous in addition to being separate and apart from other information on the label. This comment referred to current requirements in 27 CFR 7.28, which provide that 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.'' Wine Institute stated that it ''supports the ability to include brief optional phrases of additional information in conjunction with mandatory information.'' DISCUS opposed the requirement that mandatory information be separate and apart from additional information, but did not provide its rationale for this position. The Mexican Chamber of the Tequila Industry proposed that TTB establish specific parameters for the meaning of ''separate and apart.''

NABI stated that TTB's proposal to allow additional information to appear with mandatory information provided the ''additional information does not detract from the prominence of the mandatory information'' represented a vague standard. NABI requested that TTB replace this standard with one that prohibits additional information from creating a ''misleading impression inconsistent with the mandatory information.'' NABI stated that, under the ''commercial speech'' doctrine developed by the U.S. Supreme Court, the government may prevent misleading speech, but not ''detracting speech.''

TTB Response

TTB is finalizing in §§ 5.52(b) and 7.52(b) the proposed provisions requiring mandatory information to be separate and apart from additional information with the exceptions set forth in the proposed regulations and as discussed above. However, in response to the comments, we are clarifying that this new standard does not represent a change in TTB's current labeling policy. Accordingly, we are incorporating language in the regulation for greater consistency with existing regulatory standards in §§ 4.38, 5.33, and 7.28. Instead of requiring that the additional information does not ''detract from the prominence of the mandatory information,'' the final rule provides that if contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be substantially more conspicuous than that of the descriptive or explanatory information. While these determinations are made on a case-by-case basis, current TTB policy considers mandatory information (other than aspartame) to be substantially more conspicuous if the type size is at least twice the type size of the surrounding information, or if the mandatory information is otherwise substantially more conspicuous because of, for example, the boldness or color of the font. The final rule provides for distilled spirits labels, and continues to provide for malt beverage labels, that aspartame declarations must be separate and apart from all other information.

In response to the Mexican Chamber of the Tequila Industry, TTB notes that establishing specific parameters for ''separate and apart'' would result in more strict rules than what is currently in place, potentially requiring industry members to change current labels. This would also place a significant administrative burden on TTB without a clear benefit.

In response to NABI, TTB notes that requirements with regard to mandatory statements are issued pursuant to TTB's authority to ensure that labels provide consumers with adequate information about the identity and quality of the product. Requiring that such information be sufficiently conspicuous on the label is well within TTB's statutory authority.

c. Contrasting Background

Consistent with current regulations, proposed §§ 4.52(c), 5.52(c), and 7.52(c) set forth the existing regulation that states the requirement that mandatory information must appear on a ''contrasting background.'' The requirement for a contrasting background ensures that mandatory information is readily legible to consumers; for example, white letters on a white background will typically be difficult for consumers to read. The proposed regulations provided new examples that indicate how this requirement may be satisfied. The proposed regulations specifically state that TTB considers black lettering appearing on a white or cream background, or white or cream lettering appearing on a black background, to be contrasting. The proposed regulations do not restrict industry members to the use of black, cream, or white for use on labels.

Beverly Brewery Consultants and the New York Farm Bureau supported this proposal. DISCUS opposed this requirement, commenting in favor of retaining the current language from which TTB derived this provision. DISCUS suggested that by providing examples of what constitutes a contrasting background, TTB is requiring, for example, black text to appear on a white or cream background. DISCUS also suggested that TTB had determined in 2002 that regulations regarding contrasting background were not necessary. DISCUS pointed to an advance notice of proposed rulemaking to support this claim (Notice No. 917, May 22, 2001, 66 FR 28135).

TTB Response

TTB is finalizing proposed §§ 5.52(c), and 7.52(c) without change. The advance notice of proposed rulemaking that DISCUS refers to pertains to the placement, noticeability, and legibility of the Health Warning Statement under the Alcoholic Beverage Labeling Act, and TTB did not propose further amendments in response to that advance notice. TTB believes that the examples in the final rule are useful points of reference that act as guide rails for industry members. However, the regulations do not require mandatory information to appear in specific colors, nor do they require a contrasting background to be of a specific color. Industry members will remain free to select type colors and backgrounds for their labels other than black, white, or cream as long as the background is contrasting in the judgment of the appropriate TTB officer.

d. Type Size Requirements for Mandatory Information

Proposed §§ 4.53, 5.53, and 7.53 set out the type size requirements for mandatory information under the

regulations and incorporated existing policy, which provides that the minimum type size requirements apply to both capital and lowercase letters. For malt beverages, these requirements were consistent with current § 7.28(b)(3), including the requirement that alcohol content statements not exceed four millimeters on containers larger than forty fluid ounces.

WineAmerica and FEVS expressed support for the incorporation of TTB's current policy that minimum type size requirements apply to capital and lowercase letters. The European Union indicated that it understood the proposed minimum type size requirements for mandatory information to be ''fixed,'' that is, that type size cannot exceed the minimum type sizes set forth in the current and proposed regulations. The European Union stated that such ''requirements may possibly create unnecessary obstacles to international trade'' for wine and distilled spirits.

Beverly Brewery Consultants stated that proposed § 7.53 should clearly state whether it applies to mandatory or optional alcohol content statements, or both. In response to the Treasury Department's Request for Information (RFI), published in the **Federal Register** on June 14, 2017 (82 FR 27212), the Brewers Association requested that TTB remove the maximum type size restriction for alcohol content statements, stating that such statements have been permitted for more than 20 years and that there is no compelling reason to restrict the type size.

TTB Response

TTB is finalizing proposed §§ 5.53, and 7.53 as set forth in Notice No. 176, with a clarifying change to § 7.53, as discussed below.

In response to the European Union's concern, TTB emphasizes that, like the current requirements for type size of mandatory information, the proposed requirements—with the exception of alcohol content statements—are minimum type size requirements. That is, mandatory information may appear in type size that is larger than the minimum type size requirements. Given that these provisions are not new, TTB does not believe that the requirement poses any potential barriers to international trade.

Regarding § 7.53, TTB permits, but does not require, alcohol content statements on malt beverage labels, unless the malt beverage ''contain[s] any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol,'' in which case an alcohol content statement is required. See §§ 7.63(a)(3) and 7.65(a), as finalized below, and T.D. TTB–21, 70 FR 194, January 3, 2005. Section 7.53(a) provides for minimum type size requirements for mandatory information on malt beverage labels. In response to the comment from Beverly Brewery Consultants, TTB is adding to this section a reference to § 7.63(a)(3) to clarify that these requirements extend to mandatory statements of alcohol content. Consistent with current policy, TTB is also clarifying that the maximum type size limitations in § 7.53(b) apply to all statements of alcohol content.

Regarding the Brewers Association comment requesting that TTB remove the maximum type size restriction for alcohol content statements on malt beverages, which TTB has applied to both mandatory and optional alcohol content labeling statements, TTB believes such a regulatory change should not be adopted without providing more specific notice (and an opportunity to comment) to interested parties. TTB did not propose to remove the maximum type size requirements for alcohol content statements on all alcohol beverages containers in Notice No. 176. TTB therefore declines in this rule to change the maximum type size requirements. TTB may consider changes to this standard in a future rulemaking. This final rule clarifies current policy with regard to maximum type size requirements applying to alcohol content statements.

e. Visibility of Mandatory Information

Proposed §§ 4.54, 5.54, and 7.54 explicitly required that mandatory information on labels must be readily visible and may not be covered or obscured in whole or in part. DISCUS expressed support for this proposal. Beverly Brewery Consultants commented that ''[i]n view of TTB's proposal not to require certain mandatory information to appear on a 'brand label,' I strongly recommend that a 'conspicuous' requirement be added to sec. 7.54 to ensure consumers will be able to distinguish mandatory label information from other information on the label.''

TTB Response

TTB is finalizing §§ 5.54 and 7.54 as proposed. In response to the comment from Beverly Brewery Consultants suggesting that mandatory information must be ''conspicuous,'' current regulations do not impose such a requirement. Instead, both the current regulations and the proposed regulations provide that mandatory information must be ''readily visible'' on distilled spirits and malt beverage labels. TTB does not believe that the commenter supplied an adequate basis for revising this requirement, and any such change might require revisions to existing labels. Accordingly, TTB is not adopting this comment. See Section II.C.4.a below for discussion of the removal of the requirement that mandatory labeling information appear on the ''brand label'' of malt beverages.

f. Language Requirements

Consistent with current regulations, proposed §§ 4.55, 5.55, and 7.55 generally require mandatory information, other than the brand name, to appear in the English language. Also consistent with current malt beverage and distilled spirits requirements, but as a liberalization for wine, the proposed regulations provided that all mandatory information may appear solely in Spanish when products are bottled for sale in the Commonwealth of Puerto Rico. The proposed regulations allowed for additional statements in foreign languages, including translations of mandatory information, and the country of origin, when allowed by CBP regulations. DISCUS expressed support for this proposal.

TTB Response

TTB is finalizing proposed §§ 5.55 and 7.55 as set forth in Notice No. 176.

g. Additional Information (Non-Mandatory Information) on Labels

Proposed §§ 4.56, 5.56, and 7.56, set out current TTB policy on the appearance of additional information on labels (that is, information that is not mandatory information). Specifically, the proposed provisions provided that additional information that is truthful, accurate, and specific, and that does not violate the restricted, prohibited, and prohibited if misleading provisions in subparts F, G, or H of part 4, 5, or 7, for wine, distilled spirits, or malt beverages, respectively, may appear on labels. Such additional information may not conflict with, modify, qualify, or restrict mandatory information in any manner.

NABI noted that proposed §§ 4.56, 5.56, and 7.56 did not specify type size requirements for additional information, but suggested that, in the experience of its members, TTB specialists often require the additional information to appear in uniform type size. NABI stated that the regulations should ''codify clearly the fact that uniformity is not required absent a TTB showing that the lack of uniformity itself results in a statement or representation that misleads the consumer.''

Beverly Brewery Consultants expressed concern about the provisions in proposed § 7.56, suggesting that the proposed regulation would impose a new requirement that additional information be specific, and providing examples of additional information that is not specific, such as ''full of flavor'' and ''we have started a revolution with this beer.''

DISCUS opined that proposed § 5.56 should be struck on the grounds that it is duplicative of proposed § 5.122.

TTB Response

TTB is finalizing proposed §§ 5.56 and 7.56 without change.

In response to the comment from NABI, TTB notes that neither the current regulations nor the regulations adopted in this final rule require that additional information be in a uniform type size. TTB does not have a policy of requiring uniform type size on a general basis but does sometimes evaluate the type size of additional information in determining whether it qualifies mandatory information in a misleading fashion. The prominence and type size of the optional information is one factor in evaluating whether the information creates a misleading impression as to the identity of the product. TTB will continue this policy.

In response to the comment from Beverly Brewery Consultants, which suggested that the proposed regulation would impose a new requirement that additional information be specific, TTB emphasizes that the regulations as finalized do not prohibit the inclusion of puffery (such as ''full of flavor'') that is not specific. The proposed provisions in §§ 4.56, 5.56, and 7.56 authorize the use of additional information that is truthful, accurate, and specific provided that it is used in accordance with subparts F, G, and H. This does not prohibit the use of non-specific ''puffery'' on labels.

In response to DISCUS, TTB does not agree that proposed §§ 5.55 and 5.122 are duplicative. Proposed § 5.55 is explicit in authorizing the use of additional information, whereas proposed § 5.122 sets out some of the parameters for all information on a container, including additional information.

6. Subpart E—Mandatory Label Information

Proposed subpart E in parts 4, 5 and 7 sets forth the information that is required to appear on alcohol beverage labels (otherwise known as ''mandatory information''). This subpart also prescribes where and how mandatory information must appear on such labels.

a. What Constitutes a Label

In §§ 4.61, 5.61, and 7.61 TTB set out its current policy specifying what is considered to be the ''label'' for purposes of mandatory information placement.

DISCUS, WineAmerica, and the New York Farm Bureau expressed support for the proposed provisions. NABI requested that TTB clarify in the regulations whether or not TTB considers QR codes to be labeling or advertising. They also suggested that TTB remove ''plastic film'' from the proposed regulations that read ''[w]hen used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes: (1) Material affixed to the container, whether made of paper, *plastic film,* or other matter'' [emphasis added], and replace it with ''plastic, metal * * *.''

TTB Response

TTB is finalizing §§ 5.61, and 7.61 as proposed with the exception that the finalized regulations will make clear that labels can be made from plastic and/or metal, in addition to paper and ''other matter.'' While a QR code itself is part of a label, TTB evaluates the material it points to under its advertising regulations, as explained in TTB Industry Circular 2013–1, ''Use of Social Media in the Advertising of Alcohol Beverages,'' which provides as follows:

> Industry members may also enable consumers to access content by including a quick response code (or QR Code) on a label or advertisement. Consumers can scan the QR Code with their mobile device to access the additional content. Depending on the type of media that is linked to by the QR Code (such as the industry member's web page, mobile application, or blog), the relevant regulations and TTB public guidance documents will apply. If, for example, the QR code links to a document, such as a drink recipe using an industry member's product, the recipe will be considered an advertisement because it is a written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in interstate or foreign commerce.

TTB believes that TTB Industry Circular 2013–1 covers this matter adequately and there is no need to incorporate this policy into the regulations.

b. Closed Packaging

Current regulations in §§ 4.38a and 5.41 set out rules for the placement of information on bottle cartons, booklets, and leaflets. Briefly, these regulations provide that individual coverings, cartons, or other containers of the bottle used for sale at retail (that is, other than a shipping container), as well as any written, printed, graphic, or other matter accompanying the bottle to the consumer shall not contain any statement, design, device or graphic, pictorial, or emblematic representation prohibited by the labeling regulations.

The current regulations also require the placement of mandatory label information on sealed opaque coverings, cartons, or other containers used for sale at retail (but not shipping containers). Coverings, cartons, or other containers of the bottle used for sale at retail that are designed so that the bottle is easily removable may display any information that is not in conflict with the label on the bottle contained therein. However, labels must display any brand names or designations in their entirety, with any required modifications and/or statements of composition.

Thus, the prohibited practices for labeling set forth in existing §§ 4.39(a) and 5.42(a) apply to bottles, labels on bottles, any individual covering, carton, or other container of such bottles used for sale at retail, and any written, printed, graphic, or other matter accompanying such bottles to the consumer. The current labeling regulations in part 7 do not include regulations similar to current §§ 4.38a and 5.41. However, as set forth at current § 7.29(a) and (h), the prohibited practices in the labeling regulations for malt beverages apply to containers, any labels on such containers, or any cartons, cases, or individual coverings of such containers used for sale at retail, as well as to any written, printed, graphic, or other material accompanying malt beverage containers to the consumer.

In Notice No. 176, TTB stated that the existing regulations create some confusion as to when a case constitutes labeling and when it constitutes advertising. Accordingly, TTB proposed identical regulations in proposed §§ 4.62, 5.62, and 7.62 to address packaging. The proposed regulations provided, consistent with existing regulations in parts 4, 5 and 7, that packaging may not include any statements or representations prohibited by the labeling regulations from appearing on containers or labels. The proposed regulations also provided, consistent with existing regulations in parts 4 and 5 but as a new requirement for part 7, that closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, must include all mandatory information

required to appear on the label. The rationale for requiring mandatory information on sealed opaque coverings is that the consumer is not able to see the label on the container under normal conditions of retail sale. This rationale would not extend to shipping containers that do not accompany the container to the retail shelf.

Furthermore, the proposed regulations provided greater clarity than the current provisions about when packaging is considered closed. Proposed §§ 4.62, 5.62, and 7.62 provide that packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information. Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can easily be read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package. TTB sought comment on whether TTB should require mandatory or dispelling information to appear on open packaging when part of the label is obscured.

TTB solicited comments on whether the proposed rules would require significant change to labels, containers, or packaging materials. TTB also solicited comments on whether the proposed revisions would provide better information to the consumer and make it easier to find mandatory information on labels, containers, and packages.

The comments on this issue were split between those that supported the proposed change and those that stated that the proposed amendments would change TTB policies and impose new costs on industry members. Some commenters, including the Oregon Winegrowers Association and the Willamette Valley Wineries Association, supported the proposed amendments and urged TTB to go even further, by providing that ''any consumer facing information on a label or packaging cannot: (1) Be misleading; and (2) convey any information that is unsupportable by the label claims.''

The Williams Group supported the proposed provisions as providing more information to consumers; however, they also indicated that the amendments might require changes to some packaging.

The Brewers Association specifically expressed support for proposed § 7.62(c), which sets out provisions for closed packaging because ''[c]onsumers should be able to view the mandatory information at the point of purchase.'' The Brewers Association further noted that many brewers already place mandatory information on packaging.

The Beer Institute appeared to support proposed § 7.62, provided that ''TTB clarify the term 'opaque packaging' as packaging through which individual malt beverage bottles/cans (and mandatory information contained thereon) cannot be seen by the consumer.''

However, other commenters, including Heavy Seas Beer, DISCUS, and the Wine Institute, opposed proposed §§ 4.62, 5.62, and 7.62, on the basis that the new requirements would require changes to current packaging and would thus impose financial burdens. Heavy Seas Beer commented as follows:

> [C]hanging all secondary packaging to meet label requirements, meaning can wraps and mother cartons, this would be a significant financial burden for smaller suppliers, as the origin plates would need to be remade. The cost per plate can run from $1,500–$4,000 per package. We estimate that the financial burden for this change would cost our brewery about $75,000, which we simply don't have. If this new section were to be put into place, we would need 2–4 years to implement 100%.

Wine Institute and DISCUS argued, without providing specific data, that the proposal would impose a financial burden. DISCUS argued that the proposed amendments would ''adversely affect packaging such as gift boxes, gift bags, tubes, etc.'' because this type of packaging would be required to bear mandatory information. DISCUS further requested that—if the proposed rule is adopted—TTB use the language ''sealed'' and ''otherwise manipulate'' rather than ''closed.'' Wine Institute suggested that the proposed clarifications to TTB policy on what type of packaging was ''closed'' represented a change in policy, and stated that ''TTB should not change its policy on containers that can be opened and restored to its original condition; in other words, without breaking any type of seal, glue or similar type of permanent closure.''

The New York Farm Bureau, WineAmerica, Heavy Seas Beer, and a member of the public raised concerns about the cost of having to place mandatory information on ''shipping containers'' and ''mother cartons,'' and also discussed the use of this type of packaging for direct-to-consumer sales (such as sales by wine clubs). Beverly Brewery Consultants made the observation that proposed § 7.62 would result in modification or redesign of packaging. Finally, Senator Kennedy commented in opposition to this proposal as one of many that could be confusing for consumers and lead to label resubmission.

TTB Response

After carefully considering the comments, it is TTB's conclusion that the proposed amendment caused confusion on the part of industry members with regard to whether the proposed amendment would apply to shipping cartons; this was not the intent of the proposed revision. However, based on the comments, TTB cannot determine with any certainty the extent to which the proposed new requirements would require industry members (in particular, brewers) to change their packaging materials and incur new costs. TTB does not believe that this can be resolved without undergoing additional notice and comment rulemaking on a more specific proposal regarding this issue.

Accordingly, TTB will consider the new requirements for malt beverages as suggestions for future rulemaking but will not adopt these requirements at this time. Instead, TTB will retain the current regulations with regard to parts 5 and 7, with minor modifications to section 7.62 to clarify that the prohibition against statements or representations that would be prohibited on a label would include misleading brand names and class/type designations. This is consistent with current TTB policy. TTB recognizes that this means the regulations will not require malt beverages to display mandatory information on closed cartons. However, malt beverage cartons, cases, or other coverings of the container used for sale at retail will continue to be subject to the prohibited practices provisions. With regard to clarification of current policy as to what constitutes sealed packaging for industry members, TTB is not changing its current interpretation of the existing regulations.

c. Brand Names and Trademarks

Proposed §§ 4.64, 5.64, and 7.64 set forth requirements for brand names of wine, distilled spirits, and malt beverages, respectively. The proposed regulations simply clarify the current regulations by providing that a brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the distilled spirits. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or

with some other qualification, if the appropriate TTB officer determines that the qualification dispels any misleading impression that the label might otherwise create.

The Mexican Chamber of the Tequila Industry commented that proposed § 5.64 should be revised to include more specific criteria for determining whether a brand name is misleading, and that legal or administrative instruments should be established to resolve any disagreement in this regard between the TTB official and the brand owner.

TTB Response

TTB is finalizing §§ 5.64 and 7.64 as proposed. TTB is not making the change suggested by the Mexican Chamber of the Tequila Industry regarding the inclusion of more specific criteria, and the notice did not solicit comments on more specific language. TTB will consider this comment as a suggestion for future action. With regard to the process for resolving disagreements between TTB and brand owners, TTB notes that the procedures in part 13 regarding administrative appeals of the denial or revocation of label approval would apply to brand name issues as well as any other labeling issue that an applicant or certificate holder wishes to contest through the administrative process.

d. Name and Address

In the regulations on the name and address of bottlers and producers of domestically bottled wine, distilled spirits, and malt beverages, Notice No. 176 proposed clarifying changes to existing requirements.

The FAA Act provides that wine, distilled spirits, and malt beverage labels must contain certain mandatory information, including the name of the manufacturer, bottler, or importer of the product. See 27 U.S.C. 205(e)(2). Under current regulations, bottlers of distilled spirits and malt beverages may list either the place of bottling, every location at which the same industry member bottles the product, or, under certain circumstances, the principal place of business of the industry member that is bottling the product. Bottlers of distilled spirits or malt beverages that utilize one of the latter two options must mark the labels using a coding system that enables the bottler and TTB to trace the actual place of bottling of each container. This both protects the revenue and allows for the tracing of containers in the event of a product recall.

In Notice No. 176, TTB noted that, with the growing number of craft brewers and craft distillers in the marketplace, there may be more interest among consumers as to where malt beverages are brewed and where distilled spirits are distilled. On the other hand, TTB also wished to provide industry members with flexibility in their labeling statements, to accommodate the growing number of arrangements where products are produced or bottled pursuant to contractual arrangements. One of the major reasons for allowing the use of principal places of business and multiple addresses on labels is to allow industry members to use the same approved label for their products that are bottled or imported at different locations rather than having to seek approval of multiple labels. In Notice No. 176, TTB noted that, under both the existing and proposed regulations, industry members are always free to include optional statements that provide consumers with more information about their production and bottling processes if they wish. Accordingly, TTB sought comments from all interested parties, including industry members and consumers, on whether the proposed labeling requirements provided adequate information to the consumer while avoiding undue burdens on industry members.

With regard to alcohol beverages imported in containers, the name and address inform the consumer of the identity of the importer of the alcohol beverage product and the location of the importer's principal place of business. The current regulations at §§ 4.35(b), 5.36(b), and 7.25(b) provide that, on labels of imported wines, distilled spirits, and malt beverages, respectively, the words ''imported by,'' or a similar appropriate phrase, must be stated, followed immediately by 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.

Like the current regulations, the proposed regulations in §§ 4.68, 5.68, and 7.68 required the name and address of the importer when the product is imported in containers. The proposed regulations clarified that for purposes of these sections, the importer is the holder of an importer's basic permit making the original customs entry into the United States, or is the person for whom such entry is made, or the holder of an importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad. These provisions mirror the policy set forth in Revenue Ruling 71–535 with regard to the name and address requirements applicable to importers.

Proposed §§ 4.67, 5.67, and 7.67 addressed the labeling of products bottled after importation, in a manner largely consistent with current regulations. If the product is bottled after importation in bulk, by or for the importer thereof, the proposed rules required an ''imported and bottled by'' or ''imported by and bottled for'' statement, as appropriate.

The proposed regulations in §§ 4.67, 5.67, and 7.67 specifically addressed, for the first time, the name and address requirements applicable to wine, distilled spirits, and malt beverages that are imported in bulk and then subject to further production or blending activities in the United States.

In section 1421 of the Taxpayer Relief Act of 1997, Public Law 105–34, Congress enacted a new IRC provision that permits the transfer of beer in bulk containers from customs custody to internal revenue bond at a brewery. After transfer to internal revenue bond at a brewery, imported beer may be bottled or packed without change or with only the addition of water and carbon dioxide, or may be blended with domestic or other imported beer and bottled or packed.

In ATF Procedure 98–1, TTB's predecessor agency provided guidance to brewers and bottlers for the labeling of imported malt beverages bottled in the United States. This guidance was necessary because the existing regulations in part 7 do not address the labeling of imported malt beverages that are bottled in the United States, or the labeling of imported malt beverages that are blended with other imported malt beverages or with domestic malt beverages, and then bottled or packed in the United States.

Similarly, the current regulations in part 5 provide for the labeling of distilled spirits bottled after importation, but do not provide rules concerning the labeling of spirits that were subject to production activities in the United States after importation.

Thus, proposed §§ 4.67, 5.67, and 7.67 provide rules for the labeling of wine, distilled spirits, and malt beverages, respectively, that are imported in bulk and are then blended with wine, distilled spirits, or malt beverages of a different country of origin, or subjected to production activities in the United States that would alter the class or type of the product. The proposed rules provide that such products must be labeled with a ''bottled by'' statement, rather than an ''imported by'' statement.

The proposed regulations also included new provisions on the use of trade names, and the name and address requirements for ''contract bottling'' situations, in which products are produced and/or bottled by a third party pursuant to a contact with the brand owner. While these provisions were new to the regulations, they reflect current TTB policy. Finally, to reflect current TTB policy, TTB proposed new language in the regulations regarding the use of misleading trade names.

In response to the proposed regulations, TTB received comments from various interested parties, including alcohol beverage producers, trade associations, and individual commenters. Some of the commenters addressed wine-specific issues, which TTB is not addressing in this document.

e. Organization and General Comments

Regarding the reorganization of existing 27 CFR 5.36 into three distinct sections, DISCUS stated that it opposed the proposed §§ 5.66, 5.67, and 5.68 because ''[t]here is no reason to divide the existing rule into three separate proposals'' and that the proposed regulations ''are convoluted and inconsistent with the direction of providing essential, understandable information for consumers.'' DISCUS also stated that current § 5.36(a)(6) and current § 5.36(b)(2)(iii) sufficed for purposes of identifying the proprietor and importer, respectively, and their principal place of business.

With regard to proposed 27 CFR 5.66, specifically, DISCUS opposed the proposal on the ground that it ''not only fails to modernize the labeling and advertising rules but also is out of sync with historic industry practices and today's economy. There is no evidence to suggest that consumers are confused with the existing name and address rules and this new proposal only would serve to further confuse consumers.''

The Beer Institute commented that it was ''generally concerned about the changes proposed,'' as TTB did not explain why current regulations are inadequate and that ''speculation that more activity in the malt beverage sector 'may' lead consumers to want more information about where malt beverages are brewed simply isn't enough to justify regulatory change.'' The Beer Institute noted that industry members may choose to provide consumers with more information about their production and bottling process and urged TTB to allow market and consumer demands ''to dictate the level of specificity.''

TTB Response

In response to the DISCUS comment regarding TTB's proposed division of § 5.36 into three distinct sections, TTB notes that the proposed regulations are intended to more clearly distinguish between the regulatory requirements for domestically produced distilled spirits, distilled spirits imported in containers, and distilled spirits bottled after importation by separating the current name and address section into three separate sections. TTB believes that setting out these requirements in separate sections promotes ease of compliance for industry members.

Furthermore, the new regulations offer greater clarity and promote compliance by incorporating previously issued guidance documents. For instance, the proposed regulations clarify what is meant by ''importer'' for purposes of these sections by incorporating Revenue Ruling 71–535 into the regulations. The new regulations offer further clarity by setting out new regulatory requirements for distilled spirits that were bottled after importation and that were subject to further production or blending activities in the United States.

f. Distinguishing Between Imported and Domestic Products

NABI expressed its support for proposed 27 CFR 4.68. 5.68, and 7.68 and stated that the proposed sections are ''helpful'' because they provide ''greater specificity of the parties that may appear on the label [and] names of the importer in the 'imported by' statement than does the current sections 4.25(b)(1), 5.36(b)(1), and 7.25(b).'' Concerning proposed 27 CFR 7.67, Beverly Brewery Consultants expressed its support for the incorporation of TTB Procedure 98–1 in the regulations, as it ''has existed far too long without being incorporated into the CFR.''

However, DISCUS raised objections to the introduction of the term ''wholly made'' when referring to products made in the United States without imported distilled spirits, commenting as follows:

> The existing name and address rule has worked well for industry members and the introduction of the term ''wholly made'' only serves to confuse matters. TTB requests comments regarding whether these proposals provide adequate information to consumers and avoid undue burdens on industry members—we respectfully submit that the existing language better balances these concerns.

With regard to proposed 27 CFR 5.67, alcohol beverage attorney Steven Masket commented as follows:

> Both Section 5.67(a) and Section 5.69 reflect the intention of the TTB to defer to [CBP] with respect to country of origin marking, but the bald enumeration of processes in 5.67(c), results in the possibility that a product of foreign origin will be marked as domestic. I ask that the TTB further clarify that a product that is foreign should be treated and marked as imported and not considered domestic by the sheer action of simply blending or production activities conducted after importation in bulk, unless those activities meet the [CBP] rules related to country of origin marking.

Mr. Masket suggested that TTB revise the regulations to either distinguish between imported products that TTB considers to have undergone a substantial transformation in the United States under CBP rules and those that have not. Or, alternatively, Mr. Masket suggests that, if TTB ''does not believe that the identity of the importer is relevant after any of those certain processing activities enumerated in § 5.67(c) are conducted in the United States, whether substantial transformation [has occurred] or not under CBP regulations,'' that TTB should amend section 5.67(c) to add a reference to the CBP marking requirements.

TTB Response

In response to the DISCUS comment, TTB believes that the proposed regulatory text regarding products that are ''wholly made'' in the United States without imported distilled spirits clearly distinguishes those products from domestic distilled spirits that are blended with imported distilled spirits. TTB addresses the latter category of products in the section pertaining to imported spirits that are blended with domestic spirits after importation.

In response to Mr. Masket's comments on § 5.67(c), TTB does not believe it is necessary to revise the proposed § 5.67(c) to distinguish between products that have undergone a substantial transformation under CBP rules and those that have not. The TTB regulation does not require the use of the term ''imported by'' to describe beverages that have undergone production activities in the United States. This in no way implies that such products may not be considered to have a foreign country of origin under CBP rules, and in fact consistent with current regulations, the regulations at § 5.69 include a cross-reference to CBP regulations regarding country of origin marking requirements at 19 CFR parts 102 and 134. This section reflects TTB's intention to defer to CBP on the determination of whether a country of origin statement is required to appear on distilled spirits bottled after importation that are subject to further production or blending activities in the United States

and, if a statement is required, on determinations of the appropriate country of origin. Accordingly, when CBP requires a country of origin statement to appear on a distilled spirits container, such labeling statements must be consistent with CBP regulations.

As to Mr. Masket's comment on § 5.67(c)'s prohibition on placing an ''imported by'' statement on a label of distilled spirits bottled after importation and subject to certain processes in the United States, it is TTB's position that a ''bottled by'' statement is more appropriate for the labeling of such products in order to adequately distinguish such products from alcohol beverages that are imported in containers.

g. Comments in Favor of Imposing New Requirements With Regard to Names and Addresses on Labels

In addition to comments on the proposed regulations, several comments provided suggestions for further amendments to the regulations. The Brewers Association requested that TTB require labels to disclose whether brewers are part of a controlled group, as defined in 26 U.S.C. 5051(a) if the name of the controlled group is different from the brewery or its trade name as it appears on the label. As a basis for this proposal, the Brewers Association stated that disclosing brewery ownership is fundamental to TTB's responsibilities in implementing the FAA Act and that current regulations allow large companies to hide their ownership and control over multiple brands. NBWA commented in favor of strengthening transparency with regard to the identity of alcohol beverage producers.

TTB Response

In response to comments that advocate for new regulatory requirements within the name and address sections, TTB considers such comments as outside the scope of this rulemaking as Notice No. 176 did not solicit comments from industry or the general public on these specific proposals. For example, the Brewers Association comment in favor of requiring brewers to identify whether they are members of ''controlled groups'' under tax laws would represent a new requirement. Such a requirement would go beyond the longstanding policy of TTB and its predecessor agencies to allow the use of trade names, rather than the actual corporate names of bottlers or importers (much less the status of such companies as members of controlled groups) in the labeling of alcohol beverages. TTB's statutory mandate is to ensure that the labels identify the bottler or importer of the product. Accordingly, TTB is not adopting regulations that would go beyond the identification of the bottler or importer by requiring additional information about producers, bottlers, or importers in the name and address regulations.

h. Misleading Trade Names

The Beer Institute expressed its concern about TTB's proposal to prohibit the use of trade names that would create a misleading impression as to the age, origin, or identify of the product. The Beer Institute stated that TTB did not provide a specific explanation of the need for this proposal and that it ''would be a dramatic change to the long-standing practice for contract production brewers to adopt and use the customer's name/trade name on the labels.'' DISCUS also raised concerns about the provisions regarding the use of trade names, commenting as follows:

> The requirement in subsection (g)(2) regarding trade names is unnecessary. Some trade names have been used for years and could be impacted solely because TTB deems them to be misleading (irrespective of whether consumers are misled). TTB has limited resources and is not equipped to make determinations as to what is and is not misleading in this context and TTB should not make arbitrary changes to longstanding trade names. Separately, requiring changes to brand names could cause immense harm and have untold financial and marketplace impacts for industry members.

TTB Response

TTB intended the provision on misleading trade names to reflect current policy with regard to the misleading use of trade names. However, TTB did not intend to prohibit, for example, the adoption of one industry member's trade name on the basic permit or brewer's notice of another industry member in the context of a contract bottling or production arrangement.

TTB is finalizing the provision that allows for the use of trade names. This is consistent with current regulations in part 5 for distilled spirits and current policy for malt beverages. However, TTB is not adopting the proposed language specifying that trade names may not be used in a misleading manner. However, TTB is maintaining its current policy on this issue, and will view the comments as suggestions for further public guidance on this issue to clarify TTB's policy. TTB notes that the general prohibition on the use of misleading statements on labels suffices to provide TTB with authority to regulate the misleading use of trade names; however, we also stress that TTB does not consider the use of identical trade names by different permittees in a contract bottling or production context misleading, in and of itself.

7. Subparts F, G, and H—Statements That Are Restricted, Prohibited, or Prohibited if Misleading

The current regulations include a single section titled ''Prohibited Practices'' that sets forth a number of prohibited practices, and it also describes certain labeling practices that TTB regulates in various ways. To make regulatory provisions easier to find, and to improve readability, TTB proposed to divide the regulations addressing prohibited practices into three subparts: (1) Subpart F, practices that may be used under certain conditions, (2) subpart G, practices that are always prohibited, and (3) subpart H, practices that are prohibited only if they are used in a misleading manner on labels.

Proposed subparts F, G, and H each contain language to clarify that the prohibitions in these subparts apply to any label, container, or packaging, and define those terms as used in these subparts. Specifically, for purposes of proposed subparts F, G, and H, the term ''label'' includes all labels on alcohol beverage containers on which mandatory information may appear, as set forth in proposed §§ 4.61, 5.61, and 7.61, as well as any other label on the container. These proposed sections also set out the parts of the container on which mandatory information may appear.

The proposed text defines ''packaging'' for purposes of proposed subparts F, G, and H as any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail. It does not include shipping cartons or cases that are not intended to accompany the container to the consumer. The proposed rule also provides that the term ''statement or representation'' as used in those subparts includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. It also includes both explicit and implicit statements and representations. This provision avoids the need to repeat the reference to each type of statement or representation in every section in these subparts.

a. Subpart F—Restricted Labeling Statements in General

Proposed §§ 4.81, 5.81, and 7.81 set out that the labeling practices covered under subpart F (such as organic claims or food allergen labeling) may be used

on labeling only when used in compliance with the provisions set out in subpart F.

DISCUS expressed support for this section. Beverly Brewery Consultants stated that § 7.81(a)(1) was unnecessary and commented that there was no explanation as to why the definition of ''container'' in paragraph (a)(2) differs from the provision in the definitions section.

TTB Response

TTB is finalizing proposed §§ 5.81 and 7.81 as proposed. TTB disagrees with the comment from Beverly Brewery Consultants with regard to each section's paragraph (a)(1), which sets forth the general requirements applicable to restricted labeling statements, and makes the regulations easier to understand. With regard to each section's paragraph (a)(2), its purpose is not to define what a container is, but to clarify that the provisions regarding restricted labeling statements apply to all parts of the container, including those parts of the container on which information would not satisfy mandatory labeling requirements. For example, the regulations in §§ 5.61 and 7.61 provide that information appearing on the bottom surface of a container would not satisfy mandatory labeling requirements. However, pursuant to the language in §§ 5.81(a)(2) and 7.81(a)(2), information appearing on the bottom surface of the container would nonetheless be subject to the provisions on restricted labeling practices. Thus, for example, the regulations would prohibit use of an optional ''organic'' claim on the bottom surface of a container unless the use of the claim met the requirements set forth in the regulations. The final regulations do not include any changes to the language of the proposed regulations.

b. Voluntary Disclosure of Major Food Allergens

TTB received two comments that are specific to the proposed regulations pertaining to voluntary allergen labeling in §§ 4.82, 5.82, and 7.82, which set out the current regulatory provisions without change. DISCUS commented in support of the provisions as proposed. The Brewers Association commented in favor of mandatory allergen labeling, and stated that ''[i]n the event that TTB decides to maintain the existing voluntary allergen disclosure policy, the BA believes that this issue warrants a separate rulemaking in the future.'' In addition, as noted in section I.E.1.a of this document, TTB received several comments from consumers and consumer groups in support of mandatory allergen labeling.

TTB Response

TTB is finalizing §§ 5.82 and 7.82 as proposed. As explained in section I.E.1.a. of this document, comments about mandatory allergen labeling are beyond the scope of this rulemaking. In the preamble to Notice No. 176, TTB specifically stated that there were a number of ongoing rulemaking initiatives related to labeling and advertising of alcohol beverages, including any substantive changes to the allergen labeling requirements, which TTB stated it would handle separately from the proposed rule due to their complexity. TTB will treat comments in favor of mandatory allergen labeling as suggestions for future rulemaking.

c. Environmental, Sustainability, and Similar Statements

In Notice No. 176, TTB proposed a new section in parts 4, 5, and 7 (see proposed §§ 4.85, 5.85, and 7.85) on the use of statements relating to environmental and sustainability practices. The proposed rule allowed statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') to appear on labels as long as the statements are truthful, specific, and not misleading. Similarly, the proposed regulations provided that statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on labels of products that are actually certified by the appropriate organization.

WineAmerica, the New York Farm Bureau, and Sazerac expressed support for the proposed regulations. However, some commenters, including the Brewers Association, DISCUS, and Comité European des Enterprises Vins opposed the proposed provisions as unnecessary and unduly restrictive, and commented that they would delay the label review process.

TTB Response

TTB has determined that some commenters misunderstood the effect of the proposed regulations, and misconstrued the proposed regulation to require additional steps to the label review process, whereas the proposal simply clarified that the identified claims must be truthful, specific, and non-misleading, and that certification claims must be truthful. Nonetheless, TTB is not finalizing proposed §§ 5.85 and 7.85 because TTB agrees that the general regulations on false or misleading claims adequately cover this issue.

d. Use of the Term ''Organic''

Current TTB labeling regulations do not define the term ''organic,'' but instead provide that the optional use of the term ''organic'' in labeling and advertising must comply with regulations issued by the United States Department of Agriculture's (USDA's) National Organic Program (7 CFR part 205), as the USDA interprets those regulations. Proposed §§ 4.84, 5.84, and 7.84 would clarify current TTB regulations by editing existing language specifically stating that organic claims must conform with USDA regulations concerning the National Organic Program. DISCUS expressed support for the proposed regulation. TTB also received comments with regard to certification requirements that are specific to imported wine, which TTB will address when it finalizes the proposed wine regulations.

TTB Response

TTB is Finalizing §§ 5.84, and 7.84 as Proposed.

e. Prohibited Labeling Practices in General

Subpart G sets forth the prohibited labeling practices. Proposed §§ 4.101, 5.101, and 7.101 provide that the prohibitions set forth in this subpart apply to any label, container, or packaging, and then sets out the definitions of those terms for purposes of this subpart. The prohibited practices include false statements and obscene or indecent depictions. The proposed rule restated and reorganized prohibitions currently found in the TTB regulations.

DISCUS commented that this provision was unnecessary on the basis that it is ''repetitive and addressed elsewhere.''

TTB Response

TTB is finalizing §§ 5.101, and 7.101 as proposed. As previously noted, TTB proposed to divide the regulations addressing prohibited practices into three subparts: (1) Subpart F, practices that may be used under certain conditions, (2) subpart G, practices that are always prohibited, and (3) subpart H, practices that are prohibited only if they are used in a misleading manner on labels. This final rule adopts this organization; accordingly, it is necessary to provide for the substantive prohibitions in each subpart so that the reader does not need to refer to a

different subpart to understand the scope of the regulation. TTB believes this organization makes it easier for industry members to locate and understand necessary information.

f. False or Untrue Statements

Current regulations prohibit labeling statements that are 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. The FAA Act, 27 U.S.C. 205(e), authorizes the issuance of regulations to prohibit statements that are either false or misleading. As previously noted, TTB's proposed reorganization of the regulations places the prohibitions against false statements and misleading statements in separate subparts. Thus, the regulations on false statements were proposed in §§ 4.102, 5.102, and 7.102 within Subpart G, Prohibited Labeling Practices, while the prohibitions on misleading statements were proposed in Subpart H, Labeling Practices That Are Prohibited If They Are Misleading. The American Craft Spirits Association (ACSA) expressed support for proposed § 5.102. However, DISCUS expressed opposition to the proposed restatement of existing regulations.

TTB Response

TTB is finalizing §§ 5.102 and 7.102 as proposed. TTB believes that the reorganization of the existing prohibition will make the regulations easier to read and understand. The restatement of this statutory prohibition does not change current requirements or policy, but it does conform more closely to how commercial speech is analyzed under the First Amendment, which distinguishes between false commercial speech (which is not protected) and misleading commercial speech (which, if it is only potentially misleading, may be qualified in a manner that dispels the otherwise misleading impression created by the claim). See *Pearson* v. *Shalala,* 164 F.3d 650 (D.C. Cir. 1999).

g. Obscene or Indecent

Consistent with current regulations, proposed §§ 4.103, 5.103, and 7.103 provide that wine, distilled spirits, and malt beverage labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

The ACSA commented that they are ''neutral'' on this provision. Sazerac commented that TTB was approving labels that, in its view, were ''fairly obviously'' obscene.

Several commenters asserted that there were First Amendment concerns with the regulatory prohibition on ''obscene and indecent'' materials on labels. DISCUS and the Brewers Association urged TTB to amend the regulations to remove the prohibition altogether. DISCUS suggested that the terms are ''subjective concepts'' and questioned ''who will be the judge of what is indecent or obscene in the context of TTB labeling or advertising regulations.'' The Brewers Association included this prohibition along with other regulations that it suggested were ''subject to First Amendment challenges as an agency of the federal government is forced to make subjective decisions approving or disapproving messages that brewers are communicating to consumers.'' The Brewers Association suggested that this type of regulation would be better left to self-enforcement through trade associations. The New Civil Liberties Alliance commented that the proposed regulation provided discretion to TTB that was ''inherently boundless because a licensing official must make his or her own ad hoc subjective determination as to whether the content of the COLA application meets his or her standards for decency.''

The Wine Institute suggested amending the regulations to prohibit only obscene material, noting that indecent speech receives protection under the First Amendment, and suggesting that the relevant case law indicates ''that such regulations are vulnerable to a First Amendment challenge.'' In particular, the Wine Institute pointed to the decisions in two cases involving First Amendment challenges to efforts by States to ban alcohol beverage labels with vulgar or offensive images. See *Bad Frog Brewery, Inc.* v. *N.Y. State Liquor Auth.,* 134 F.3d 87 (2d Cir. 1998), and *Flying Dog Brewery, LLLP* v. *Michigan Liquor Control Com'n,* 597 Fed. Appx. 342 (6th Cir. 2015).

TTB Response

TTB is not adopting the suggestion to eliminate the prohibition on ''obscene'' material on labels or advertisements because the current regulatory prohibition simply incorporates the statutory prohibitions in 27 U.S.C. 205(e)(4). Furthermore, it is well recognized that the First Amendment does not protect ''obscene'' speech or child pornography. See *Sable Communications* v. *FCC,* 492 U.S. 115, 124 (1989). Thus, the statutory and regulatory prohibitions on ''obscene'' labels and advertisements do not violate the First Amendment.

In evaluating whether labels are ''obscene,'' TTB is mindful of the three-pronged test established by the U.S. Supreme Court in *Miller* v. *California,* 413 U.S. 15, 24–25 (1973). TTB recognizes that applying this test in a prior approval context is a difficult challenge.

TTB agrees that the Wine Institute has raised a valid point about whether there is a distinction between ''obscene'' and ''indecent'' speech under the FAA Act. TTB is aware that offensive speech that is not obscene receives protection under the First Amendment, and TTB is mindful of these First Amendment limitations when reviewing labels and advertisements. In *Iancu* v. *Brunetti,* 139 S. Ct. 2294, 2299 (2019), the Supreme Court struck down a provision of the Lanham Act that barred the registration of ''immoral'' or ''scandalous'' trademarks, finding it to be a viewpoint-based ban. The Court also noted that the Justices, in *Matal* v. *Tam,* 137 S. Ct. 1744 (2017), had ''found common ground in a core postulate of free speech law—the government may not discriminate against speech based on the ideas or opinions it conveys.'' However, the FAA Act's restriction on obscene and indecent speech is not a viewpoint-based restriction. TTB does not reject labels on the sole grounds that they might be offensive. Instead, as the Sazerac acknowledges, TTB has approved labels including content that some people may find offensive, including labels that include expletives or nudity in certain contexts, based on the First Amendment protections afforded to such speech under current case law.

Because TTB did not seek specifically comments on this issue in Notice No. 176, TTB believes that it cannot make any substantive changes to the existing standard without engaging in notice and comment rulemaking on the issue. TTB will treat the comments on this issue as suggestions for future rulemaking action, and will retain the statutory prohibition in existing regulations. Nonetheless, in applying that standard, TTB will continue to apply current case law under the First Amendment, and will not reject labels on the sole grounds that they may be offensive. As always, TTB urges industry members to consider that, while their products are intended only for adult consumption, labels on containers may be visible to children on store shelves.

h. Subpart H—Labeling Practices Prohibited as Misleading

Proposed §§ 4.122(a), 5.122(a), and 7.122(a) set out the general prohibition against any statement or representation,

irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the wine, distilled spirits, or malt beverages, or with regard to any other material factor. Proposed §§ 4.122(b), 5.122(b), and 7.122(b) also provided as follows: ''For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.'' This is not a new policy, but the proposed rule sets it out more clearly.

The Wine Institute urged TTB to eliminate the examples in proposed § 4.122 and elsewhere in the Code of Federal Regulations, suggesting that examples are better conveyed to industry via written guidance documents made available on the agency's website. The Wine Institute stated that ''[b]y providing examples of permissible or impermissible label statements in written guidance, TTB will be able to create or change examples and communicate this information to industry members in an expeditious manner as opposed to making further points of clarification or adjustments to the Code of Federal Regulations.''

TTB Response

This final rule adopts proposed §§ 5.122 and 7.122 as proposed. In this case, the example simply illustrates an important principle to facilitate industry understanding of the regulations, rather than a factual situation that might change with other circumstances. Accordingly, the final rule retains this example.

i. General First Amendment Concerns

Subject to certain limited exceptions, the FAA Act specifically requires industry members to obtain a certificate of label approval in order to prevent the introduction into interstate commerce of alcohol beverage containers that are not labeled in accordance with the implementing regulations. See 27 U.S.C. 205(e). Nonetheless, TTB received some comments that raised general First Amendment concerns about the pre-approval of labels to enforce the statutory prohibition on misleading statements on alcohol beverage labels subject to the FAA Act.

NABI commented that while current case law does not protect misleading commercial speech, ''it sets a high bar for the Federal Government in backing up and proving its claim that any one specific representation on a label or in an advertisement is misleading.'' NABI further suggested that ''waiting for consumer complaints about specific labels or advertisements may be the better approach than purely speculating in advance of approving a certificate of label approval (COLA) or pre-clearing a proposed advertisement.''

The New Civil Liberties Alliance (NCLA), which describes itself as ''a nonprofit civil rights organization founded to defend constitutional rights,'' commented on several First Amendment issues. The NCLA stated that the proposed rule reformed ''an overly burdensome regulatory system.'' However, its comment also argues that ''COLAs are unconstitutional prior restraints on liberties guaranteed to all Americans by the First Amendment. To ameliorate the unconstitutional impact of restraints on speech, the Rule should apply the process and post-publication enforcement of the proposed labeling requirements for COLAs related to personalized labels * * * to *all* COLAs.'' [Emphasis in original.]

The NCLA comment questioned the distinction between the treatment of labels (which TTB reviews prior to the introduction of the product in interstate commerce) and advertisements (for which TTB does not require prior review). NCLA suggested that TTB instead amend the regulations to allow the approval of COLAs that include a ''template'' of mandatory information, and stated that this approach would be a logical extension of TTB's current and proposed policies regarding allowable revisions to approved labels and approval of personalized labels.

The Washington Legal Foundation (WLF), a nonprofit, public-interest law firm and policy center, stated that while TTB's proposed rule is in many ways clarifying, it ''inadequately protects commercial-speech rights. TTB is interested in promoting marketplace civility and ensuring that consumers are not misled, but rules promoting these laudable aims must still avoid unduly chilling free speech rights under the First Amendment.''

The Brewers Association (BA) submitted a comprehensive comment on this issue, stating as follows:

> As a basic policy, the BA respectfully suggests that TTB treat all types of label claims and trade dress in a similar manner. If claims, graphics, or other content on a label are misleading on the label as submitted, or if claims obscure or improperly modify mandatory information, TTB should address whatever elements of the label are misleading. Otherwise, the BA believes that TTB should maintain its focus on mandatory information concerning malt beverages. TTB could expressly reserve the right to initiate label revocation proceedings or enforcement action to seek corrections if claims on labels are determined to be false or misleading via competitor complaints or other credible sources, such as the Federal Trade Commission or recognized third party accreditation organizations.
>
> Various proposals in Notice 176 impose content restrictions based on existing TTB regulations that are difficult or impossible for TTB to enforce in an evenhanded manner and may violate commercial speech protections guaranteed by the First Amendment. See, *e.g., Cabo Distributing Co., Inc.* v. *Brady,* 821 F. Supp. 601 (N.D. Cal. 1992); *Bad Frog Brewery* v. *New York State Liquor Authority,* 134 F.3d 87 (1998). The recent *U.S. Supreme Court opinion in Iancu* v. *Brunetti,* decided on June 24, 2019 is also instructive on the topic of regulation of potentially offensive speech.
>
> Specific restrictions proposed § 7.126 (use of flags); § 7.127 (use of certain seals), § 7.124 (disparaging competitors), and § 7.103 (obscene or indecent statements or representations) are all subject to First Amendment challenges as an agency of the federal government is forced to make subjective decisions approving or disapproving messages that brewers are communicating to consumers. The BA recommends that TTB delete these sections from the final regulations.
>
> Hundreds of examples exist of labels approved by TTB that arguably violate existing regulations as well as the proposed regulations. This reality places TTB in an untenable situation. To the extent that any of the restrictions referenced above pose legitimate government concerns, they can be addressed under proposed § 7.122, which lays out a solid approach to making determinations on false and misleading labels. If TTB attempts to enforce §§ 7.126, 7.127, 7.124, and 7.103, a First Amendment challenge is possible, and the archaic restrictions seem unlikely to survive. In the past when confronted by an analogous situation, TTB properly identified health claims as a legitimate policy concern, engaged in rulemaking, and promulgated a comprehensive and defensible regulation that is included in Notice 176 at § 7.129.

TTB Response

After carefully reviewing the comments, TTB has concluded that its proposed regulations comply with First Amendment case law regarding regulation of commercial speech and the statutory requirement to pre-approve labels to prevent misleading claims.

In *Central Hudson Gas* & *Electric Corp.* v. *Public Services Commission,* 447 U.S. 557, 563–566 (1980), the Supreme Court held that in order to regulate commercial speech, the Government must satisfy a four-prong test. First, the First Amendment protects expression only if it concerns lawful activity and is not misleading. Second, the Government must establish a substantial interest. Third, the regulation must directly advance the governmental interest asserted. Finally, the regulation must be no more

extensive than necessary to serve the interest asserted.

In two cases involving alcohol beverages, the Supreme Court struck down bans on *truthful and non-misleading* commercial speech. In *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476, 491 (1995), the Supreme Court applied the *Central Hudson* analysis in striking down the FAA Act's prohibition of statements of alcohol content on malt beverage labels unless required by State law. In *44 Liquormart, Inc.* v. *Rhode Island,* 517 U.S. 484 (1996), the Supreme Court struck down Rhode Island's ban on advertising the price of alcohol beverages on First Amendment grounds. However, these decisions did not address the Government's authority to regulate actually or potentially misleading commercial speech regarding alcohol consumption. TTB also notes that courts have expressed a general First Amendment preference for additional disclosure over bans on potentially misleading commercial speech. See, *e.g., Pearson* v. *Shalala,* 164 F.3d 650, 656 (D.C. Cir. 1999), citing *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 376 (1977) (where attorney advertising was not inherently misleading, ''the preferred remedy is more disclosure, rather than less.'').

To the extent that some comments are suggesting that the FAA Act's COLA requirements are unconstitutional, TTB disagrees. A law acts as a prior restraint when it mandates that a speaker seek government permission before engaging in protected expression; however, the Supreme Court has indicated that the prior-restraint doctrine may not apply to commercial speech. See *Central Hudson Gas & Elec. Corp* v. *Public Serv. Comm'n,* 447 U.S. 557, 571 n. 13 (1990) (stating that ''commercial speech is such a sturdy brand of expression that traditional prior restraint doctrine may not apply to it'').

In a recent case involving a First Amendment challenge to TTB's denial of a petition to allow specific health claims in the labeling and advertising of distilled spirits regarding the alleged DNA-protective properties of an ingredient added to alcohol beverages, the D.C. Circuit declined again to rule on the issue of whether traditional prior restraint doctrine applies to commercial speech. See *Bellion Spirits, LLC* v. *United States,* 7 F.4th 1201, 1213 (D.C. Cir. Aug. 6, 2021) (''We have previously left open whether the prior-restraint doctrine applies in the context of commercial speech * * * and we do so again here. Even assuming the applicability of prior-restraint principles, Bellion fails to demonstrate an unconstitutional prior restraint.'').

With respect to a facial challenge to TTB's COLA system, the court held as follows:

> By imposing sufficiently ''narrow, objective, and definite standards,'' *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147, 151, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969), the COLA scheme adequately channels TTB's discretion. The COLA regulation provides that TTB ''will approve'' specific health claims ''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.'' *See* 27 CFR 5.42(b)(8)(ii)(B)(2). Those conditions of approval are ''sufficiently definite to constrain [TTB] within reasonable bounds.'' *See Nutritional Health Alliance* v. *Shalala,* 144 F.3d 220, 228 (2d Cir. 1998).
>
> In addition, the COLA process * * * channels TTB's decisionmaking through adequately strict deadlines. *See Freedman* v. *Maryland,* 380 U.S. 51, 58, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). The regulation states that TTB must respond to an application within 90 days, unless it elects to use one 90-day extension. *See* 27 CFR 13.21(b). Indeed, applicants who do not receive a decision from TTB within the specified time period may file an administrative appeal. *Id.* We find no ''unbridled'' discretion in that scheme. *See City of Lakewood,* 486 U.S. at 757, 108 S.Ct. 2138.

See *Bellion Spirits* at 1213.

Accordingly, it is TTB's position that the COLA regulations do not represent an unconstitutional prior restraint on commercial speech.

j. Guarantees

The FAA Act specifically authorizes the issuance of regulations to prohibit, irrespective of falsity, such statements relating to ''guarantees'' as the Secretary of the Treasury ''finds to be likely to mislead the consumer.'' See 27 U.S.C. 205(e). Proposed §§ 4.123, 5.123 and 7.123 prohibit the use of guarantees that are likely to mislead the consumer. However, TTB does not prohibit money-back guarantees. This is a restatement of existing policy currently found in §§ 4.39(a)(5), 5.42(a)(5), and 7.39(a)(5), with minor modifications for clarity.

In addition to the First Amendment general concerns that commenters raised about this provision and other provisions relating to misleading speech, TTB received two comments in opposition to the proposed provisions on guarantees on the ground that they were unnecessary. ADSA commented that the provisions are from a bygone era, and DISCUS suggested that the proposals were vague and unnecessary.

TTB Response

TTB is finalizing proposed §§ 5.123 and 7.123 without change. TTB agrees that the general provisions on misleading statements might cover this issue; however, the intent of the regulation is to implement the specific statutory language on this issue. Accordingly, TTB believes that these specific regulations still serve a useful purpose.

k. Statements That Are Disparaging of a Competitor's Products

Current regulations mirror the language in the FAA Act, 27 U.S.C. 205(e), which simply prohibits labeling and advertising statements that ''are disparaging of a competitor's products.'' See 27 U.S.C. 205(e) and (f). In proposed §§ 4.124, 5.124, and 7.124, TTB sought to clarify longstanding ATF and TTB policy (as expressed in T.D. ATF–180, 49 FR 31667, August 8, 1984) that a competitor's product is disparaged within the meaning of the statutory prohibition only when statements or claims about the product, or relating to the product, are false or would tend to mislead the consumer. This policy does not preclude additional information such as ''puffery'' statements made about one's own product, nor does it prohibit truthful and nonmisleading comparative statements or claims that place the competitor's product in an unfavorable light. TTB's intention was to clarify the prohibition in a manner that conformed to current case law about protections afforded to truthful and non-misleading commercial speech.

In the proposed regulatory text, TTB also included examples of statements that would, or would not, be prohibited under this provision. For example, TTB would not prohibit a statement of opinion such as ''We think our [product] tastes better than any other [product] on the market.'' However, TTB would consider a truthful statement such as ''We do not add arsenic to our [product]'' to be disparaging because it falsely implies that other producers do add arsenic to their products. Furthermore, the proposed regulations provide that labels may not include statements that disparage their competitor's products by making specific allegations, such as ''Brand X is not aged in oak barrels,'' when such statements are untrue.

In its comment, the Washington Legal Foundation (WLF) suggested that the prohibition on false or misleading ''disparaging'' statements about a competitor's products would ''violate commercial-speech rights under the First Amendment.'' WLF pointed out

that a recent Supreme Court case, *Matal* v. *Tam,* 137 S. Ct. 1744 (2017), struck down the ''disparagement clause'' of the Lanham Act, which prohibited Federal trademark registration for marks that might disparage any persons living or dead. WLF noted that the Court held that the ban ''offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.'' 137 S. Ct. at 1751. WLF noted that the Court emphasized that heightened scrutiny applies when a law or regulation engages in viewpoint discrimination.

The comment from NABI noted that as a general matter, the Supreme Court has rejected ''paternalism'' on the part of the Federal Government in prohibiting commercial speech, and suggested that review by TTB of consumer deception after receipt of consumer complaints might be a better approach than ''purely speculating'' in advance of approving a label. The NABI comment specifically referenced the proposed rule on ''disparaging'' statements. DISCUS commented in favor of removing both the proposed and existing language on disparaging statements, and suggested that proposed ''Section 5.122 should serve as the only regulation governing truthful and misleading labeling claims. In that regard, the instant rulemaking has several proposed rules governing truthful, non-misleading statements regarding distilled spirits labels, containers, and packaging when only one rule is necessary.''

The Brewers Association suggested that the rule on disparaging statements was one of several issues that were better left to self-regulation by the alcohol beverage industries, noting that the Brewers Association and other industry trade associations maintain advertising codes that address obscene, indecent, and disparaging materials. The Association also noted that the ''Federal Trade Commission has repeatedly expressed support for voluntary industry initiatives to regulate offensive alcohol beverage advertising and for advertising of many other consumer products and services. See, *e.g.,* Federal Trade Commission, Self-Regulation in the Alcohol Industry: March 2014, p. 34.''

TTB received a comment in support of the proposed language on disparaging statements from ACSA. Other trade associations suggested amendments to the proposed revision on disparaging statements. Wine Institute commented in support of the proposed amendments, but stated that the codified regulations should not include examples of permissible or impermissible label statements, believing that written guidance on TTB's website better conveys such examples to industry. Accordingly, Wine Institute recommended removing the examples from the proposed regulation.

ADSA questioned the continued need for any specific regulation that prohibits false or misleading statements that are disparaging about competitors, and suggested that such statements would be covered by the general prohibition on false or misleading statements. ADSA was particularly concerned that the second example in the proposed rule, about not adding arsenic to a distilled spirits product, was capable of misinterpretation and ''could be construed as suggesting that any claim about the absence of an ingredient or feature (*e.g.,* 'gluten-free') constitutes a prohibited disparaging claim.'' Accordingly, ADSA stated that ''[a]t a minimum, TTB should delete and not replace the examples in the current proposal.''

TTB Response

TTB notes that it designed the proposed amendment to the prohibition on statements that are ''disparaging'' of a competitor's products to address First Amendment issues and clarify longstanding policy that the prohibition applies only to false or misleading statements.

Unlike the ''disparagement clause'' of the Lanham Act, which applied to marks that might disparage any individuals, living or dead, regardless of whether the information conveyed was truthful and non-misleading, TTB narrowly focused the proposed rule on statements that are false or misleading, and the disparage the products of a competitor. Under the first prong of the *Central Hudson* test, the First Amendment does not protect false or misleading commercial speech. The language of the FAA Act does not specify this important qualification, but, as explained above, this has been the position of TTB and its predecessor agency since the 1980s. Unlike the provision of the Lanham Act that was struck down in *Matal* v. *Tam,* the disparagement prohibition in the proposed rule was thus specifically aimed at commercial speech (relating to the products of a competitor) that is false or misleading, and thus serves the dual purpose under the FAA Act of protecting fair competition and preventing consumer deception.

Based on the comments regarding the examples, TTB agrees that in this particular situation, the proposed examples seemed to confuse people rather than shed light on its position. Accordingly, TTB is removing the examples from the language of the final rule. Instead, the final rule prohibits only false or misleading statements that explicitly or implicitly disparage a competitor's product, and does not prohibit statements of opinion or truthful and non-misleading comparisons between products. This language is entirely consistent with current case law under the First Amendment.

l. Tests or Analyses

Proposed §§ 4.125, 5.125 and 7.125 prohibit statements or representations of, or relating to, analyses, standards, or tests, whether or not truthful, that are likely to mislead the consumer. These proposed provisions incorporate current policy, but also provide new examples of misleading statements or representations under these sections, which TTB intends to illustrate the principle that a truthful statement about a test or standard may nonetheless be misleading as presented.

The ACSA expressed its support for the proposed regulation. Wine Institute suggested the removal of the example of a misleading statement regarding a test or analysis. The Mexican Chamber of the Tequila Industry and the Tequila Regulatory Council supported the inclusion of examples, and requested inclusion of a new example relating specifically to the testing of tequila by anyone other than an authorized conformity assessment body. Furthermore, the Tequila Regulatory Council proposed that ''in the case of tequila, no statements or declaration of test, other than the one provided by the conformity assessment body in the form of a NOM [Norma Oficial Mexicana] mark, be allowed'' and that TTB should require a NOM mark on any label of Tequila bottled in the United States. The comment states that this mark, which includes the four-digit code assigned to the distiller, is a sign of quality and product assurance. Finally, DISCUS and ADSA opposed the inclusion of § 5.125, on the same grounds that they opposed the provisions on guarantees. Among other things, they commented that the general provisions on misleading statements would cover misleading statements relating to analyses, standards, or tests.

TTB Response

TTB is finalizing proposed §§ 5.125 and 7.125 without change. TTB agrees with DISCUS and ADSA that the general provisions on misleading statements might cover this issue; however, the intent of the regulation is to provide guidance that is more specific to

industry members and consumers as to how they may depict statements about standards, analyses, and tests on a label without running afoul of the statute and regulations. Accordingly, TTB believes that these specific regulations, including the example provided, serve a useful purpose.

TTB is not adopting the suggestions made in the comments from the Mexican Chamber of the Tequila Industry and the Tequila Regulatory Council for the inclusion of a new example in the regulation regarding testing by anyone other than an authorized conformity assessment body. Similarly, TTB is not adopting the Tequila Regulatory Council's suggestion that a NOM mark be required on labels of Tequila bottled in the United States, as this would require more mandatory information to appear on Tequila labels. TTB believes that these comments relate specifically to Tequila rather than to the general prohibition on misleading testing claims, and that they fall outside of the scope of the proposals on which TTB solicited comments in Notice No. 176.

m. Depictions of Government Symbols

Under current regulations, TTB prohibits representations relating to the American flag or the U.S. armed forces from appearing on alcohol beverage labels in order to prevent misconceptions that the U.S. government or its armed forces endorse, or otherwise supervised the production of, the alcohol beverage. However, the regulations prohibit the use of flags from other countries only where it would be misleading. The regulations on U.S. and foreign flags are based on the same statutory provision of the FAA Act at 27 U.S.C. 205(e)(5), which prohibits deception of the consumer by use of a name or representation of individuals or organizations when such use creates a misleading impression of endorsement.

Consistent with the statutory prohibition on which TTB bases these regulations, it is TTB's current policy to enforce this regulatory prohibition only where such representations might tend to mislead consumers. Thus, TTB proposed to amend the regulations to remove the blanket prohibition against the use of representations of, or relating to, the American flag, the armed forces of the United States, or other symbols associated with the American flag or armed forces. Therefore, proposed §§ 4.126, 5.126, and 7.126, retain the prohibition against the use of such symbols or images where they create the false or misleading impression that the government entity represented has endorsed or was otherwise affiliated with the labeled product. Furthermore, each of these proposed sections specifically provides that the section does not prohibit the use of a flag as part of a claim of American origin or a claim of another country of origin.

TTB received several comments in support of removing the blanket ban on the use of flags on alcohol beverage labels, including comments from WineAmerica, the New York Farm Bureau, DISCUS, ACSA, and an attorney in the alcohol beverage field. ADSA suggested that as amended, the provision was meaningless. Wine Institute commented that a specific provision on flags was unnecessary and should be covered by a general misleading provision. Comments from the Brewers Association and the New Civil Liberties Alliance raised First Amendment concerns about several regulatory provisions, including this one.

On the other hand, TTB received two comments that favored a blanket ban on the use of the American flag on labels or in advertisements. One of these comments, from the Missouri Craft Distillers, raised concerns about using national symbols for marketing purposes. The other comment, from Sazerac, suggested that TTB's proposal is contrary to the Federal Flag Code.

TTB Response

TTB is finalizing §§ 5.126 and 7.126 as proposed. The regulations on depictions of government symbols are based on the statutory provisions of the FAA Act (27 U.S.C. 205(e)(5)) that prohibit deception of the consumer by use of name or representation of individuals or organizations when such use creates a misleading impression of endorsement or affiliation. As stated in Notice No. 176 and above, the proposed regulations remove the blanket ban on use of flags and other symbols of the United States and Armed Forces. Rather, the proposed regulations set out TTB's current policy prohibiting the use of these symbols only when they create a misleading impression that there was some sort of endorsement by, or affiliation with, the governmental entity represented.

With regard to Sazerac's comment, TTB notes that the Federal Courts have not ruled on the validity of the Flag Code or other criminal provisions with regard to the use of the image of the American flag for marketing purposes. TTB believes that the use of an image of a flag as part of a general message of patriotism may be protected under the First Amendment, even if that message appears on a product label. For more information, see the general discussion in the Congressional Research Service's ''Frequently Asked Questions About Flag Law,'' dated October 7, 2019, which can be found on the website at *https://crsreports.congress.gov/product/pdf/R/R45945.*

In any case, TTB's regulations implementing the FAA Act's ban on the use of images that create a misleading impression that an alcohol beverage is endorsed or otherwise affiliated with any private or public organization does not intersect with or otherwise affect the enforcement of the Flag Code, which governs the handling and display of the United States flag. Thus, TTB does not address the Flag Code in its analysis of this regulation.

n. Depictions Simulating Government Stamps Relating to Supervision

Proposed §§ 4.127, 5.127, and 7.127 retain prohibitions against depictions simulating government stamps or relating to government supervision but provide that these representations are only prohibited if they create the misleading impression that the alcohol beverage is manufactured under government authority. In Notice No. 176, TTB specifically solicited comments on whether there is still a need for regulations on this issue.

DISCUS and the ACSA commented in favor of the proposal. However, several commenters, including Wine Institute, ADSA, and the Williams Group expressed the view that specific provisions on this issue were no longer necessary, as they reflected a ''bygone era'' and it is questionable as to whether such stamps or other symbols retain any meaning for consumers today. The Brewers Association included this provision in its general comment raising First Amendment concerns.

TTB Response

Based on the comments, TTB agrees that there is no longer a need to include specific prohibitions on this issue. TTB will continue to cover misleading representations on this issue via the general prohibition on misleading labeling statements. Accordingly, this final rule does not include proposed §§ 5.127 and 7.127.

o. Health-Related Claims

In proposed §§ 4.129, 5.129, and 7.129, TTB set out current regulations pertaining to health-related statements without change. ACSA expressed support for these provisions as proposed. The Wine Institute and St. George Spirits sought clarification on the use of specific terms used in these provisions, and the Wine Institute suggested that TTB publish guidance

with regard to specific issues that the regulations present.

TTB Response

TTB is finalizing §§ 5.129 and 7.129 as proposed. However, TTB will consider the comments it received regarding the issuance of public guidance on issues pertaining to the regulations on health-related statements.

p. Appearance of Endorsement

Consistent with current regulations, proposed §§ 4.130, 5.130, and 7.130 maintains TTB's prohibition on the use of the name of a living person or existing private or public organization if the use of that name or a representation misleads 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. The difference between the current and proposed regulations is that proposed §§ 4.130, 5.130, and 7.130 made it more clear that actual endorsements are permitted and that TTB may request documentation supporting a claim of endorsement.

DISCUS commented in favor of retaining the existing regulations, without explaining the basis for this comment.

TTB Response

TTB believes the proposed regulations reflect the same policy as the current regulations but are easier to understand. Accordingly, TTB is finalizing §§ 5.130 and 7.130 as proposed, but without the language that TTB may request documentation supporting a claim of endorsement. TTB is removing this language because it is true of any claim.

The final rule also includes language in §§ 5.130 and 7.130 that was inadvertently omitted from the proposed rule, for consistency with the statutory provisions at 27 U.S.C. 205(e)(5). As amended, the regulatory language, like the statutory language, specifically provides that the provisions on implied endorsements do not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman of distilled spirits, wine, or malt beverages. The legislative history of the FAA Act, as reflected in the Report of the House Committee on Ways and Means (H.R. Rep. No. 1542, 74th Cong., 1st Sess., at 13), explains that this ''provision does not extend to cases of conflict within the industry as to proprietary rights in trade or brand names.'' This is consistent with TTB's longstanding position, as stated on the COLA form, that its issuance of a COLA in no way confers trademark protection.

The final rule also includes a ''grandfathering'' provision that is found in the statutory language, regarding names that were in use by the industry member or its predecessors in interest prior to August 29, 1935, the date that the FAA Act was enacted. While TTB believes it is unlikely that such ''grandfathered' names are still being used, we are retaining the statutory language in the final rule out of an abundance of caution.

8. Subpart I—Standards of Identity

a. Geographic Names

In Notice No. 176, TTB proposed to reorganize and amend existing regulations setting out the conditions under which geographic names for distilled spirits and malt beverages may be used on a label as, or as part of, the designation of the product.

For distilled spirits, the proposed regulations at § 5.154 sought to clarify and update the rules currently found in 27 CFR 5.22(k) and (l). These regulations allow ''generic'' names (*i.e.,* names that have lost their geographical significance by usage and common knowledge) to be used to designate products from places other than the geographic areas otherwise indicated by the name. Current regulations provide that ''London dry gin'' and ''Geneva (Hollands) gin'' are examples of generic names. This means, for example, that ''London dry gin'' may be used on the label of a product that is produced somewhere other than London, and no modifier such as ''type'' would be required for such a product.

The proposed regulations provided that geographic names that have not been found to be ''generic'' may not be used on products made outside of the place indicated by the name, unless TTB determines that the name represents a type of distilled spirit, in which case the designation must include a qualifier such as ''type'' or ''style'' or a statement indicating the true place of production. TTB proposed to list names of specific products that fall within the categories of products without geographical designations that are associated with a particular geographical region. Similarly, for malt beverages, TTB proposed to clarify the requirements for the use of geographical names, which are currently set out in 27 CFR 7.24(f) though (h), and to add to the regulations several established generic names as well as names of types of malt beverages that require a qualification that indicates the true place of production.

In response to these proposals, TTB received a significant number of comments from various interested parties, including distilled spirits and malt beverage producers, domestic and foreign trade associations, and foreign governments. The European Union (EU) expressed concern that certain names of distilled spirits and malt beverages listed in TTB's regulations ''correspond to EU [geographical indications].'' Likewise, Spirits Europe commented that ''a number of names quoted are registered as geographical indications in the EU (for example Ouzo, Aquavit).'' Furthermore, many commenters, including the EU, opposed certain aspects of TTB's proposal that allowed for the use of the terms ''type'' and ''style'' on the grounds that it would violate provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For instance, DISCUS commented that the proposed regulations appear inconsistent with Article 23 of the Agreement and ''quer[ied] whether TTB has considered its applicability.'' Likewise, the NABI encouraged TTB to ''review the U.S. obligations [under TRIPS] to ensure that the U.S. is in compliance.''

Furthermore, several commenters suggested that the use of the terms ''type'' and ''style'' in conjunction with a geographical designation creates potential for consumer confusion. For example, FEVS commented that allowing for the use of ''type'' or ''style'' would be ''extremely confusing and misleading to consumers as to the nature and essential qualities of the product'' being purchased. Similarly, DISCUS commented that ''the use of the terms 'style' and 'type' would be extremely misleading to consumers in particular as it relates to the distinctive products of other nations.'' The Mexican Chamber of the Tequila Industry stated its belief that the use of the terms ''type'' or ''style'' on distinctive products ''undermines the traditional culture and social context associated with it'' and that ''labels using the name of the distinctive product should only be allowed when certified according to its standard of identity.'' The Republic of Ireland stated that ''use of the words 'Irish type' or 'Irish style' on whiskey-related goods will convey an improper association with Irish Whiskey and is an evocation of Ireland when such products will not have been produced in Ireland.''

Several commenters proposed further amendments to the regulations. For instance, an individual commenter requested that ''Berliner weiss [be]

added to the list of recognized non-geographical beer styles'' and Sazerac requested that TTB ''move 'Ojen' and 'Swedish Punch' to the list of products that are associated with a particular place that have become generic, and therefore may be manufactured in any place.'' The BNIC requested that TTB add language to its regulations to ''[make] absolutely clear that when a geographical designation is also a standard of identity (*e.g.,* a type designation), that designation cannot be used on a label or in advertising except in conformity with that standard of identity.'' ACSA supported the intent of TTB's proposal but stated that ''clarification and additional protections are necessary in order to avoid misleading consumers and to protect regional and national American spirit designations.'' Specifically, ACSA recommended that ''TTB recognize and protect any spirits designations that are a product of a specific geographic region and whose production standard have been formally agreed by an organized cohort of producers in that region such that their products are genuinely differentiated from the category.'' Furthermore, ACSA suggested that the terms ''type'' and ''style'' be required to appear ''on the same line and in the same font as the geographical designation stated.''

With regard to the proposed regulations for malt beverages, Beverly Brewery Consultants questioned whether ''Munich,'' ''Munchner,'' and ''Kulmbacher'' should still be recognized as being distinctive types that may be qualified with the word ''type'' or ''American'' or some other statement indicating the true place of production. On the other hand, the Brewers Association suggested that the proposed rule would require labeling changes and suggested that ''[a]ny attempt at this point in time to disentangle American and European geographic designations for beer styles is almost certain to result in arbitrary decisions.'' Finally, an owner of Schilling Beer Co. asked why TTB had not yet recognized ''IPA'' (which is an abbreviation of the designation ''India Pale Ale'') as a recognized style of beer.

TTB Response

After reviewing and considering the comments received, TTB will not move forward, at this time, with the proposed reorganization and clarifying amendments to the existing regulations on geographical names for distilled spirits and malt beverages. Instead, the final regulations for distilled spirits (§ 5.154) and malt beverages (§ 7.146) retain the provisions of the current regulations as they appear in sections 27 CFR 5.22(k)–(l) and 27 CFR 7.24(f)–(h), respectively. As several commenters raised issues relating to compliance with international agreements to which the United States is a Party, TTB believes that it must engage in further consultation with other government agencies on these matters prior to taking further action on the proposed amendments. For this reason, TTB will also evaluate the comments that address existing regulations as suggestions for further rulemaking.

TTB notes that its decision to retain the current regulations without incorporating the proposed amendments does not represent any change in TTB's current policy on the matter of geographical names, as set forth in TTB guidance or otherwise. Thus, for example, while the final rule does not specifically include Scotch ale (Scottish ale), and Russian Imperial Stout (Imperial Russian Stout) as examples of generic designations for malt beverages, TTB has already issued public guidance recognizing these names as generic. Accordingly, brewers may continue to use ''Imperial Russian Stout'' or ''Russian Imperial Stout'' and ''Scotch Ale'' or ''Scottish Ale'' on labels to describe this type of malt beverage without the addition of any qualifying statements, such as ''type,'' ''American,'' etc. Similarly, this final rule will not affect the continued validity of any certificates of label approval that TTB has issued for malt beverage or distilled spirits labels that include geographical names (such as approvals issued for ''Ojen'' products made in the United States).

TTB is finalizing the proposed change regarding the recognition of ''Andong Soju'' in the regulations in § 5.154. Pursuant to Article 2.13.2 of the United States–Korea Free Trade Agreement, the United States agreed to recognize Andong Soju as a distinctive product of the Republic of Korea. See TTB Ruling 2012–3.

Accordingly, the final rule includes Andong Soju in the examples of geographical names that may not be used on labels for distilled spirits produced in any other place than the particular place of region indicated in the name. With regard to the comment about recognition of ''IPA'' as a type of malt beverage, TTB notes that the designation ''India Pale Ale'' has been recognized as a generic designation since the issuance of the first malt beverage labeling rules under the FAA Act in 1936. However, the abbreviation ''IPA'' is not recognized as a designation for a malt beverage. It is TTB's policy is to allow ''IPA'' to appear as additional information on malt beverage labels; however, TTB has not allowed this abbreviation to suffice as the class/type designation without an additional designation (such as ''ale,'' ''beer,'' or ''India Pale Ale''). Because TTB did not solicit comments on whether the industry and consumers recognize the term ''IPA'' (standing alone on a label) to mean the same thing as ''India Pale Ale,'' TTB will not adopt the comment on this issue, but will instead consider it as a suggestion for future action.

9. Subpart L—Recordkeeping and Substantiation Requirements

Proposed Subpart L of parts 4, 5, and 7 provided rules for recordkeeping and substantiation requirements for alcohol beverages.

a. Recordkeeping Requirements and Retention Period

Current regulations require bottlers holding an original or duplicate original of a certificate of label approval (COLA) or a certificate of exemption to exhibit such certificates, upon demand, to a duly authorized representative of the United States Government (see 27 CFR 4.51, 5.55, and 7.42). Current regulations also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs officer (see 27 CFR 4.40, 5.51, and 7.31). However, these regulations do not state how long industry members should retain their COLA. Furthermore, since the current regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, applicants electronically submit over 98 percent of new applications for label approval, and TTB electronically processes the remainder. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that TTB electronically processed. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that industry members keep track of which label approval they are using when they make such revisions.

Accordingly, proposed §§ 4.211, 5.211, and 7.211 provided that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label that is used on an alcohol beverage container and that is subject to the COLA requirements of the applicable part. The proposed regulations stated that bottlers and importers could satisfy the requirement by providing original certificates, photocopies, or electronic

copies of COLAs, or records showing the TTB identification number assigned to the approved COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized to be made on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product, upon request by the appropriate TTB officer. Bottlers and importers must be able to provide this information for a period of 5 years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB proposed 5 years as a reasonable period for regulated industry members to retain records because this period covers both the civil and criminal statute of limitations for violations of the FAA Act. TTB noted that the proposed rule would not require industry members to retain paper copies of each certificate. They should simply be able to track a particular removal to a particular certificate, and they may rely on electronic copies of certificates, including copies contained in the TTB Public COLA Registry.

DISCUS expressed support for the recordkeeping requirement provisions, but raised a separate issue regarding how long TTB kept records of approved COLAs and formulas, suggesting that TTB should retain them in perpetuity. WineAmerica expressed support for the inclusion of a recordkeeping requirement in the regulations but asked that if such a form is not physically locatable, TTB should not penalize the producer, ''as virtually all TTB related documents can be accessed via online sources.'' NABI recommended that there be no mandatory retention period for COLAs available on COLAs Online, or in the alternative, stated that the retention period should be 3 years with a2-year optional extension. NABI stated that retention of certificates for every shipment imposed an undue burden on importers that a shorter retention period would be lessen, while the Williams Group believed 5 years was a reasonable record retention period for substantiating documentation. Wine Institute stated that maintaining the records required under §§ 4.212 and 5.212 for 5 years would create a significant recordkeeping and, therefore, financial burden on smaller wineries. Wine Institute recommended a3-year retention period, which was in line with other TTB record retention requirements and the period reviewed by TTB during audits.

Beverly Brewery Consultants suggested removing as redundant from § 7.211(b) the words ''if the product is required to be covered by a COLA,'' because the other text in the paragraph already establishes that the products and label revisions would be covered by a COLA. Beverly Brewery Consultants also recommend removing from § 7.211(c) a reference to § 7.26, which does not appear in the proposed regulations.

The New York Farm Bureau commented as follows:

> Beverage producers must provide proof of COLA approval at TTB's request. NYFB supports the idea that each producer keeps their own records of TTB approved forms, but if such form is not physically able to be located, the TTB does not penalize the producer, as virtually all TTB related documents can be accessed via online sources.

TTB Response

After reviewing the comments, TTB believes that the proposed recordkeeping provisions caused some confusion; therefore, the final rule does not adopt §§ 5.211 and 7.211 as proposed. Instead, TTB is finalizing the provision in current regulations that imposes a 5-year record retention period for certificates of age and origin for imported distilled spirits. These requirements are finalized in new § 5.30.

TTB is also finalizing the provision in the current regulations that requires certificate holders to produce COLAs upon demand from an appropriate TTB official.

TTB notes the proposed rule did not require industry members to retain paper copies of each certificate. Rather they may rely on electronic copies of certificates, including copies contained in the TTB Public COLA Registry. TTB is adopting final regulations that reflect the use of modern, online systems as it will no longer require certificate holders to provide original certificates in response to such requests. Instead of consolidating these requirements into a recordkeeping subpart, TTB will simply retain the requirements in the appropriate sections of the regulations in new §§ 5.21(c), 5.23, 5.24(d), 7.21, and 7.24.

The DISCUS comment about TTB's own schedule for retaining records in its online systems is beyond the scope of this rulemaking, and TTB will consider it as a request for further action. Because TTB is not adopting the proposed regulations in this final rule, TTB is not addressing editorial comments from Beverly Brewery Consultants.

b. Substantiation Requirements

Proposed §§ 4.212, 5.212, and 7.212 set forth specific substantiation requirements, which are new to the regulations, but which reflect TTB's current policies as to the level of evidence that industry members are expected to have to support labeling claims. The proposed regulations provided that all claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (*e.g.,* ''tests provide'' or ''studies show'') must have the claimed level of substantiation.

Furthermore, the proposed regulations provided for the first time that any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, would be considered misleading. The proposed regulations in subpart H similarly included the same requirement. TTB proposed these revisions to the regulations to clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation.

NABI raised due process concerns and stated that proposed §§ 4.212, 5.212, and 7.212 must be clarified and narrowed to inform industry members of their obligations. Specifically, NABI commented that the provisions allowing TTB to request substantiation for any claim, implicit or explicit, did not adequately inform industry members of their obligations, and would require importers to maintain an indeterminate amount of information for every product they import.

Wine Origins Alliance (WOA) expressed support for the proposed section and noted that the term ''claim'' was not defined in existing or proposed regulations, and expected that it would have the same broad meaning used by the Federal Trade Commission and Lanham Act jurisprudence, *i.e.,* text ''that states or implies a particular fact.'' WOA stated that under current TTB regulations, there is no specific obligation for an industry member to substantiate a claim on labeling, and therefore ''a claim could be based on mere supposition or speculation.'' According to WOA, it is currently TTB's burden to prove that an unsubstantiated claim is false or misleading, whereas under the proposal, TTB could request substantiation for any claim and take enforcement action if it found the support inadequate. With this understanding, WOA supported the proposed requirements to the extent they would cause industry members to be more conservative in deciding which claims to put on labels, and thus

''reduce the chances of claims that falsely or misleadingly suggest a connection to one of our member regions.''

Oregon Winegrowers Association and Willamette Valley Wineries Association supported proposed § 4.212 for similar reasons, believing it would help avoid consumer confusion by leading to fewer false or misleading labeling claims. The Williams Group supported requiring substantiation and a reasonable basis in fact for all labeling claims.

Wine Institute recommended removing § 4.122(b)(2) as duplicative of § 4.212(b). Proposed 4.122 states TTB's general prohibition of misleading statements or representations on wine labels, containers, or packaging, and references the substantiation requirement in § 4.212(b).

DISCUS opposed § 5.212 because substantiation requests by TTB may delay label approvals. According to DISCUS, TTB faces a significant and increasing label review burden and lacks the capacity and expertise to determine the sufficiency of scientific or other substantiation of claims on distilled spirits labels. DISCUS also expressed concern that subjective rejections of labels by label specialists could impede product launches or lead to other commercial impacts. The DISCUS comment also stated that the proposal may ''affect or delay historical labels to the detriment of industry members without commensurate benefit to TTB.''

ADSA similarly believed that TTB lacked expertise to police labeling substantiation. ADSA expressed concern that TTB personnel would allege substantiation failures that would result in either expensive legal proceedings or offers in compromise to resolve the allegations. ADSA stated that its member companies already must substantiate labeling claims to avoid potential civil and governmental liability, including actions by competitors, consumers, State attorneys general, and the Federal Trade Commission, so additional requirements from TTB were unnecessary.

Beer Institute believed the phrase ''adequately substantiated,'' the standard by which TTB official would determine if a claim was misleading under proposed § 7.212, was too vague and required clarification. Beverly Brewing Consultants opposed the proposed regulation at § 7.212 because it did not distinguish between potentially false and misleading claims and generally accepted advertising puffery, such as ''Vermont's Favorite Beer'' or ''Great Tasting Beer.'' Beverly Brewing Consultants stated that the proposed regulation did not have a basis in the current regulations or past practice or usage.

TTB Response

After careful review of the comments, TTB has concluded that the proposed language caused confusion among industry members. TTB did not intend the proposed regulations to slow down the label review process by requiring COLA applicants to substantiate all claims prior to label approval, but some commenters incorrectly interpreted them as such. Accordingly, TTB is not adopting the proposed regulations on substantiation of claims. TTB stresses that it continues to expect certificate holders to be able to provide substantiation of both implicit and explicit labeling claims upon request.

It is worth noting that while TTB has not issued regulations on ''puffery,'' TTB generally follows the FTC's policy under which the agency does not expect ''puffery,'' in the form of statements of opinion or hyperbolic claims regarding the quality of the product, to be substantiated. See ''FTC Policy Statement on Deception,'' dated October 14, 1983 (appended to *Cliffdale Assoc., Inc.,* 103 F.T.C. 110, 185 (1984), which states, ''The Commission generally will not pursue cases involving obviously exaggerated or puffing representations, *i.e.,* those that the ordinary consumers do not take seriously''). See also *Pfizer, Inc,* 81 F.T.C. 23, 64 (1972) (''[t]he term ''puffing'' refers generally to an expression of opinion not made as a representation of fact'').

10. Subpart M—Penalties and Compromise

a. Criminal Penalties

Consistent with statutory provisions of 27 U.S.C. 205(e), proposed §§ 4.221, 5.221 and 7.221 state that a violation of the labeling provisions is punishable as a misdemeanor and refer readers to 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

DISCUS, Willamette Valley Wineries Association (WVWA), Oregon Winegrower's Association (OWA) and the New York Farm Bureau expressed support for this proposal. WVWA and OWA also requested an amendment to the proposed penalty regulations, providing that TTB would refer permittees who have repeated or egregious labeling violations for further investigation.

TTB Response

The proposed regulatory language simply refers readers to the statutory provisions about criminal penalties, as it is not appropriate to codify the suggested enforcement policies in the regulations. Accordingly, TTB is finalizing §§ 5.221 and 7.221 as proposed.

b. Conditions of Basic Permits

Proposed §§ 4.222, 5.222, and 7.222 provide that basic permits are conditioned on compliance with the provisions of 27 U.S.C. 205, including the labeling provisions of parts 4, 5 and 7. The proposed regulations state that a willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in 27 CFR part 1.

DISCUS, Willamette Valley Wineries Association, and the Oregon Winegrower's Association expressed support for the regulations as proposed. Beverly Brewery Consultants, however, requested that TTB delete § 7.222 because part 7 ''does not describe or regulate FAA Basic Permits.'' Similarly, the National Beer Wholesalers Association questioned whether TTB was proposing to create such a permit requirement for brewers.

TTB Response

Brewers are not required to obtain a basic permit under the FAA Act. Instead, the Internal Revenue Code at 26 U.S.C. 5401 requires brewers to file a notice of intent to operate a brewery. Under this authority, TTB requires brewery applicants to submit TTB Form 5130.10, the Brewer's Notice, which collects information similar to that collected on a permit application and, when approved by TTB, is a brewer's authorization to operate. The requirements for filing and a maintaining a brewer's notice are located at 27 CFR part 25, subpart G.

While brewers are not required to obtain a permit, importers and wholesalers of malt beverages are subject to this requirement of the FAA Act. See 27 U.S.C. 203–204; 27 CFR 1.21 and 1.23. Because the FAA Act provides the authority for part 7 and sets forth the basic permit requirements for importers and wholesalers of malt beverages, TTB proposed, similar to the parallel provisions for wine and distilled spirits, to provide a reference to the basic permit requirement in part 7. Section 7.222 does not imply that brewers must obtain a basic permit, but simply states that possession of a basic permit is conditioned upon compliance with 27 U.S.C. 205. TTB is therefore finalizing §§ 5.222 and 7.222 as proposed.

c. Compromise

Proposed §§ 4.223, 5.223, and 7.223 set forth TTB's authority to compromise liability for a violation of 27 U.S.C. 205 upon payment of a sum not in excess of $500 for each offense. The appropriate TTB officer will collect this payment and deposit it into the Treasury as miscellaneous receipts.

DISCUS, Willamette Valley Wineries Association, and the Oregon Winegrower's Association expressed support for the regulations as proposed.

TTB Response

TTB is finalizing §§ 5.223 and 7.223 as proposed.

B. Amendments Specific to 27 CFR Part 5 (Distilled Spirits)

In addition to the changes discussed in section II.A. of this document that apply to more than one commodity, TTB proposed editorial and substantive changes specific to the distilled spirits labeling regulations in part 5. This section will not repeat the changes already discussed in section II.A. of this document, which relate to more than one commodity. Furthermore, the proposed changes regarding part 5 on which TTB received no comments, and that TTB has adopted without change in this final rule, will not be discussed in this section. The substantive changes that are unique to part 5, on which TTB received comments, are described below. They are organized by subpart.

1. Subpart A—General Provisions

In Notice No. 176, TTB proposed in § 5.1 a list of definitions. These were largely consistent with current regulations but included some proposed revisions. TTB addressed some of the proposed amendments in T.D. TTB–158. As explained in that final rule, TTB adopted the proposed definition of ''distilled spirits'' to codify its longstanding position that products containing less than 0.5 percent alcohol by volume are not regulated as ''distilled spirits'' under the FAA Act. TTB also stated in that final rule that it had decided not to move forward with the proposed new definition of the term ''oak barrel.'' TTB noted that in the absence of a regulatory definition for ''oak barrel'' or ''oak container,'' it will be TTB's policy that these terms include oak containers of varying shapes and sizes. However, T.D. TTB–158 did not address many of the other proposed amendments to the definitions. We address the comments on those proposed amendments here. Additionally TTB made minor clarifying edits in subpart A for consistency with statutory language and current requirements.

Comments on Definitions in § 5.1

TTB proposed to modify the definition of ''age'' to include the concept that the distilled spirits must have been stored in oak barrels ''in such a manner that chemical changes take place as a result of direct contact with the wood.'' TTB received several comments that objected to this standard on the grounds that it was subjective, vague, arbitrary, and/or unnecessary.

In Notice No. 176, TTB proposed to add a definition of ''American proof,'' which cross references the definition of ''proof,'' which is unchanged from the current regulations. TTB uses the term ''American proof'' in some circumstances to clarify that the proof listed on a certificate should be calculated using the standards in the part 5 regulations, not under another country's standards. TTB received two comments with regard to this proposed definition. One commenter stated that the term ''proof'' does not need a regulatory definition because it is well understood. The Distilled Spirits Council of the United States (DISCUS) commented in support of defining ''proof'' but urged TTB to change the temperature at which alcohol content is measured from 60 degrees Fahrenheit to 68 degrees Fahrenheit (20 degrees Celsius), stating that ''[m]oving the U.S. to a 68 °F (20 °C) standard would allow U.S. manufacturers to calculate proof in a manner similar to the rest of world and reduce production burdens.'' DISCUS also commented that it opposed the proposed definition of ''American proof'' because it is unnecessary and confusing. TTB also proposed to add a definition of ''grain,'' which would define the term to include cereal grains as well as the seeds of three pseudocereal grains: Amaranth, buckwheat, and quinoa. (A ''pseudocereal'' is not a grass, but its seeds may be ground into flour and otherwise used as cereals). TTB has received a number of applications for label approval for products using these pseudocereals, and TTB also notes that the FDA has proposed draft guidance regarding ''whole grain'' claims that include amaranth, buckwheat, and quinoa as ''cereal grains.'' See 71 FR 8597 (February 17, 2006).

TTB received seven comments in support of allowing the use of pseudocereals as grains for the purposes of distilled spirits labeling. One distiller suggested that pseudocereals are different from traditional cereal grains, and if they are permitted to be used in the distillation of whisky, they should be specifically identified on the label. DISCUS suggested that TTB include the grains listed in the definition of grain set forth in the U.S. Department of Agriculture (USDA) regulations at 7 CFR 810.101 (which includes barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat) and that the TTB definition should also include other grains not listed in the USDA regulations, such as rice, millet, and heirloom grains. DISCUS supported the language regarding pseudocereals.

The Kentucky Distillers Association (KDA) supported the inclusion of pseudocereals as grains but requested the inclusion of, and clarification of, the status of sorghum, proposing a distinction between sorghum grains vs. cane sorghum and sorghum stalks (which the commenter argued should not be allowed to be considered as grains for purposes of distilling whiskey).

The American Craft Spirits Association (ACSA) supported the inclusion of the three pseudo cereals, but also requested the specific addition of millet and sorghum, and requested that TTB revise the definition to clearly provide that it did not exclude cereals or pseudocereals that were not specifically listed. ACSA also requested that TTB revise the definition of a ''distiller,'' which is found in 27 CFR part 19.

TTB Response

After reviewing the comments on the proposed changes to the definition of ''age,'' TTB is retaining the current definition in the regulations. The comments suggested that the reference to chemical changes was vague, and TTB did not mean to introduce a subjective element to the definition. TTB notes that it retains its current policy that storage in paraffin-lined oak barrels does not meet regulatory requirements for ''aging'' distilled spirits in oak barrels. Finally, as proposed in Notice No. 176, the definition of ''age'' in the final rule refers to ''oak barrels'' rather than ''oak containers,'' to avoid confusion with the new definition of ''container'' in the final rule, which includes cans, bottles, and other closed receptacles that are for use in the sale of distilled spirits at retail. As previously noted, in T.D. TTB–158, TTB explained that in the absence of a regulatory definition for ''oak barrel'' or ''oak container,'' it will be TTB's policy that these terms include oak containers of varying shapes and sizes.

TTB is finalizing the proposed definition of ''American proof,'' because

in certain contexts, the use of this term makes it clear that the proof should be measured under American standards, which (as the DISCUS comment noted) differ from those of several other countries. TTB also notes that the measurement of proof at 60 degrees Fahrenheit in the current and proposed definitions of ''proof'' and ''proof gallon'' in part 5 is consistent with the statutory definition of ''proof spirits'' in the IRC (see 26 U.S.C. 5002(a)(10)), and adopting a different standard in the FAA Act regulations would cause confusion. Accordingly, TTB is finalizing the proposed definitions of ''proof,'' ''proof gallon,'' and ''American proof.''

TTB is also adopting the proposed definition of ''grain.'' TTB believes this definition will expand options for distillers by clarifying that they may use the seeds of amaranth, buckwheat, and quinoa to distill spirits (such as ''grain spirits'' or ''whisky'') that are required to be distilled from grain. TTB is not adopting the DISCUS suggestion to specifically list each type of cereal grain in the definition because such specificity is unnecessary. The definition includes all cereal grains; as such, TTB does not need to specifically list those grains. Furthermore, TTB sees no reason to implement specific labeling disclosure requirements for the seeds of the pseudocereals amaranth, buckwheat, and quinoa, beyond the labeling requirements that currently apply to grains. For example, if a commodity statement is required for a spirit distilled from buckwheat, the statement could be worded as either ''Distilled from Grain'' or ''Distilled from Buckwheat.'' This maintains labeling flexibility for the bottler or importer.

With regard to ACSA's suggestion that the regulation be revised to provide that all pseudocereals are included within the definition of grain, TTB currently has only addressed the status of the three pseudocereals that were listed in the proposed regulation (amaranth, buckwheat, and quinoa). The commenters did not identify any specific pseudocereals that they wished to use in distilled spirits, other than the three identified in the proposed rule, and thus TTB sees no reason to address this issue in the current rulemaking. Similarly, the proposed definition of ''grain'' did not address the issue of whether stalks and cane from certain agricultural products (such as sorghum) qualify as grains. Thus, the KDA comment proposing that the regulations exclude cane sorghum and sorghum stalks is outside the scope of this proposal. TTB will treat this comment as a suggestion for future rulemaking. TTB also notes that the definition adopted in this final rule in no way changes its current policy, which is that sorghum and corn syrups are not grains.

The ACSA comment on amending the definition of ''distiller'' in 27 CFR part 19 is outside the scope of this rulemaking document, which is not amending the part 19 regulations.

Finally, TTB is making a technical amendment to the definition of ''distilled spirits.'' As amended by T.D. TTB–158, the definition listed the maximum alcohol content of a distilled spirit containing wine as ''48 degrees of proof'' and the minimum alcohol content for any distilled spirits as ''0.5 percent alcohol by volume.'' For clarity and consistency, this final rule amends the definition to express both of these values in degrees of proof, with a parenthetical reference to the equivalent percentage of alcohol by volume. As amended, the two sentences in question state that ''[t]he term 'distilled spirits' does not include mixtures containing wine, bottled at 48 degrees of proof (24 percent alcohol by volume) or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term 'distilled spirits' also does not include products containing less than one degree of proof (0.5 percent alcohol by volume).''

Subpart E—Mandatory Label Information

a. Single Field of Vision Labeling

In Notice No. 176, TTB proposed to clarify where mandatory information must appear on a container by replacing the ''brand label'' concept with a requirement that three elements of mandatory information (the brand name; the class, type, or other designation; and the alcohol content) must appear within the same field of vision. TTB intended the proposed amendments to increase flexibility for placing such information on a distilled spirits container.

Previously, the term ''brand label'' was defined in current § 5.11 as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal retail display conditions. Further, the definition stated that ''[t]he principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.''

TTB proposed, in proposed § 5.63(a), to allow this mandatory information to appear anywhere on the labels, as long as it is within the same field of vision, which means a single side of a container (which for a cylindrical container is 40 percent of the circumference), where all pieces of information can be viewed simultaneously without the need to turn the container. TTB explained that requiring that this information appear in the same field of vision, rather than on the display panel ''most likely to be displayed, presented, shown, or examined'' at retail, is a more objective and understandable standard, particularly as applied to cylindrical bottles.

TTB received five comments related to this proposal. A distiller and the American Craft Spirits Association each supported the change to a ''single field of vision'' concept. Another distiller commented in favor of allowing the alcohol content statement to appear on either the front label or the back label. Diageo commented in favor of allowing all information required by TTB regulations to appear on a single label, stating that ''if TTB were to permit all mandatory information to appear on a single label, U.S. consumers almost certainly would quickly become accustomed to the new label and shop accordingly.'' DISCUS supported the increased flexibility that the proposal would allow, bringing distilled spirits more in line with current requirements for wine. However, DISCUS also recommended that TTB liberalize placement rules further, allowing mandatory information to appear anywhere on distilled spirits labels.

TTB Response

In T.D. TTB–158, TTB liberalized the placement rules as proposed by allowing the brand name, class and type designation, and alcohol content to appear anywhere on the container as long as those three pieces of information are in the same field of vision. TTB did not adopt the DISCUS comment to eliminate all placement standards for mandatory information, based upon TTB's position that it is important to keep these three closely-related elements of information together on the label since they express vital, related information that, taken together, conveys important facts to consumers about the identity of the product. With regard to the comment from Diageo, TTB notes that under the final rule, industry members may, if they wish, include additional optional or mandatory statements on the same label as the three pieces of information that are required to appear in the same field of vision.

In this final rule, TTB is finalizing its regulation for mandatory information as proposed in Notice No. 176, which

maintains the substance of the rule as finalized in T.D. TTB–158, but also eliminates the ''brand label'' concept from the regulations in part 5. As finalized, § 5.63 does not include the term ''brand label,'' and thus the definition of the term is also removed from the regulations. This amendment is a liberalizing change that will not require any changes to labels, but will allow further flexibility in the placement of labeling information on distilled spirits containers. TTB notes that it may take some time to make conforming changes to the COLAs Online system to remove references to a ''brand label,'' but, in the interim, COLA applicants may simply designate in COLAs Online the label(s) bearing the brand name, class and type designation, and alcohol content within a single field of vision as the ''brand label.''

b. Alcohol Content Statement—Proof

In Notice No. 176, TTB proposed to clarify the existing requirement that, if the alcohol content is stated as degrees of proof, that statement must appear in direct conjunction with the mandatory alcohol content statement. Proposed § 5.65 provided that the statement of proof must appear immediately adjacent to the mandatory alcohol content statement.

The proposed rule kept the current requirement that the mandatory alcohol content statement must be stated on the label as a percentage of alcohol by volume, and provided that a proof statement may, but need not, appear on the label. In ATF Ruling 88–1, TTB's predecessor agency clarified that an optional proof statement must appear in direct conjunction with the mandatory statement only once on the label or in an advertisement, specifically, in the place where the alcohol by volume statement is serving as the mandatory alcohol content statement. Accordingly, the proposed rule clarified that additional statements of proof need not be accompanied by the alcohol by volume statement.

TTB received one comment on this issue, from a distiller (SanTan) arguing that there was no need for an optional statement of proof to be in direct conjunction with the required statement of alcohol content as a percentage of alcohol by volume.

TTB Response

It is TTB's view that, if an optional proof statement appears on the label, it should be in the same field of vision as the required alcohol content statement to avoid confusing consumers. The proof of a distilled spirit is defined as being twice the ethyl alcohol content as a percentage of alcohol by volume, at 60 degrees Fahrenheit. Consumers who are used to seeing the alcohol content labeled as a percentage of alcohol by volume, however, may be confused if the only alcohol content statement on the label is, for example, ''80 proof.'' In contrast, if the ''80 proof'' statement appears in the same field of vision as the mandatory alcohol content statement (''40 percent alcohol by volume''), consumers will understand the relationship between proof and alcohol content as a percentage of alcohol by volume.

Accordingly, as finalized by this document, § 5.65 provides that, if a single optional proof statement appears on the label, it must be in the same field of vision as the required alcohol content statement, expressed as a percentage of alcohol by volume. This change liberalizes the placement requirements in the current regulations, which provide that there may be no intervening material between the mandatory alcohol content statement and the optional proof statement. The final rule also provides that additional statements of proof may appear on the label in different locations, without an accompanying alcohol by volume statement. The final rule adopts the proposal to allow other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume; however, it removes, as unnecessary, language clarifying that the mandatory statement may not be expressed as a range or by maximums or minimums. As discussed later in this document, similar language has also been removed from the malt beverage regulations at § 7.65.

c. Terms Used in Name and Address Statement

In Notice No. 176, TTB explained that the current regulations in 27 CFR 5.36 allow for various statements as part of the name and address statement, and limit the use of certain phrases, depending upon the party seeking to use those phrases. In general, a ''bottled by'' statement must appear on the label of domestically bottled distilled spirits, followed by the name and address of the bottler. In lieu of this statement, as explained elsewhere in this document, the phrase ''distilled by'' may appear on the label to describe the original distiller of the distilled spirits, where the spirits are bottled by or for that distiller. Current § 5.36(a)(4) provides that certain other terms may be used to describe the ''rectifier'' of the distilled spirits—these terms are ''blended by,'' ''made by,'' ''prepared by,'' ''manufactured by,'' and ''produced by.'' The current regulations do not define these terms. Because there is no longer a rectification tax on distilled spirits, and thus these terms have lost their significance under the IRC, some industry members and consumers are confused as to when the use of those terms is appropriate.

Accordingly, proposed § 5.66(b)(2) used the term ''processor'' of distilled spirits, rather than ''rectifier'' to be consistent with current IRC use. The proposed regulation also clarified that the term ''produced by,'' when applied to distilled spirits, does not refer to the original distillation of the spirits, but instead indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity. TTB solicited comments on whether the proposed definitions of these terms are consistent with trade and consumer understanding.

TTB received several comments on this issue that raised questions as to whether the terms used in the regulations reflected current consumer understanding.

TTB Response

TTB is finalizing the proposed regulation, which accurately reflects current TTB policy as to the meaning of the term ''production,'' but does not define the other terms that describe processing operations (formerly known as rectification operations). TTB believes that several commenters raised valid points as to consumer understanding of these terms. The proposed rule, however, did not solicit specific comments on precise definitions for terms other than ''produced by,'' so incorporating new definitions for these terms would be outside the scope of the rulemaking. Accordingly, TTB will treat these comments as suggestions for future rulemaking.

d. State of Distillation

TTB noted in Notice No. 176 that it has received several inquiries about its existing regulations on labeling certain whisky products with the name of the State where distillation occurred. Current § 5.36(d) requires the State of distillation to be listed on the label if it is not included in the mandatory name and address statement. However, because the name and address statement may be satisfied with a bottling statement, there is no way to know, simply by reviewing a proposed label, if

distillation actually occurred in the same State as the bottling location. For example, a whisky label may indicate that the product was bottled in Kentucky, even if it was distilled in another State and transferred in bond to Kentucky for bottling.

Accordingly, TTB proposed, in § 5.66(f), an updated regulation that would provide that, where required, the State of original distillation for certain whisky products must be shown on the label in at least one of the following ways:

- By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location. This means that a principal place of business or a list with multiple locations would not suffice;
- By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky Bourbon whisky''), as long as distillation and any required aging occurred in that State; or
- By including a separate statement, such as ''Distilled in [name of State].''

TTB received 47 comments on the proposal to clarify the State of distillation. Of those, 45 comments supported the proposal to require the State of distillation to be indicated on the label in one of the three ways proposed. For example, the Texas Whiskey Association stated that ''[w]e applaud the clarity in new proposals on listing the State of Distillation on a label where it is not the same as bottling or business address. We strongly support that distillation and aging must take place in the actual state where the whiskey is distilled for a whiskey to carry a state designation.'' The American Single Malt Whiskey Commission stated that ''[w]e are in favor of the current propos[ed] § 5.66(f) requiring that the state of distillation for certain whisky products be shown on the label in at least one of the three ways outlined.'' Heaven Hill Brands commented that: ''[w]e strongly support distillation and aging being labeled per the actual state where this occurs so that consumers know exactly what product they are buying, especially as it relates to Kentucky Bourbon Whisky.''

Some commenters suggested that TTB impose tighter restrictions on State of distillation labeling. For example, the Texas Whiskey Association commented as follows:

> We strongly support that distillation and aging must take place in the actual State where the whiskey is distilled for a whiskey to carry a state designation. We would go further and request that it be mashed, fermented, distilled and aged in that State before it carries a State designation. We would further support that if a whiskey is distilled more than once, with distillation occurring in more than one state, that no State designation be permitted.

TTB received two comments opposed to the proposal. The Confederated Tribes of the Chehalis Reservation explained that:

> Because tribes literally were barred from opening and operating distilleries until just recently, the Chehalis Tribe has had no ability to create and stockpile our own aging supply of products. We should be allowed to negotiate with older participants in the industry in creating and blending products without having to disclose confidential information about our sources, partners or partnerships * * *. At a minimum, the Chehalis Tribe and other tribes should be exempt from such requirements.

DISCUS, in its comment, urged TTB to eliminate the requirement to include a State of distillation on labels. DISCUS commented that State of distillation statements should be optional and subject to the relevant business circumstances of each supplier.

TTB Response

After carefully considering the comments, TTB has decided not to finalize the proposed changes to the State of distillation labeling requirement. While most of the comments from distillers supported the position that consumers should be provided with this information, DISCUS commented that TTB should eliminate the requirement altogether, allowing such statements as optional information on labels. This represents a new option that TTB did not air for comment in Notice No. 176. Because adoption of the amendment proposed in Notice No. 176 could reasonably be expected to require some labeling changes by bottlers of certain types of whisky, TTB has determined that, before adopting any substantive changes to this longstanding requirement, it might be appropriate to air, for public comment, the relative merits of making the State of distillation labeling statement optional rather than mandatory. This would also allow TTB to solicit comments on the costs and burdens of the different options. Accordingly, TTB will treat the comments on this issue as suggestions for future rulemaking.

Instead of mandating changes to labels, the final rule maintains the current requirements for labeling of the State of distillation on certain whisky products by continuing to allow the bottling statement to suffice where the whisky was in fact distilled in the State shown on the label, even though the label does not make any representation as to the place of distillation. However, the final rule further clarifies current requirements by revising the current language to provide that if the address shown in the ''bottled by'' statement includes the State in which distillation occurred, the requirement may be satisfied by including a ''bottled by'' statement as part of the mandatory name and address statement, followed by a single location. TTB believes this clarification will assist industry members in complying with the requirements, but it will not change the substance of the current labeling requirement.

With regard to the Texas Whiskey Association comment about when a whiskey may use a State designation, this document finalizes the proposed language clarifying that the use of, for example, ''Texas Rye Whisky'' means that the product was both distilled and aged in Texas. With regard to any additional redistillations in a second State, it has been the longstanding position of TTB and its predecessors that the State where the original distillation occurred is the State of distillation for purposes of the labeling regulations. See Rev. Rul. 54–416, 1954–2 C.B. 470. TTB is adopting this position in the final rule.

e. Coloring Materials

In Notice No. 176, TTB proposed to maintain the substantive requirements for disclosure, on labels, of the use of certain coloring materials used in the production of distilled spirits, including the provision (found in current § 5.39(b)(3)) that the use of caramel need not be indicated on labels of brandy, rum, Tequila, or whisky other than straight whisky. Pursuant to current § 5.23, caramel may be used in distilled spirits products if this use is customarily employed in them in accordance with established trade usage, and if the caramel is used at not more than 2.5 percent by volume of the finished product.

TTB received four comments related to coloring materials. Two distillers asked for more stringent labeling rules for the use of caramel in the categories of distilled spirits products that are currently exempted from the caramel disclosure requirements. Of these, Sazerac commented that ''[i]n order to respond to reasonable consumer expectations for consistency across products, Sazerac asks that TTB require consistent disclosure of caramel color.'' Privateer Rum commented in favor of the proposal and suggested that the

regulation should require disclosure of the use of caramel in rum.

ACSA commented that it was ''in favor and supportive of the language on coloring materials and feels strongly the provision should be applied equally to imported spirits.'' The European Union (EU) asked for an explanation as to the general rule on disclosure of caramel on distilled spirits, and the basis for the exceptions.

TTB Response

After careful consideration, TTB is finalizing the coloring materials labeling regulation as proposed in § 5.72, which clarifies current regulations but does not impose additional labeling requirements. TTB did not propose any changes to the current requirements, and believes that the addition of new labeling disclosure requirements for coloring materials such as caramel is beyond the scope of this rulemaking. The exception to the caramel disclosure requirement for brandy, rum, Tequila, and whisky other than straight whisky is a longstanding policy of TTB and its predecessors.

3. Subparts F, G, and H

a. Barrel Proof and Similar Terms

In Notice No. 176, TTB proposed in § 5.87 to set forth definitions for the terms ''barrel proof'', ''cask strength'', ''original proof'', ''original barrel proof'', ''original cask strength'', and ''entry proof'' on distilled spirits labels. The proposed rule also added ''cask strength'' as a term that means the same as ''barrel proof'' and ''original cask strength'' as a term that means the same as ''original barrel proof.''

The proposed rule incorporated the holding, set forth in ATF Ruling 79–9, that the terms ''original proof,'' ''original barrel proof,'' and ''entry proof,'' when appearing on a distilled spirits product label, indicate that the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same. The ruling further held that the term ''barrel proof'' appearing on a distilled spirits label indicates that the bottling proof is not more than two degrees lower than the proof established at the time the spirits were gauged for tax determination.

The proposed regulations updated the description of the term ''barrel proof'' to take into account changes in the operation of distilled spirits plants as a result of the Distilled Spirits Tax Revision Act of 1979. The reference to the time of tax determination is no longer the applicable standard under the current tax determination system. Since the term ''barrel proof'' is intended to indicate that the spirit is approximately the same proof as when it is dumped from the barrel, the proposed regulations state that the term may be used on a label when the alcohol content (proof) of distilled spirits when bottled is not more than two degrees of proof lower than the proof of the spirit when the spirit was dumped from the barrel. Proposed § 5.87 accordingly provided that the term ''barrel proof'' or ''cask strength'' may be used to refer to distilled spirits that had been stored in wood barrels, and the proof when bottled is not more than two degrees lower than the proof of the spirits when the spirits are dumped from the barrels. TTB noted that it rarely sees such terms on distilled spirits labels and specifically sought comments on whether they still have relevance and provide meaningful information to the consumer and whether TTB should regulate their use on labels.

TTB received several comments on this proposal. Some of the comments reflected disagreement on the two different concepts that TTB addressed in proposed § 5.87. Proposed § 5.87(a) defined terms that may be used on a label when the proof at which the product is bottled is within 2 degrees of the proof of the product when the spirits were dumped from the barrel into the bottling tank. Proposed § 5.87(b) defined terms that refer to the proof of the spirits when entered into the barrels for aging.

DISCUS and the ACSA commented that all of the terms refer to proof at bottling, with the exception of ''entry proof,'' which it states is ''clearly understood as the proof at which the spirit was entered into the barrel and would therefore be confusing to define in relation to final proof post-maturation, which can be very different than the entry proof into the barrel.'' Therefore, ACSA recommended that ''entry proof'' not be included in this list of definitions, and instead be allowed as an applicable descriptor of the proof of entry into the barrels regardless of bottling proof.

On the other hand, DISCUS commented that ''Original proof'' and ''barrel proof'' are two distinct and separate concepts, as proof can go up or down during aging. DISCUS suggested that the two degree variance for ''cask strength'' and ''barrel proof'' is too narrow, suggesting that at a minimum, ''the standard should be set at a 7 percent differential and should be measured when the product is dumped from the barrel. Water is used as part of production, for example, to flush the production lines and other technical needs. This amount of water may differ based upon the length of the production line and other factors specific to each producer's facility. Based upon these realties, TTB should amend this proposal to establish that ''barrel proof'' may be within 7 percent of proof at dump.''

The Scotch Whisky Association commented that ''original proof'' is not a useful term for labeling. Spirits Canada commented in opposition to defining what they referred to as marketing terms. Two individual commenters also wrote in support of the proposed definitions.

TTB Response

After careful consideration of the comments, TTB is finalizing § 5.87 as proposed. TTB believes that it is useful to consumers to have uniform standards for these terms appearing on labels, and most of these terms have been subject to the definitions in ATF Ruling 79–9 for over 40 years. Many industry members rely on these labeling terms for their products.

b. Terms Related to Scotland

In Notice No. 176, TTB proposed rules that maintain and clarify standards for the use of terms related to Scotland on distilled spirits labels. Such rules currently appear only in the regulatory sections related to product standards of identity and class and type, at current §§ 5.22(k)(4) and 5.35, respectively. The proposed provision retained the current rule set forth at current § 5.22(k)(4), that the words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands'' and similar words connoting, indicating, or commonly associated with Scotland may be used only on a product wholly produced in Scotland. It moves this rule to the provisions on restricted labeling practices in the new subpart F. However, regardless of where the finished products are produced, the regulations would not prohibit the term ''Scotch Whisky'' from appearing on the label in the statement of composition for distilled spirits specialty products that use Scotch Whisky or in the statement of composition on the label of Flavored Scotch Whisky. (While the finished product may be produced anywhere, the Scotch Whisky component must continue to be made in Scotland under the rules of the United Kingdom.) In addition, proposed § 5.90(b) clarified (in accordance with current regulations as well as proposed § 5.127) that phrases related to government supervision may be allowed only if required or specifically authorized by the regulations of the United Kingdom. This supersedes Revenue Ruling 61–15, which applied that rule to specific

language on labels of Scotch whisky bottled in the United States.

The Scotch Whisky Association commented in support of the existing prohibition. Several commenters commented that the terms ''highlands'' and ''lowlands'' should not be restricted to Scotch Whisky products, as other areas of the world have highlands and lowlands areas. The Irish Whiskey Association and the Ireland Department of Agriculture commented that TTB should impose new restrictions on terms related to Ireland.

TTB Response

After careful consideration, TTB is finalizing § 5.90, on terms related to Scotland, as proposed, with a minor editorial change. TTB believes that these longstanding restrictions ensure that consumers are fully informed about the meanings of the regulated terms. TTB will consider comments about allowing the use of the terms ''highlands'' and ''lowlands'' in other contexts for potential future rulemaking.

c. Pure

In Notice No. 176, TTB proposed to maintain its longstanding restrictions on the use of the term ''pure'' on distilled spirits labels. The rule provides that the term ''pure'' may not be used unless it is a truthful representation about a particular ingredient, is part of the name of a permittee or retailer for whom the spirits are bottled, or is part of the name of the permittee who bottled the spirits.

While TTB did not specifically request comments on this issue, TTB received six comments regarding ''pure.'' Three commenters, Diageo, DISCUS, and the American Distilled Spirits Association (ADSA), urged TTB to eliminate the prohibition on the term ''pure.'' Diageo stated that allowing the use of the term on wine and malt beverages but not distilled spirits is inconsistent. SanTan Spirits suggested that TTB's definition of ''pure'' should include products that consist of distillate and water, such as, for example, ''pure whisky.'' St. George Spirits commented in support of the proposed regulation. ACSA commented that the term ''pure'' is vague and sought further clarification.

TTB Response

After careful consideration, TTB is finalizing the current regulations on the term ''pure'' as proposed in § 5.91. Thus, the final rule retains the longstanding restrictions on the use of the term ''pure'' on distilled spirits labels. The rule provides that the term ''pure'' may not be used unless it is a truthful representation about a particular ingredient, is part of the name of a permittee or retailer for whom the spirits are bottled, or is part of the name of the permittee who bottled the spirits.

This issue has been the subject of separate rulemaking, and TTB published an advance notice of proposed rulemaking (Notice No. 53, December 7, 2005, 70 FR 72731), soliciting comments on whether it or not it should revise the standard. TTB did not specifically solicit comments on this issue as part of the recodification, and it will consider the comments that it did receive as suggestions for future rulemaking.

4. Subpart I

In Notice No. 176, TTB set forth, in subpart I, the standards of identity for distilled spirits. The standards of identity are divided into classes and more specific types. TTB proposed certain revisions to the standards of identity, described in more detail below. In addition to comments on TTB's proposed revisions, TTB received a number of suggestions for new standards of identity, both classes and types, that had not been proposed in Notice No. 176. Examples of standards of identity that commenters advocated for include standards for Straight Applejack, Juniper Processed Spirits (including Genever), Straight Rum, Rum Agricole, Queen's Share Rum, Irish Cream Liqueur, and others. Additionally, TTB received comments supporting the creation of a type of whisky, American Single Malt Whisky. Because other commenters could not anticipate creation of new standards that were not initially proposed, TTB is not finalizing any of these suggested standards in this rulemaking. It will keep the comments for consideration for future rulemaking focused on the standards of identity for distilled spirits.

a. The Standards of Identity in General

In Notice No. 176, TTB stated that some distilled spirits products may conform to the standards of identity of more than one class. Consistent with longstanding policy, TTB proposed to clarify, in § 5.141(b)(3), that such a product may be designated with any class designation to which the product conforms. For example, a vodka with added natural orange flavor and sugar bottled at 45 percent alcohol by volume may meet the standard of identity for a flavored spirit or for a liqueur. Accordingly, the product may be designated as either ''orange flavored vodka'' or ''orange liqueur'' at the option of the bottler or importer. Under current policy, TTB would not allow a product to be designated on a single label as both ''orange flavored vodka'' and ''orange liqueur,'' because TTB views it as misleading for a label to bear two different class designations. TTB specifically sought comments on whether the TTB regulations should permit a distilled spirits label to bear more than one class designation if the product conforms to the standards of identity for more than one class.

TTB received three comments related to this issue. All three commenters wrote that TTB should allow labels to bear only one designation.

TTB Response

TTB will finalize this regulation as proposed, in § 5.141(b)(3), to allow industry members the flexibility of designating their products with any single class designation to which the product conforms, but not to use multiple designations. It was not TTB's intention to allow multiple designations on labels. A product that may meet the definition for two or more classes or types must still be designated with a single class or type.

b. Neutral Spirits

In Notice No. 176, TTB proposed to provide that the source material of the neutral spirits may be specifically included in the designation on the label of the product. Thus, the bottler would have the option of labeling a product as ''Apple Neutral Spirits'' (in addition to ''neutral spirits distilled from apples'' as the required commodity statement) or ''Grape Vodka,'' (in addition to ''vodka distilled from fruit'' as the required commodity statement) as long as such statements accurately describe the source materials.

TTB received four comments on this issue. Three commenters supported allowing the source material to provide better clarity to consumers and would allow for labeling flexibility. DISCUS commented that it opposes allowing the source material as part of the designation as it would affect current products that use terms such as ''Grape Vodka'' as the distinctive or fanciful name for a distilled spirits specialty product.

TTB Response

TTB agrees that allowing the source material as part of the designation for neutral spirits may cause confusion with distilled spirits specialty products that use similar statements as distinctive or fanciful names. As DISCUS pointed out, TTB has allowed terms such as ''grape vodka'' as the distinctive or fanciful name for specialty products—such a product is different from a vodka distilled from grapes. Accordingly, TTB

will not move forward with finalizing the proposed rule. TTB notes, however, that industry members are not precluded from placing information about the source materials on the label. For example, a phrase such as ''Distilled from grapes'' or ''Distilled from Washington apples'' would be allowed on vodka labels.

c. Whisky

In Notice No. 167, TTB proposed to set forth an updated standard of identity for whisky. Among other things, TTB proposed clarifying that Bourbon Whisky may not contain coloring, flavoring, or blending materials. TTB also proposed to specifically note that ''whisky'' may be spelled either ''whisky'' or ''whiskey,'' which is longstanding policy.

TTB received four comments supporting the clarification that bourbon whisky may not contain coloring, flavoring, or blending materials. Six commenters supported the clarification that whisky may be spelled ''whisky'' or ''whiskey'', while SanTan Spirits commented that whisky should only be spelled as ''whiskey''.

In Notice No. 176, TTB also proposed to provide for a new type designation of ''white whisky or unaged whisky.'' TTB has seen a marked increase in the number of products on the market that are distilled from grain but are unaged or that are aged for very short periods of time. Under current regulations, unaged products would not be eligible for a whisky designation (other than corn whisky) and would have to be labeled with a distinctive or fanciful name, along with a statement of composition.

Accordingly, TTB proposed new standards of identity for products that are either unaged (so they are colorless) or aged and then filtered to remove color; these products would be designated as ''unaged whisky'' or ''white whisky,'' respectively. This proposal represented a change in policy because, currently, all whiskies (except corn whisky) must be aged, although there is no minimum time requirement for such aging. TTB believes that, currently, some distillers may be using a barrel for a very short aging process solely for the purpose of meeting the requirement to age for a minimal time. Consequently, TTB proposed the new type designation of ''white whisky or unaged whisky'' and specifically requested comments on this new type and its standards.

TTB received 22 comments on the proposal to add the new ''white whisky or unaged whisky'' type. Twelve commenters wrote in support of the proposal. For example, Stoutridge Distillery commented in support of the change, suggesting that ''there are many craft distillers creating these products and 'passing them through' an oak container to meet the 'letter of the law'. This change would acknowledge that this is a legitimate whisky type and encourage further development of the commercial category.''

TTB also received 10 comments opposed to the creation of this new type. For example, Diageo objected to:

> the creation of a ''white whiskey'' or ''unaged whiskey'' categor[y] . . . Consumers expect whiskey to be aged. This is backed by hundreds of years of whiskey production domestically and internationally. Such products could be misleading by labeling as ''whiskey'' spirits that are otherwise neutral or bear no whiskey characteristics unless artificially imparted.

ADSA also opposed the new type, stating that its member companies have spent years building whisky brands based on aged liquids that are synonymous with quality. ADSA stated that the proposed category might cause consumer confusion.

TTB Response

After careful consideration, TTB is not finalizing the proposal to create a new type of ''white whisky or unaged whisky''. Both the current and amended standards for types of whisky adequately inform consumers of products that are aged for short periods of time and any whisky aged less than 4 years must include an age statement. TTB agrees that adding unaged whiskies to the ''whisky'' class may cause consumer confusion. Such products may continue to be labeled as distilled spirits specialty products with a statement of composition.

TTB is finalizing the proposals that whisky may be spelled as ''whisky'' or ''whiskey'' and that bourbon whisky must not contain any coloring, flavoring, or blending materials. These amendments reflect current policy and were supported by commenters. While there was one comment that advocated the use of a single spelling of ''whiskey,'' it has been longstanding policy to recognize either spelling, and TTB sees no basis for revising that policy and requiring changes to labels to enforce a single spelling for this term.

d. Cordials and Liqueurs

In Notice No. 167, TTB proposed to set out minor changes to the standards for cordials and liqueurs. Among other changes, TTB proposed to prohibit the terms ''distilled,'' ''compound,'' or ''straight'' from appearing on labels for cordials and liqueurs, on the grounds that the terms were misleading on labels for cordials and liqueurs, which are by definition blended (rectified) compounds. The proposed rule thus incorporated into this section the following holding in Revenue Ruling 61–71:

> In view of the fact that the term 'straight,' in relation to American types of whisky, can be employed on labels only if the product is a single distillate or a homogeneous mixture not subject to rectification tax, and as the term 'straight,' in every-day trade parlance, is regarded in much the same sense as 'unblended' in relation to distilled spirits, in general, the use of the term 'straight' on labels on rectified compounds, known as 'cordials' or 'liqueurs,' would be deceptive or misleading to the consumer with respect to the actual identity of the product thus labeled or advertised.

Current regulations also provide that certain cordials or liqueurs may be designated with a name known to consumers as referring to a cordial or liqueur and therefore need not use the word ''cordial'' or ''liqueur'' as part of their designation. Thus, pursuant to TTB's Beverage Alcohol Manual (TTB P 5110.7), several cordials and liqueurs—specifically, Kummel, Ouzo, Anise, Anisette, Sambuca, Peppermint Schnapps, Triple Sec, Curaçao, Goldwasser, and Crème de [predominant flavor]—currently may be designated by those names on the labels of those products. TTB proposed to codify this policy by adding these names as type designations under proposed § 5.150.

TTB received several comments related to this proposal. The American Distilling Institute commented that if a producer ferments and distills the base spirit used in the creation of the liqueur, they should be able to state that fact on their label along with other relevant production functions. Sazerac pointed out that ''Revenue Ruling 61–71, which TTB cites as the basis for this proposed change, only addresses the claim 'straight' and does not address 'distilled' or 'compound' '' and suggested that TTB had not provided an adequate basis for providing that terms like ''distilled'' imply original distillation and are misleading when used on cordials or liqueurs.

ACSA commented that it supports the proposed § 5.150 without further detail.

TTB Response

After considering the comments, TTB is finalizing § 5.150 with modifications. The final rule incorporates the holding of Rev. Rul. 61–71 with regard to the prohibition on the use of misleading claims that a cordial or liqueur is ''straight.'' For the reasons set forth in

that ruling, a cordial or liqueur cannot be ''straight.'' TTB agrees with the comment that stated that the proposed regulation went further than Rev. Rul. 61–71 but notes that the current regulations at 27 CFR 5.22(h)(6) provide that cordials and liqueurs ''shall not be designated as 'distilled' or 'compound.' '' However, TTB is not adopting the proposed amendment to prohibit the use of the term ''distilled'' or ''compound'' on cordial or liqueur labels. Additionally, TTB will consider for future rulemaking whether to expand the allowable sugars to other types of sweeteners.

e. Flavored Spirits

The TTB regulations currently list flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as the class designations under Class 9. Currently, other types or classes of distilled spirits that are flavored must generally be labeled with a statement of composition in accordance with 27 CFR 5.35(a).

In Notice No. 176, TTB proposed to expand the current Class 9 by establishing a standard of identity for ''flavored spirits.'' The current Class 9 covers only five classes of distilled spirits (brandy, gin, rum, vodka and whisky) as ''base spirits'' to which flavoring materials may be added. As proposed, the base spirits for the new ''flavored spirits'' class would include types within these classes (such as corn whisky), as well as other classes of base spirits covered by a standard of identity (and types within those classes), such as agave spirits (or Tequila).

The proposed rule also included a clarification of current TTB policy, which is that a person may not add additional spirits to a base spirit in a flavored spirits product, even if the additional spirits are mixed into an intermediate product. As TTB explained in more detail in T.D. TTB–158, TTB's longstanding policy is that Class 9 flavored spirits must derive all of their spirits content from the base spirit of the product, in contrast with those products that are labeled with statements of composition in lieu of a class or type.

While TTB allows for any spirit to appear as part of a truthful statement of composition, TTB stated in Notice No. 176 that it did not believe that consumers perceive a distinction between, for example ''Orange Flavored Tequila''—which is how a flavored spirit would be designated under the proposed rule—and ''Tequila with Orange Flavor''—which is how the statement of composition would appear for a distilled spirits specialty product. TTB therefore proposed to allow any type of base spirit to be flavored in accordance with the flavored spirits standard instead of just brandy, gin, rum, vodka, and whisky, as permitted by the current regulations. Accordingly, proposed § 5.151 provided a class of flavored spirits that could be made by adding flavors to any base spirit made in accordance with the standards of identity set forth in the regulation. TTB proposed to maintain a minimum alcohol content at bottling of 30 percent (60° proof) for this revised and expanded class. Flavored spirits may contain added wine. TTB proposes to maintain the requirement that wine content above 2.5 percent (or 15 percent for brandy) must be disclosed on a label.

TTB received six comments related to this issue. ACSA, the Tequila Regulatory Council, and the Mexican Chamber of the Tequila Industry supported the proposed regulation. The Tequila Regulatory Council noted that it would lessen the administrative burden for Tequila bottlers in the United States if TTB allows any base spirits to be flavored. The Irish Whiskey Association and the Ireland Department of Agriculture commented in opposition to the proposal, stating that flavored Irish Whiskey would be misleading. Heritage Distilling commented in favor of amendments to clarify that flavored Bourbon whisky is a recognized type of flavored whisky. The Scotch Whisky Association opposed allowing ''flavored Scotch Whisky'' on labels because the United Kingdom does not allow for such a product under its laws and regulations.

TTB Response

After careful consideration of the comments, TTB is finalizing the flavored spirits regulations as proposed except that TTB is modifying the standards of identity to provide that the base spirit must be a distilled spirit conforming to one of the standards of identity set forth in §§ 5.142 through 5.148. This does not include liqueurs or distilled spirits specialty products, because these products may already contain natural flavors, so there is no need to have ''flavored'' versions of them. As a clarifying change, TTB is also adding the word ''natural'' to ''nonbeverage flavors'' to clarify that there is no change to the requirement in TTB's current regulations at § 5.22(i) that only natural (and not artificial) flavoring materials may be used in Class 9 flavored spirits.

The final rule will not require label changes, and simply clarifies current TTB policy. Industry members who choose to maintain their product as a distilled spirits specialty product will not need to change their labels, but may choose to label their products as, for example, ''Bourbon whisky with cherry flavor'' rather than ''Cherry flavored bourbon whisky.'' In response to the comment regarding the use of terms related to Scotland, under the final rule, TTB would approve the use of ''Scotch Whisky'' in a designation such as ''Cherry Flavored Scotch Whisky'' if the base spirit meets the standards of identity for Scotch Whisky, regardless of whether the United Kingdom would allow this type of designation. In such a case, TTB notes that the product may be flavored in the United States or another country after exportation from the United Kingdom. TTB notes that it is also finalizing without change the standard of identity for distilled spirits specialty products in § 5.156.

f. Diluted Spirits

In Notice No. 176, TTB proposed to codify standards for the use of the term ''diluted.'' As set forth in ATF Ruling 75–32, TTB currently requires that distilled spirits bottled at below the specified alcohol content for that particular class be designated on the label as ''diluted'' in direct conjunction with the statement of class and type to which it refers. For example, under the standard of identity for vodka set forth at current § 5.22(a), vodka must be bottled at ''not less than 80° proof.'' As a result, a vodka bottled at 60° proof must bear the statement ''diluted vodka'' on the label. TTB proposed, in § 5.153, to incorporate this policy into the regulations by establishing a class of spirits known as ''diluted spirits.'' This applies to products that would otherwise meet one of the class or type designations specified in subpart I except that it does not meet the minimum alcohol content, usually because of reduction of proof through the addition of water. Although the ruling states that the word ''diluted'' must be readily legible and as conspicuous as the statement of class to which it refers and in no case smaller than 8-point Gothic caps (except on small bottles), TTB proposed to require that the word ''diluted'' appear in readily legible type at least half the size of the class and type designation to which it refers. For example, but for the fact that a product is 70° proof, it would be eligible to be designated as ''Vodka.'' However, because of its lower proof, it must instead be designated as ''Diluted Vodka''.

TTB received ten comments opposed to the creation of the ''diluted spirits'' class. For example, Spirits Europe questioned whether the class would undermine certain traditional products

and confuse consumers. DISCUS and ACSA opposed the proposed language and believe that consumers would prefer a ''lite'', ''low alcohol'' or ''under-proof'' label rather than a ''diluted'' designation.

TTB Response

TTB has decided not to move forward with the creation of the ''diluted spirits'' class. TTB will maintain the comments related to other ways to label diluted products as suggestions for future rulemaking. The holding of ATF Ruling 75–32, including those relating to type size, will remain in effect.

5. Subpart J—Formulas for Distilled Spirits

With regard to the formula requirements in part 5, in Notice No. 176, TTB stated:

> The current regulations in subpart C of part 5 set forth requirements for formulas for distilled spirits. In the present rulemaking, TTB proposes to maintain the formula requirements with minor changes to reflect current policy as set forth in TTB Industry Circular 2007–4. However, TTB believes there may be formula requirements that no longer serve a labeling purpose. TTB seeks specific comments on whether certain formula requirements should be eliminated and the rationale for such a change. TTB may address these issues in the final rule or in a separate rulemaking document.

TTB received two comments on the distilled spirits formula regulations in proposed subpart J. ADSA commented in opposition to formula requirements for spirits that are first aged in an oak barrel and then aged in a different type of barrel, such as a barrel previously used to age wines or other types of spirits. ADSA stated that interest in this type of innovative production has grown in the past decade. Accordingly, ADSA urged TTB to delete from its final regulations the prohibition on claiming age for time spent in a second (or third, or fourth, etc.) barrel and the presumption that aging in a second barrel of different wood alters a product's class or type. For the same reasons, ADSA urged TTB to eliminate the proposed formula requirement for the mixing of spirits subject to different aging methods (charred and non-charred barrels, etc.). At a minimum, ADSA stated that proposed § 5.193 requires substantial revisions to better clarify exactly when a formula is required.

The National Association of Beverage Importers (NABI) noted that proposed § 5.193 requires a formula where, among other things, distilled spirits are ''mingled,'' and that the regulations do not define the term ''mingling.'' NABI suggested that if TTB is using the term ''mingling'' to cover mixing or blending activities, then it would be clearer to use those terms. NABI noted that the term ''mingling'' dates back to the pre-1980 regulatory framework, when the IRC imposed a rectification tax, and that the term lost its significance after the repeal of the rectification tax. NABI stated that clarification of the term is important to importers as they need to decide whether they must apply for formula approval for specific imported distilled spirits products.

TTB Response

With regard to the ADSA comment regarding formula requirements for aging in different types of barrels, and the NABI comment requesting clarification of when a formula is require for ''mingling,'' TTB believes that the commenters have raised valid concerns about whether the formula requirements are current and easy to understand.

As noted in the NABI comment, many of the formula requirements in part 5 date back to pre-1980 requirements. In recent years, it has been TTB's goal to update formula requirements on a regular basis through the issuance of public guidance. See, *e.g.,* Industry Circular 2020–1, dated February 12, 2020, Industry Circular 2018–6, dated September 18, 2018, and TTB Ruling 2016–3, dated September 29, 2016.

Accordingly, rather than revising the regulations in subpart J to address the specific issues that the commenters addressed, TTB is keeping the current regulations in place, with a change that will allow TTB to clarify or eliminate formula requirements for distilled spirits through public guidance, without amending the regulations. In this final rule, § 5.193 provides general rules for distilled spirits formulas, but also provides that TTB may exempt categories of distilled spirits products from specific regulatory formula requirements upon a finding that the filing of a formula is no longer necessary in order to properly classify the finished product. TTB will review the comments on this issue as suggestions for exemptions from the formula requirements when it issues new guidance on this issue, and as suggestions for future rulemaking to update the formula regulations.

TTB has also revised the language in § 5.193(a) to provide that while the compounding of distilled spirits through the mixing of a distilled spirits product with any coloring or flavoring material, wine, or other material containing distilled spirits generally requires a formula, there is an exception if TTB has issued public guidance recognizing that such ingredients are harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to the standards set forth in § 5.155. This language is added for consistency with the provisions of TTB Ruling 2016–3, dated September 29, 2016, in which TTB approved general formulas for vodka and rum, and certain types of whisky and brandy, made with certain specified harmless coloring, flavoring, or blending materials, in accordance with the ruling. TTB referred to these formulas as ''general-use formulas'' and industry members who produce distilled spirits in conformance with a general-use formula do not need to submit a formula to TTB for approval.

C. Amendments Specific to 27 CFR Part 7 (Malt Beverages)

In addition to the changes discussed in Section II.A. of this document that apply to more than one commodity, this section discusses proposed editorial and substantive changes specific to the malt beverage labeling regulations in part 7. It will not repeat the changes already discussed in Section II.A. of this document, which relate to more than one commodity. The substantive changes that are unique to part 7, on which TTB received comments, are described below, and are organized by subpart. Unless otherwise stated, TTB is finalizing the proposals in Notice No. 176 specific to the malt beverage regulations in part 7.

1. Subpart A—General Provisions

In Notice No. 176, TTB proposed to set forth, in subpart A, several provisions with general applicability to part 7, including a list of defined terms, territorial limits of the regulations, a section setting forth to whom and to which products the regulations apply, and sections addressing administrative items such as forms used and delegations of the Administrator. For more information on the specific proposals for subpart A of part 7, please refer to Notice No. 176, section II.E.1. As explained below, TTB is finalizing the specific proposals for subpart A of part 7, with certain changes. Among other things, certain minor clarifying edits have been made for consistency with statutory language and current requirements.

a. Comments on Definitions in § 7.1

In Notice No 176, TTB proposed in § 7.1 a list of definitions largely consistent with the current regulations. TTB proposed to add definitions for the terms ''keg collar'' and ''tap cover,'' consistent with a proposed amendment,

discussed later in this document in Section II.C.3., to allow mandatory label information to appear on non-firmly affixed keg collars and tap covers, subject to certain conditions. See § 7.51, as finalized below. TTB is also finalizing its proposals to amend the definition of the term ''bottler'' to include any brewer or wholesaler who places malt beverages in containers (regardless of size), and to remove the definition of ''packer,'' consistent with amendments that remove from TTB's current name and address regulations a distinction between ''bottling'' malt beverages in containers of a capacity of one gallon or less and ''packing'' them in containers in excess of one gallon. See Section II.A.6.d.

TTB received several comments related to definitions in proposed § 7.1. Beverly Brewery Consultants approved of the proposal to remove the definition of ''packer.'' In a comment submitted previously in response to the Treasury Department's RFI, the Brewers Association had recommended elimination of the distinction between ''bottler'' and ''packer,'' although the Brewers Association did not address this issue in its comments on Notice No. 176.

Beverly Brewery Consultants also requested that TTB delete the definition of ''Certificate of exemption from label approval'' because the term is not used in part 7, and also suggested that TTB add a definition of ''packaging,'' noting that the term was defined nearly identically in proposed §§ 7.62(a), 7.81(a)(3), 7.101(a)(3), and 7.121(a)(3). In addition, Beverly Brewery Consultants suggested adding a definition for ''industry member.''

TTB Response

TTB is finalizing its proposal to eliminate the definition of ''packer'' from its part 7 regulations. TTB received two comments in support of this change and none opposed. In § 7.1, TTB is finalizing its proposed definition of ''bottler'' as ''Any brewer or wholesaler who places malt beverages in containers.'' Also in § 7.1, TTB is finalizing the proposed definition of ''Certificate of exemption from label approval'' to clarify that such certificates are available for wine and distilled spirits products only. See TTB Ruling 2013–1 (noting that, ''unlike the regulations for wine and distilled spirits (set forth in 27 CFR parts 4 and 5, respectively) the part 7 regulations do not require certificates of exemption for malt beverages sold exclusively in intrastate commerce. TTB and its predecessor agencies have never issued certificates of exemption for malt beverages.''). As discussed in Section II.C.2 below, the holdings of this ruling are being incorporated into the regulations, and thus this ruling is superseded by this final rule.

In response to the comment regarding the definition for ''packaging,'' TTB included the definition of packaging separately in subparts E, F, G, and H for ease of reference and along with other definitions relevant to those subparts. TTB is finalizing those definitions as proposed. In response to Beverly Brewery Consultants' request that TTB add a definition of ''industry member,'' TTB does not believe the definition is necessary because this term does not appear in the part 7 regulations. Where the term is used in relation to part 7 in the preamble of this final rule, it refers generally to the brewers, wholesalers, and importers of malt beverages to whom part 7 applies.

b. Minimum Quantities of Barley and Hops

In § 7.1, TTB proposed to retain the current definition of ''malt beverage,'' but requested comments on whether it should set forth any minimum standards for the quantity of malted barley or hops used in the production of malt beverages. The current definition states that malt beverages must be made with malted barley and hops but does not set forth minimum quantities.

Two commenters opposed establishing minimum standards for the quantity of malted barley or hops needed for an alcohol beverage to be considered a malt beverage. The Brewers Association supported TTB's decision not to include a minimum standard for use of barley and hops in its definition of ''malt beverage,'' noting that ''[a]t this point in the evolution of the brewing industry, new standards for use of barley and hops would necessitate reformulation of thousands of malt beverages.'' The Beer Institute also submitted a comment opposing minimum standards. TTB received no comments in support of establishing minimum standards.

TTB Response

TTB is not moving forward with minimum standards in this final rule. TTB will continue to enforce its current policy on this issue, as stated in TTB Ruling 2008–3. Under this policy, TTB does not mandate minimum quantities of malted barley and hops to meet the definition of a malt beverage.

c. Comments on Requirement To Obtain a COLA

In proposed § 7.3, TTB described the general requirements and prohibitions under the FAA Act, including the requirement for brewers, wholesalers, and importers to obtain from TTB a COLA covering the labeling on each container of a malt beverage. An owner of Schilling Beer Co. requested that TTB allow malt beverages to be shipped in interstate commerce after submitting labels to TTB, but before a COLA is issued, or alternatively, that TTB cease issuing COLAs but instead conduct periodic compliance checks of labels that are submitted. The commenter stated that a shutdown in government operations severely impacted the brewer and caused a delay in obtaining TTB label approvals.

TTB Response

TTB recognizes that label approvals are critical to brewers and that any disruption to normal TTB operations may increase label processing times. However, this comment is beyond the scope of the current rulemaking. Accordingly, TTB is not incorporating any special rules to address compliance with labeling requirements during government shutdowns in this final rule.

Separately, TTB finalized technical changes in § 7.3(d), which generally describes the regulatory requirements under each subpart of part 7. First, § 7.3(d)(3) and (5) contain editorial changes for consistency within § 5.3(d). Second, three references to regulatory definitions in § 7.3(d)(3)–(4) are updated to correspond to the correct definitions and subparts.

d. Comments on ''Similar'' State Law

In Notice No. 176, TTB proposed at § 7.4 a regulation setting forth the jurisdictional limits of the FAA Act found in 27 U.S.C. 205. Generally, the labeling and advertising provisions of the FAA Act apply only to malt beverages shipped in interstate commerce. However, the penultimate paragraph of 27 U.S.C. 205 includes an additional limitation, stating the labeling provisions apply ''to malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State'' from any place outside of that State only ''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 that State. Section 7.4(a)(1) sets forth this requirement in the regulations, while § 7.4(a)(2) defines ''similar'' State law as applying to those requirements ''found in State laws or regulations that apply

specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages.''

Separately, TTB proposed, at §§ 7.21(a) and 7.24(a), to require that bottlers and importers obtain a COLA for domestically bottled and imported malt beverages, respectively, subject to certain exceptions, which are addressed in §§ 7.21(b) and 7.24(f). These proposed regulations clarified, consistent with current regulations, that COLAs are required only if the laws or regulations of the State into which the malt beverages are being shipped ''require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part.'' These provisions specify that this condition is met ''when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical to those set forth in subparts D through I of this part.'' Consistent with §§ 7.4, 7.21(b), and 7.24(f), TTB also notes that malt beverages not subject to the COLA requirements may still be subject to the substantive labeling provisions of the part 7 labeling regulations.

For example, under both current regulations and the final rule, a brewer may not need a COLA to ship malt beverages, in interstate commerce, into a State that has adopted some, but not all, of the labeling requirements of part. However, if the regulations of that State require the name and address of the bottler to appear on the label, in a manner that is similar to TTB requirements, and the container bears no information as to the name and address of the bottler, then the brewer shipping that malt beverage has violated both State regulations and the FAA Act, even though it was not required to obtain a COLA for the malt beverage.

Beverly Brewery Consultants stated that proposed §§ 7.4(a)(2), 7.21(b), and 7.24(f) were inconsistent in their discussion of State law. The commenter stated that while § 7.4 refers to ''similar'' State laws, §§ 7.21(b) and 7.24(f) refer to ''identical'' State laws. Beverly Brewery Consultants stated that each section relates to the extent that malt beverages are subject to the provisions of the FAA Act, and therefore should use consistent language. NABI requested that TTB clarify in § 7.4 that similar State law refers only to State law that applies to alcohol beverages. For example, the NABI comment distinguished between a State consumer protection law relating to the labeling of foods in general that is broad enough to include alcohol beverages and a State labeling law that only applies to carbonated soft drinks, and thus would not be a similar State law.

TTB Response

TTB is finalizing §§ 7.4, 7.21(b), and 7.24(f) as proposed, with minor editorial revisions that are discussed below. Other comments received on § 7.21 are discussed in Section II.C.2 below. Other comments received on § 7.24 are discussed in Section II.A.3.b. and c. above.

As previously noted, Beverly Brewery Consultants commented that TTB was inconsistent in using the term ''similar'' State laws in § 7.4, while using the term ''identical'' State regulations in §§ 7.21(b) and 7.24(f). However, TTB intended to use different standards in these regulations. TTB reiterates that § 7.4 describes the jurisdictional limits of the labeling and advertising provisions of the FAA Act, whereas §§ 7.21 and 7.24 relate to the regulatory requirement to obtain a COLA. The statutory limits with regard to compliance with the substantive labeling requirements of the FAA Act for malt beverages shipped in interstate commerce provide there is no violation of the FAA Act unless the State into which the malt beverage is shipped has ''similar'' State law. However, the regulations have always provided that no COLA is required for malt beverages shipped, in interstate commerce, into a State that has not adopted the labeling regulations in part 7. TTB and its predecessor agencies have interpreted this to mean that a COLA is required only if the State into which the malt beverages are being introduced has either adopted the Federal malt beverage labeling regulations (specifically or by reference) or has adopted labeling requirements that are identical in effect (not just similar) to those in part 7. As described above, the relationship to State law is different for each of these situations.

This provision is consistent with current regulations at 27 CFR 7.40, and with the malt beverage COLA regulations since they were first adopted in 1936, both of which provided that the COLA requirement applied only where the State into which the malt beverages are being shipped had adopted the Federal malt beverage labeling regulations. In the proposed rule, TTB clarified the language further by specifically providing that this included the adoption of regulations identical to the labeling regulations in part 7. Because the comments indicate that this language may have been confusing, TTB is incorporating a minor technical change in the language of sections 7.21(b) and 7.24(f), which now state that the COLA requirement applies when malt beverages are being shipped from one State into another State, and the destination State has either adopted subparts D through I of this part in their entireties or has adopted requirements *identical in effect* to those set forth in subparts D through I of this part. This editorial change clarifies that the regulations of the destination State need not replicate the exact text of the Federal regulations, word for word, but simply must be identical in effect to the labeling regulations in part 7.

In response to NABI, TTB also finds that § 7.4, as proposed, accurately describes the relationship between ''similar'' State law and the labeling and advertising provisions of the FAA Act applicable to malt beverages. Section 7.4(a)(2) sets out the longstanding Bureau interpretation of ''similar'' State law by stating that if a malt beverage label does not violate the laws or regulations of the State or States into which the malt beverages are being shipped, it does not violate part 7. The similar State law referred to in § 7.4(a)(2) therefore includes State laws and regulations that apply specifically to malt beverages and those general labeling requirements that are not specific to malt beverages, but which apply to malt beverages.

TTB agrees with NABI's comment to the effect that a State law that specifically applied only to, for example, carbonated soft drinks, and did not apply to malt beverages, would not be a ''similar'' State law for this purpose. Accordingly, the regulatory text in § 7.4(a)(2) has been revised to include the clarification that in order to be ''similar,'' the State requirements need to apply to malt beverages, even if their application extends more broadly to non-alcoholic beverages as well. As revised, the regulations provide that a ''similar'' State law may be found in State laws or regulations that apply specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages but that do apply to malt beverages.

e. Other Editorial Changes

Beverly Brewery Consultants suggested other editorial and clarifying changes in §§ 7.7 and 7.10. For example, Beverly Brewery Consultants suggested that TTB remove a reference to ''alcoholic beverages'' from § 7.7(a)'s description of the health warning statement required under the Alcoholic Beverage Labeling Act of 1988 (ABLA).

TTB Response

TTB considered these recommendations of technical and clarifying changes and concluded that the text of the regulations as originally proposed clearly communicates TTB's requirements. In § 7.7(a), TTB accurately describes the requirements of the ABLA as applicable to alcoholic beverages, including malt beverages, that contain at least 0.5 percent alcohol by volume. See 27 U.S.C. 214. Separately, TTB corrected a minor spelling error corrected in § 7.10, as finalized below.

2. Subpart B—Certificates of Label Approval

In Notice No. 176, TTB proposed to consolidate the regulations related to TTB label approval in a new subpart B for each commodity in parts 4, 5, and 7. TTB further proposed in § 7.21 to clarify that certificates of label approval (COLAs) are not required for malt beverages sold exclusively in the State in which the malt beverages were bottled.

Proposed § 7.21(a) set forth the general requirement for bottlers of malt beverages to obtain a COLA. Section 7.21(b) clarified that a COLA is required for malt beverages shipped into a State from outside of the State only where the laws or regulations of the receiving State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of part 7, subparts D through I. Proposed § 7.21(b) also noted that malt beverages that are not subject to the COLA requirements of current § 7.21 may still be subject to the substantive labeling provisions of part 7, subparts D through I, to the extent that the State into which the malt beverages are being shipped has similar State laws or regulations. As previously noted, these requirements are consistent with the longstanding policy of TTB and its predecessor agencies.

Proposed § 7.21(c) clarified that persons bottling malt beverages that will not be shipped, or delivered for sale or shipment, in interstate or foreign commerce, are not required to obtain a COLA or a certificate of exemption from label approval, along with a note explaining what constitutes a certificate of exemption from label approval. As noted in the NPRM, TTB has never issued certificates of exemption for malt beverages. TTB issues certificates of exemption from label approval to cover a wine or distilled spirits product that will not be introduced in interstate or foreign commerce. TTB solicited comments on whether the issuance of a certificates of exemption for malt beverages in such circumstances (for products that will not be sold outside of the State of the bottling brewery) would be useful to industry members, and whether the regulations should allow a certificate of exemption for such products.

TTB received four comments on the proposed regulations at § 7.21. The Brewers Association interpreted the proposed regulation as requiring brewers to obtain COLAs if they are located in States that incorporate TTB regulations by reference or have identical regulations, even if the product was bottled for intrastate sale. The Brewers Association stated that the proposal would have the effect of requiring brewers and brewpubs who only sell malt beverages in their home States to now obtain a COLA.

The Williams Group suggested that TTB allow industry members who are exempt from COLA requirements to request and obtain a COLA or a certificate of exemption ''in the rare instance that it might be required or otherwise helpful.'' NABI stated it would be valuable for brewers to obtain certificates of exemption so that the labels would appear on the COLA Public Registry, which would confirm that products were legally produced in the United States. Beverly Brewery Consultants suggested removing the note in § 7.21(c) explaining what a certificate of exemption from label approval is and replacing it with a statement that TTB does not issue certificates of exemption for malt beverages.

TTB Response

TTB is finalizing § 7.21 as proposed, except for the addition, at paragraph (d), of a provision originally proposed at § 7.211, regarding the presentation of evidence of label approval upon request by an appropriate TTB official. See Section II.A.9.a. Section 7.21 does not create any new COLA requirements for brewers. Consistent with TTB's current regulations, § 7.21 requires brewers or wholesalers bottling malt beverages to obtain a COLA prior to bottling the malt beverages or removing them from the bottling premises if the product is intended for sale in interstate commerce and if the State in which the product is to be sold incorporates TTB labeling regulations by reference or has identical regulations. Malt beverages intended only for sale intrastate are not required to obtain a COLA, as stated in § 7.21(c).

In response to the comment from the Williams Group, requesting that COLAs or certificates of exemption be available for malt beverages that will not be shipped or delivered for sale or shipment, in interstate or foreign commerce, TTB notes that bottlers may currently apply for COLAs on a voluntary basis. Brewers may therefore apply for COLAs covering malt beverages currently sold in intrastate commerce if, for example, they believe the State may require such documentation, or to cover the possibility that such products may be sold in interstate commerce in the future.

Because COLAs are granted based on the label's compliance with TTB's regulations in part 7, some malt beverages that are only distributed intrastate and are labeled in conformance with State law may not be eligible to obtain a COLA, such as where State law creates a conflicting requirement. This is why TTB sought comments on whether certificates of exemption should be available for malt beverages that are only distributed intrastate. While the Williams Group recommended making them available in the ''rare case that it might be required or otherwise helpful,'' it also stated that it was not aware of State requirements for COLAs or certificates of exemption for malt beverages only distributed intrastate. Because TTB did not receive comments referring to State requirements for TTB documentation for these types of malt beverages, this final rule does not include any provisions for allowing certificates of exemption for malt beverages on an optional basis.

NABI suggested that requiring certificates of exemption for malt beverages sold in intrastate commerce would be useful, so that industry members could confirm, via the COLA Public Registry, that products were legally produced in the United States. However, the NABI comment did not provide any evidence to establish that the theoretical benefit from such a requirement would justify the additional regulatory burden. TTB notes that such a requirement would constitute a new burden on bottlers of malt beverages distributed only in intrastate commerce and would represent a change to longstanding TTB policy to not require certificates of exemption for malt beverages sold exclusively in intrastate commerce. Accordingly, this final rule does not adopt the NABI comment.

Finally, TTB disagrees with the comment from Beverly Brewery Consultants, requesting that TTB remove from § 7.21(c) the parenthetical statement explaining what constitutes a certification of exemption from label approval. TTB believes this note in paragraph (c) provides useful information because it provides context

for the earlier statement in § 7.21 that bottlers of malt beverages that will not be shipped or delivered for sale or shipment in interstate or foreign commerce are not required to obtain a COLA or a certificate of exemption from label approval.

3. Subpart D—Label Standards

In Notice No. 176, TTB proposed a subpart D in each of parts 4, 5, and 7, containing regulations governing the placement of, and other requirements applicable to, mandatory and additional information on labels and containers. Most of the proposals applied similarly to the labels of the wine, distilled spirits, and malt beverage products. Specific to part 7, TTB proposed, and is now finalizing, an exception, for certain kegs, to the requirement that labels be firmly affixed to malt beverage containers.

Generally, TTB requires that labels be ''firmly affixed'' to malt beverage containers, that is, that they must be affixed in such manner that they cannot be removed without the thorough application of water or other solvents. Under § 7.51(b), TTB proposed an exception to this requirement for kegs that have a capacity of 10 gallons or more. The exception provided that a label in the form of a keg collar or a tap cover was not required to be firmly affixed, provided that the name of the brewer or bottler of the malt beverage was permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method. (TTB notes that it inadvertently described the proposal as contingent on the name of the brewer appearing on the keg, but proposed regulatory text that provided that the name of the bottler appear on the keg.)

TTB proposed this exception in response to requests from brewers, who have asserted that the requirement for firmly affixed labels is unduly burdensome as applied to kegs. Brewers have noted that kegs are intended to be reused, but that it takes considerable time and effort to scrape off the label each time a keg is to be reused. For this reason, brewers requested that TTB authorize the use of keg collars that are not firmly affixed to the keg, or a tap cover, to bear mandatory labeling information.

Seven commenters addressed proposed § 7.51, including the proposed exception and the general requirement that labels must otherwise be firmly affixed to malt beverage containers. The commenters provided important information, including current practices of affixing labels to kegs, the burden of compliance with current and proposed regulations, and the prevalence of keg sharing programs. In light of those comments, TTB is finalizing the requirement that labels be firmly affixed to containers, as proposed at § 7.51(a), and is expanding the exception to this requirement from what was proposed at § 7.51(b).

Only the Williams Group appeared to support, without reservation, the proposed exception, for certain keg collars and tap covers, to the requirement that labels be firmly affixed to containers. The six other commenters raised one or more specific objections. The Brewers Association, the Beer Institute, and MicroStar Logistics opposed making the exception to the firmly affixed label requirement for keg collars and tap covers contingent upon permanently or semi-permanently marking the keg with the name of the bottler. The Brewers Association and MicroStar Logistics stated that many brewers rely on third-party keg-sharing programs and that the exception, as proposed, would not provide any additional flexibility in such circumstances. The Brewers Association, MicroStar Logistics, NBWA, and the Confederated Tribes of the Chehalis Reservation described the exception, with its reliance on identifying the brewer through marking on the keg, as a new requirement that would add costs to industry members. The Confederated Tribes of the Chehalis Reservation stated that ''the current use of keg collars with the brewery information is a system that is working'' and does not need to be changed. They stated that the proposed rule would impose costs on brewers and force them to purchase additional kegs. The Beer Institute requested that TTB clarify that brewers may use trade names in lieu of actual corporate names and provide guidance on the proposal as applied to contract brewing. NBWA requested that TTB clarify that brewers are responsible for affixing keg collars before kegs leave the brewery.

The Brewers Association and MicroStar Logistics also objected to the existing requirement that labels must be ''firmly affixed'' to malt beverages containers such that they ''cannot be removed without thorough application of water or other solvents.'' They described this requirement, proposed at § 7.51(a) and derived from TTB's prior regulations, as ''out of date and unnecessary in light of the significant adoption of keg sharing programs by the beer industry.'' The Brewers Association additionally opposed the ''unnecessary use of additional water or solvents'' out of concern for workplace safety and environmental protection.

The Brewers Association, the Beer Institute, and MicroStar Logistics suggested that TTB allow firmly affixed, non-adhesive keg collars that ''are specifically designed to affix to the neck of the keg and cannot be removed without deliberate effort.'' They stated that the use of such collars would save brewers from the burden and expense of scraping off old labels and would still maintain appropriate consumer protections. The Brewers Association stressed that TTB should allow the use of such non-adhesive keg collars because other aspects of malt beverage distribution and sale ensure that the proper products are delivered from brewers to wholesalers, retailers, and consumers. The Brewers Association stated that kegs are transported by licensed carriers and wholesalers, who have an economic motivation to deliver the proper product to retailers and consumers. It stated that kegs are typically shipped from packaging breweries shrink wrapped and on pallets, which deters tampering with keg collars. Once in commerce, the Brewers Association stated that State laws require retailers, bars, and restaurants to supply the correct product and that permanent keg marking would not serve to ameliorate any attempts to deceive consumers because kegs typically are not visible to consumers.

The Beer Institute, along with Beverly Brewery Consultants, also proposed extending the exception for keg collars to kegs with a capacity of less than 10 gallons. The Beer Institute favored a minimum capacity of 5.2 gallons, while Beverly Brewery Consultants recommended allowing keg collars on kegs with a capacity greater than 1 gallon. Both commenters stated that, because brewers frequently use a variety of keg sizes, these suggestions would allow brewers greater flexibility in labeling their kegs.

Finally, the Confederated Tribes of the Chehalis Reservation questioned the impact that the requirement, in proposed § 7.51(a), to firmly affix labels would have on growlers. The commenter asked that the regulations clarify that refillable beer containers, such as growlers, which are refilled at the request of consumers at the point of sale, do not need to be firmly affixed with product information.

TTB Response

After reviewing the comments, TTB has decided to finalize, as proposed in § 7.51(a), the requirement that labels be firmly affixed to containers, and expand

the exception for keg labels proposed in § 7.51(b). Recognizing the points made in the comments by the Beer Institute, the Brewers Association, and MicroStar Logistics, TTB is providing an exception to the ''firmly affixed'' requirement for kegs to incorporate certain types of non-adhesive keg collars or tap covers.

This final rule provides that a keg collar or tap cover is considered to be firmly affixed if removal would break or destroy the keg collar or tap cover in such a way that it cannot be reused. Because any attempt at removal will break the keg collar or tap cover, or render it unfit for reuse, this provision allows non-adhesive keg collars and tap covers but mitigates the risk that labels simply could be switched between kegs. TTB believes this additional option will reduce the burden on breweries of removing and replacing keg labels and recognizes the use of third party keg providers. Although the Brewers Association described various controls and requirements that deter intentional mislabeling of kegs in commerce, TTB believes that allowing keg labels that could be switched from one keg to another with minimal effort presents an undue risk of fraud or deliberate tampering that would result in consumer deception.

Any keg collar or tap cover that is either broken or destroyed and rendered unfit for reuse upon removal would be eligible for the exception under § 7.51(b)(1), including those that utilize tamper-resistant or tamper-evident seals, leave evidence of tampering behind, or are intended to be self-adhering as opposed to adhering directly to a keg. While some commenters suggested that TTB allow keg collars and tap covers that cannot be removed without ''deliberate effort,'' TTB finds that such a standard would be difficult to define and communicate, and would risk being unenforceable in practice.

TTB is also finalizing the exception proposed in Notice No. 176 that allows for placement of mandatory information on keg collars and tap covers that are not firmly affixed. The exception is now set forth below at § 7.51(b)(2). It provides that a keg collar or tap cover is not required to be firmly affixed if the name of the bottler or importer is permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method. TTB has added the words ''or importer'' to clarify that the exception applies both to domestically brewed and imported malt beverages.

In both § 7.51(b)(1) and (b)(2), TTB is clarifying that these provisions apply only to keg collars and tap covers that meet the definitions of these terms in § 7.1, as finalized by this rule. TTB did not receive comments in response to the proposed definitions of ''keg collar'' or ''tap cover'' in § 7.1, which were proposed to provide clarity on the meaning of these terms in the context of the exception proposed at § 7.51(b).

In response to comments by the Beer Institute and Beverly Brewery Consultants, TTB is providing additional flexibility by reducing the minimum capacity of kegs to which § 7.51(b)(1) and (b)(2) apply, from the proposed 10 gallons to 5.16 gallons. Both of these commenters described common keg sizes used by brewers with a capacity of less than ten gallons, including ''sixth barrel'' kegs, which have a capacity of one-sixth of a 31-gallon barrel (or approximately 5.16 gallons). In Notice No. 176, TTB proposed the exception to the requirement that labels be firmly affixed to containers because kegs are intended to be reused and brewers had expressed that it takes considerable effort to remove and replace adhesive labels on kegs. TTB stressed that the proposed exception would afford additional flexibility without sacrificing consumer protection. This remains the case for kegs with a minimum capacity of 5.16 gallons. Such kegs are generally reused by brewers and delivered to bars or restaurants that dispense malt beverages to consumers, whereas smaller containers, such as one gallon kegs, typically are not reused and are often sold directly to consumers. For these reasons, TTB believes reducing the minimum keg capacity from the proposed 10 gallons to 5.16 gallons will ease the burden on industry members, particularly small brewers, of labeling and relabeling kegs while maintaining adequate consumer protections.

In response to the Brewers Association and MicroStar Logistics comments requesting changes to the requirement that labels be firmly affixed to containers, which appears in § 7.51(a), TTB notes that it did not propose changes to this standard. The standard, that generally labels must be affixed such that they ''cannot be removed without thorough application of water or other solvents,'' represents TTB's general requirement for labels in the malt beverage industry. This standard also exists in the wine and distilled spirits regulations. Because TTB did not propose changes to this standard, it finds that this option was not adequately aired for comment in the notice, and thus will consider it for further rulemaking.

The Confederated Tribes of the Chehalis Reservation asked TTB to clarify what impact the requirement to firmly affixed labels to containers under proposed § 7.51 would have on growlers. Section 7.51 does not create new requirements for growlers, which TTB considers to be bottles or glasses, depending on how they are used. See TTB Beer FAQs B9, What is TTB's policy with respect to ''growlers''?,'' available at *https://www.ttb.gov/beer/beer-faqs.*

Proposed § 7.51(a), requiring that labels be firmly affixed to containers of malt beverage, was derived from current TTB regulatory requirements. The exception described above only applies to malt beverages in kegs of 5.16 gallons or more.

In response to the Beer Institute's request that TTB clarify that brewers may use trade names in lieu of actual corporate names and provide guidance on the proposal as applied to contract brewing, TTB notes that § 7.51 only addresses how labels must be affixed to containers. The name and address statements required to appear on labels are described in part 7, subpart E, in §§ 7.66–7.68. TTB is therefore addressing this comment in the discussion of those sections below. In response to the NBWA request that TTB clarify that brewers are responsible for affixing keg collars before kegs leave the brewery, TTB refers the commenter to the discussion above under part 7 subpart A. Section 7.3(c) of that subpart states in relevant part that brewers and wholesalers may only introduce in interstate or foreign commerce malt beverages in containers that are marked, labeled, and branded in accordance with the labeling requirements of part 7. TTB notes that subject to the jurisdictional limits of the FAA Act, the law clearly prohibits the sale or shipment in interstate or foreign commerce of wine, distilled spirits, or malt beverages that are not bottled, packaged, and labeled in accordance with regulations issued by the Secretary. See 27 U.S.C. 205(e).

TTB is making two additional technical changes to proposed § 7.51. First, for clarity, TTB is changing the title of § 7.51 from ''Firmly affixed requirements.'' to ''Requirements for firmly affixed labels.'' Second, TTB is moving the second sentence from proposed § 7.51(b) to a separate paragraph (c). This provision states, ''This section in no way affects the requirements of part 16 of this chapter regarding the mandatory health warning statement.'' Part 16 contains TTB's requirements implementing the Alcoholic Beverage Labeling Act of 1988

(ABLA), which requires that a specific health warning statement appear on the labels of all containers of alcohol beverages for sale or distribution in the United States. See 27 U.S.C. 215. Part 16 contains a separate requirement that the health warning statement be firmly affixed to alcohol beverage containers. See § 16.22(c). TTB is therefore making this change to further clarify that none of the provisions in § 7.51 affect the regulatory requirements under part 16.

4. Subpart E—Mandatory Label Information

Subpart E in part 7 sets forth the information that is required to appear on malt beverage labels (otherwise known as ''mandatory information''). Proposed changes specific to malt beverages included removing restrictions on where mandatory information may appear on malt beverage labels, allowing alternative statements of alcohol content (such as alcohol by weight), expanding the tolerance for statements of alcohol content, clarifying the permissible name and address statements for brewers and bottlers, and codifying TTB's policy that statements of net contents may be expressed in metric units in addition to U.S. standard measures. For more information on the specific part 7 subpart E proposals, please refer to Notice No. 176, Section II.E.4. In the case of allowing alternative statements of alcohol content (such as alcohol by weight), TTB finalized this change in T.D. TTB–158. Regarding name and address statements for brewers and bottlers of malt beverages, TTB discussed these requirements along with similar requirements for wine and distilled spirits regulations above in Section II.A.6.d.

a. Placement of Mandatory Information

In Notice No. 176, TTB proposed in § 7.63 a provision to allow mandatory information to appear on any label on a malt beverage container. TTB is finalizing this proposal. TTB's current regulations require certain mandatory information to appear on a ''brand label,'' while other mandatory information or additional information could appear on any label. Our current regulations define brand label as ''[t]he label carrying, in the usual distinctive design, the brand name of the malt beverage.'' TTB proposed to remove this requirement because in practice, many malt beverage labels wrap around the container. As a result, mandatory information often appears anywhere on certain cans or bottles.

TTB did not receive any comments for or against this change specifically as applied to malt beverages. Therefore § 7.63 is finalized as proposed.

TTB notes that it may take some time to make conforming changes to the COLAs Online system to remove references to a ''brand label.'' COLA applicants may, in the interim, simply designate in COLAs Online any label bearing the brand name as the ''brand label.''

b. Alcohol Content Statements for Malt Beverage Labels

In Notice No. 176, TTB proposed to increase the alcohol content tolerance for malt beverages from 0.3 percent above or below the labeled alcohol content to 1 percent above or below. However, TTB is not finalizing this proposal. TTB made this proposal with the understanding that some brewers, especially small brewers, avoid putting optional alcohol content statements on malt beverage labels because of difficulty maintaining precise alcohol content from batch to batch. Currently, alcohol content statements must only be included on malt beverage labels if the product contains alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol. TTB stated that it believed increasing the tolerance for malt beverage alcohol content statements would encourage more brewers to include such statements when they are otherwise optional. TTB stated that it did not believe that a one percentage point variation from the labeled alcohol content would significantly impact consumers. TTB noted that under both its current regulations, and those finalized by this rule at § 7.65(c)–(e) below, the alcohol content tolerance is restricted in the case of malt beverages labeled with the statements ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol free.'' For example, alcohol content for malt beverages labeled as ''low alcohol'' or ''reduced alcohol'' must be less than 2.5 percent alcohol by volume. Likewise, malt beverages labeled ''non-alcoholic'' must contain less than 0.5 percent alcohol, and ''alcohol free'' malt beverages must contain no alcohol.

Four commenters, the Brewers Association, the Beer Institute, Beverly Brewery Consultants, and a team of professors from Abertay University and Heriot Watt University in Scotland, commented on TTB's proposed alcohol content tolerance for malt beverages in § 7.65. Beverly Brewery Consultants supported the proposed increase, noting that fermentation may result in batches of the same product that vary by alcohol content. The Brewers Association also supported the proposed increase in the alcohol content tolerance. The Brewers Association proposed that TTB require disclosure of alcohol content on malt beverage labels, provided it increased the tolerance as proposed. Prior to the publication of Notice No. 176, in its response to the Treasury Department's RFI, the Brewers Association also suggested maintaining the existing tolerance of plus or minus 0.3 percent for malt beverages below 5 percent alcohol-by-volume (ABV) and increasing the tolerance to plus or minus 0.5 percent for malt beverages with an alcohol content at or above 5 percent ABV.

The Beer Institute opposed the proposed increase of the alcohol tolerance for malt beverages. It stated that the proposed increase was too great and would undermine provisions of the FAA Act that direct the Secretary to promulgate regulations that prevent consumer deception, provide adequate information to consumers, and prohibit false or misleading statements. Further, the Beer Institute stated that the increase could confuse, mislead, and possibly endanger consumers due to higher than labeled alcohol content. The Beer Institute also expressed concern about the relationship of an increased tolerance to other TTB requirements, such as the labeling of low or reduced alcohol malt beverages and the use of optional Serving Facts statements. It raised concerns that brewers might use the increased tolerance to either save costs by brewing near the low end of the tolerance, or provide more alcohol than is labeled by brewing at the high end. The Beer Institute recommended keeping the current tolerance, which it stated balances the technical challenges of brewing with the consumer interest in predictable alcohol content.

The team of professors supported the proposed increase and submitted the results of a study of beers brewed in the United Kingdom showing that a significant fraction fell outside a tolerance of plus or minus 0.3 percent.

TTB Response

TTB is not finalizing the proposal to increase the alcohol content tolerance for malt beverages from 0.3 percent to 1 percent. Commenters have raised important issues in support of, and in opposition to, the proposal. The comments from the Brewers Association, Beverly Brewery Consultants, and the team of professors supported an expanded tolerance and observed that some brewers have difficulty maintaining precise alcohol content in malt beverages from batch to batch. However, TTB notes that the

Brewers Association's comment to the RFI sought a smaller increase (to plus or minus 0.5 percent) for those malt beverages with an alcohol content at or above 5 percent alcohol by volume, and no increase at all for other malt beverages.

TTB notes that it does not agree with a comment from the Beer Institute, which stated that an increased alcohol content tolerance would allow malt beverages labeled as ''low alcohol'' to contain one percentage point more alcohol than is labeled. This is not the case. As noted above, § 7.65 maintains the alcohol tolerance limitations from TTB's current regulations, including for malt beverages labeled as low or reduced alcohol. Under § 7.65(d), as finalized, alcohol content for such malt beverages must be less than 2.5 percent alcohol by volume regardless of the otherwise permitted tolerance.

Regarding the issue of increasing the tolerance for alcohol content, the Brewers Association appeared to request that disclosure of alcohol content be made mandatory for all malt beverages, and that TTB should increase the tolerance as part of such a change. In Notice No. 176, TTB stated that it was not proposing to expand the types of malt beverages for which an alcohol content statement would be mandatory. Accordingly, TTB finds that aspect of the Brewers Association comment to be outside the scope of this rulemaking.

Based on the comments received in response to the proposal on alcohol content tolerances, TTB has concluded that whether the alcohol content tolerance for malt beverages should be increased requires further consideration. As a result, TTB is finalizing § 7.65 without changing the alcohol content tolerance for malt beverages. The tolerance remains 0.3 percent above or below the stated alcohol content, subject to the limitations described in § 7.65. TTB will treat the Brewers Association comment as a request for further rulemaking on this issue.

TTB is also finalizing proposed § 7.65(b) with minor modifications. In T.D. TTB-–158, TTB amended existing regulations on alcohol content statements to provide that, while a statement of alcohol content must be expressed as a percentage of alcohol by volume, other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume. This document incorporates this amendment, with minor clarifying changes. Consistent with current regulations, the final rule clarifies that § 7.65 applies only where State law does not either prohibit alcohol content statements or provide its own requirements for the manner of such statements. The final rule also removes, as unnecessary, language clarifying that a mandatory alcohol content statement may not be expressed as a range or by maximums or minimums.

c. Net Content Labeling for Malt Beverages

In Notice No. 176, TTB proposed at § 7.70 to amend the net content labeling regulations for malt beverages to reflect current policy by specifically stating in the regulations that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory U.S. measure. (As explained further below, the notice referred to ''U.S. standard measures'' to mean U.S. customary units of measurement, *e.g.,* U.S. gallons, quarts, pints, and fluid ounces). TTB noted that current regulations allow for the use of U.S. standard measures, but do not address whether metric contents also may be displayed. Because current TTB policy is to allow net contents to be expressed in both formats, TTB proposed that § 7.70 allow for the statement of net contents of metric measurements in addition to, but not in lieu of, the U.S. standard measures. TTB did not receive comments for or against this proposal.

In the interim, this change was adopted in the current malt beverage net content labeling regulations by T.D. TTB–165. The summary of that final rule explained that: ''TTB is also amending the labeling regulations for distilled spirits and malt beverages to reflect current policy by specifically stating in the regulations that distilled spirits may be labeled with the equivalent standard United States (U.S.) measure in addition to the mandatory metric measure, and that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory U.S. measure.''

Separately, in response to the Treasury Department's RFI, the Brewers Association suggested that, for malt beverage containers with volumes of between one pint and one quart, TTB should allow the expression of net contents as fluid ounces only. Currently, net contents for containers of this size must be expressed as fractions of a quart, or in pints and fluid ounces.

TTB Response

Because TTB did not receive comments on its proposal to allow the statement of net contents in metric measurements in addition to, but not in lieu of, the U.S. standard measures, and because this change has already been made in the regulations as amended by T.D. TTB–165, TTB is finalizing § 7.70 as proposed. TTB is making a minor editorial revision to refer to the U.S. standard measures as ''U.S. customary units of measurement.'' While both terms have the same meaning, TTB finds that the term ''customary'' describes this system of measurement more accurately than the term ''standard.''

In response to the RFI comment from the Brewers Association, TTB notes that it did not propose changes to the permissible format of U.S. standard units. It is not clear whether industry members and consumers were given adequate notice that such formatting requirements were subject to change. TTB is therefore not adopting this suggestion from the Brewers Association. TTB may consider changes to the permissible formats for net contents statements in a future rulemaking.

5. Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

In Notice No. 176, TTB proposed, in subpart H of parts 4, 5, and 7, regulations on labeling practices that are prohibited if they are misleading. See section II.B.6. TTB responds above to comments on proposals that apply similarly to wine, distilled spirits, and malt beverages. See section II.A.7.h. Regarding malt beverages specifically, TTB is incorporating in § 7.128 text from TTB's current regulations, which prohibits malt beverage labels from containing statements or representations that tend to create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product. TTB is also adding in § 7.128(b)(4), based on current guidance, a provision that truthful and accurate statements about production of a malt beverage, such as ''aged in whisky barrels,'' do not violate this standard. See TTB Ruling 2015–1.

Finally, based on comments received, TTB is not finalizing proposed § 7.131, which contained a prohibition from TTB's current regulations on the use of the term ''bonded'' or similar terms that may imply governmental supervision over the production, bottling, or packing of a malt beverages product. TTB does not believe a separate regulation is necessary in this area and is opting to rely on its general prohibition against statements or representations, irrespective of falsity, that tend to mislead consumers.

a. Claims Related to Distilled Spirits

In Notice No. 176, TTB proposed regulations at §§ 4.128, 5.128, and 7.128 prohibiting labeling statements that tended to create a false or misleading impression that products of one commodity contain or are themselves a different commodity. In the case of malt beverages, the proposed regulation at § 7.128 prohibited labeling statements that would create a misleading impression that a malt beverage product contained or was itself a distilled spirit or wine product. The proposed regulations also would have prohibited homophones or coined words that simulate or imitate a class or type designation of a different commodity. TTB proposed this requirement based on its receipt of increasing numbers of applications for approval of labels that contained such terms.

In T.D. TTB–158, TTB decided not to finalize proposed §§ 4.128, 5.128, and 7.128, stating in response to comments that ''a blanket approach to cross-commodity terms * * * could unnecessarily restrict creativity in the use of truthful and non-misleading representations on labels.'' However, as discussed in Notice No. 176, current TTB regulations continue to prohibit misleading representations that a malt beverage product contains or is itself a distilled spirit product. See 27 CFR 7.29(a)(7). TTB received two comments in relation to this current regulation. The Beer Institute, although it opposed the language in proposed § 7.128, which took a more expansive approach to cross-commodity terms in general, supported TTB's current regulation. The Williams Group, however, commented that both TTB's current and proposed regulations limit producers' freedom to be creative. The Williams Group also stated that consumers are able to read labels and determine the type of commodity.

Both proposed § 7.128 and TTB's current regulation at § 7.29(a)(7) listed three types of labeling statements that TTB does not consider to create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product. They are truthful and accurate statements of alcohol content, the use of a brand name of a distilled spirits product as a malt beverage brand name, or the use of a cocktail name as a brand name or distinctive or fanciful name. In Notice No. 176, TTB proposed to add items to this list. First, TTB proposed to allow truthful and accurate statements about the production of a malt beverage, such as ''aged in whisky barrels'' or ''Beer brewed with chardonnay grapes.'' This provision was based on labeling guidance in TTB Ruling 2014–4. TTB notes that Ruling 2014–4 was superseded by TTB Ruling 2015–1, which includes the content of Ruling 2014–4 in its entirety. Second, based on provisions in the Beverage Alcohol Manual for malt beverages, TTB proposed to allow the use of the designations ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) style wine ale.'' Third, TTB proposed to add a new provision, permitting ''[t]he use of terms that simply compare malt beverage products to wine or distilled spirits products without creating a misleading impression as to the identity of the product.''

The Beer Institute opposed adding these three items, on the grounds that TTB personnel in the future may interpret the exceptions as defining the limits of what labeling claims or statements related to non-malt beverage products may be used. In contrast, Beverly Brewery Consultants supported listing specific terms in the regulations to clarify to brewers that use of these terms on labels is permissible. TTB notes that while the Beer Institute opposed proposed § 7.128, it did not oppose the existing restrictions from the prior regulation at § 7.29(a)(7) and recommended that such restrictions be extended to wine product labels. Finally, Beverly Brewery Consultants expressed concern that the proposed regulation could impact currently permissible statements on malt beverage labels, such as those comparing malt beverage products to ''champagne.''

TTB Response

TTB is finalizing at § 7.128 its current regulation from § 7.29(a)(7), which prohibits malt beverage labels from containing statements or representations that tend to create a false or misleading impression that a malt beverage contains distilled spirits or is distilled spirits product.'' In response to the Williams Group, TTB believes its current regulation does not limit product innovation, because statements or representations related to distilled spirits are still permitted, provided they do not create a false or misleading impression about the identity of the product. For the same reason, TTB believes this provision is necessary for consumer protection.

TTB is also finalizing the provision proposed at § 7.128(b)(4), which incorporates current guidance to state that truthful and accurate statements about the production of a malt beverage, such as ''aged in whisky barrels'' are not prohibited. However, TTB is not including the proposed examples relating to the use of grapes in the production of beer (''fermented with grapes'' and ''Beer brewed with chardonnay grapes''), because they relate to the proposed regulatory language about misleading cross-commodity comparisons with wine, which was not finalized. Similarly, this final rule makes conforming changes to § 7.143(h)(3), which describes designations related to barrel aging that TTB would consider misleading, to remove examples of designations that mention wine or grapes. These types of claims remain subject to the general prohibition against misleading labeling statements.

TTB is also not finalizing in § 7.128 the proposed provision permitting terms ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) style wine ale,'' because they also relate specifically to claims related to wine. TTB's policy permitting these terms remains in effect, as reflected in the class and type regulations that are finalized at § 7.143(g).

TTB is also not finalizing the provision permitting labeling statements that simply compare malt beverage products to wine or distilled spirits products, without creating a misleading impression as to the identity of the product. Upon further review, this provision does not provide additional clarity over and above the general prohibition in § 7.128(a), that labels may not create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product.

b. Use of the Term ''Bonded''

In proposed § 7.131, TTB maintained a provision from its current regulations that prohibited the use on malt beverage labels of the term ''bonded'' or similar terms that may imply governmental supervision over the production, bottling, or packing of the product. TTB sought comments, however, on whether it should continue to prohibit the use of such terms on malt beverage labels.

Two commenters responded to TTB's proposal. The Williams Group and Beverly Brewery Consultants both stated that the prohibition is unnecessary and outdated. The Williams Group stated that the term had little meaning and would not mislead consumers or cause them to believe that distilled spirits had been added to a malt beverage. Beverly Brewery Consultants stated that there did not appear to be a need to retain the prohibition. TTB also notes that the Brewers Association submitted a comment in response to the Treasury Department's RFI stating that there is no reason to prohibit the use of the word

''bonded'' on malt beverage labels because the word ''has no meaning related to malt beverages.''

TTB Response

Based on the comments received, TTB is eliminating the prohibition on the use of the word ''bonded'' or similar terms on malt beverage labels. Commenters generally stated that use of the term ''bonded'' or similar terms on malt beverages labels would not tend to mislead consumers. TTB notes that the general prohibition in § 7.122 against statements or representations, irrespective of falsity, that mislead consumers is finalized as proposed. This provision extends to labeling statements that use the term ''bonded'' or similar terms in a misleading fashion, for example, implying government supervision or certification that actually was not provided. Such uses would be prohibited under TTB's general prohibition on misleading labeling. See 27 CFR 7.102.

6. Subpart I—Class and Type

In Notice No. 176, TTB proposed to reorganize and amend its class and type designations for malt beverages. These regulations appear in current § 7.24 and were proposed to be reorganized into part 7 subpart I, §§ 7.141–7.147.

Part 7 does not prescribe standards of identity for malt beverages. Instead, current § 7.24(a) provides that statements of class and type for malt beverages 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 composition of the product, shall be stated, and such statement is treated as a statement of class and type for purposes of part 7.

TTB did not propose now to include specific standards of identity. Proposed § 7.141 is derived from 27 CFR 7.24(a) and sets out standards for class and type designations on malt beverages. This section explains that the class of the malt beverage must be stated on the label. The type may optionally be stated. Statements of class and type must conform to the designation of the product as known to the trade. If the product is not known to the trade, the product must contain a distinctive or fanciful name as well as a statement of composition.

Proposed § 7.141 differs from the current regulations in that it proposes to define a ''malt beverage specialty'' as a malt beverage that does not fall under any of the class designations set forth in part 7 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials, or the use of certain types of production processes. Such beverages will not be designated as ''malt beverage specialties'' on the label, but the term reflects current usage and is a convenient way to refer to such products in the regulations.

Proposed § 7.142 sets out class designations. Any malt beverage may be designated simply as a ''malt beverage.'' The designations ''beer'', ''ale'', ''porter'', ''stout'', ''lager'', and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade's understanding of those designations. TTB proposes to allow these designations to be preceded or followed by descriptions of the color of the product (such as brown, red, or golden).

Proposed § 7.143 is largely consistent with existing regulations on class and type designations. There are new proposed provisions for ''ice beer,'' ''wheat beer,'' ''rye beer,'' and ''barley wine ale,'' consistent with existing TTB policy.

The proposed regulations in proposed §§ 7.143(h) and 7.144 reflect changes adopted in TTB Ruling 2014–4 (which was then superseded by TTB Ruling 2015–1) with respect to the labeling of malt beverage products fermented or flavored with honey, certain fruits, and certain spices. In response to a petition from the Brewers Association, TTB exempted certain malt beverages from the formula requirements under part 25, and liberalized the labeling rules applicable to these products. We proposed to codify these labeling standards in the regulations.

Malt beverages that are not ''known to the trade'' are required to be labeled with a statement of composition. Proposed § 7.147 sets forth provisions for statements of composition on malt beverages. These provisions reflect current policy. Specifically, a statement of composition is required to appear on the label for malt beverage specialty products, as defined in proposed § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

TTB notes that this final rule does not adopt the proposed regulations regarding the use of geographical names on malt beverage labels in §§ 7.142(c) and 7.146.

Instead, due to issues raised by commenters relating to compliance with international agreements to which the United States is a party, TTB is retaining its geographical names regulations under current § 7.24(f)–(h), codifying them at § 7.146 with organizational changes only. This determination is discussed in Section II.A.8.a. Otherwise, TTB is finalizing §§ 7.141–7.147 as proposed, with only minor changes as discussed below.

a. General Support and Opposition

TTB received one comment generally in favor of the reorganized class and type regulations changes, and one opposed. Beverly Brewery Consultants supported the reorganization of TTB's class and type regulations, stating that it was more logical and would enable users to find information more easily. Beverly Brewery Consultants also supported the proposed definition of ''malt beverage specialty products'' at § 7.141. The Brewers Association, however, opposed the proposed regulations at §§ 7.141–7.144 and 7.147, stating that they ''are based on longstanding concepts used in distilled spirits labeling and advertising regulations'' which ''are not generally understood by brewers and would necessitate many changes in existing labels and advertisements.'' The association requested that TTB retain the language addressing class and type found in the current regulations in § 7.24. Finally, Beverly Brewery Consultants suggested editorial changes at § 7.141(b) for clarity by breaking up the text into multiple sentences.

TTB Response

In response to the Brewer's Association's comment questioning the use of certain concepts, TTB believes the comment potentially refers to the terms ''malt beverage specialty products'' and ''distinctive or fanciful name.'' The inclusion of these terms does not reflect substantive changes to the class and type regulations for malt beverages. Under both TTB's current and proposed regulations, statements of class and type must conform to the designation of the product as known to the malt beverage trade, and if the product is not known to the trade, it must be labeled with a distinctive or fanciful name as well as a statement of composition.

Proposed § 7.141 designated such products not known to the trade under a particular designation as ''malt beverage specialty products.'' Thus, while the term ''malt beverage specialty

products'' is new to the regulations, the concept is not new to the malt beverage industry. It currently appears in Formulas Online and COLAs Online and is merely a way to refer to those products ''not known to the trade.'' TTB also notes that the term ''distinctive or fanciful name'' appears in TTB's current malt beverage class and type regulations. See 27 CFR 7.24(a). The inclusion of these terms will not result in changes to existing malt beverage labels or advertising because the substantive provisions are the same in both the current and proposed regulations and the terms themselves are not required to appear on labels.

In response to Beverly Brewery Consultant's editorial comments, TTB reviewed the text for clarity and found that it sufficiently communicates TTB's requirements.

b. Oak Barrels

TTB proposed in § 7.143(h) to expressly permit non-misleading labeling statements that describe malt beverages aged in barrels or with woodchips, spirals, or staves derived from barrels. TTB is finalizing § 7.143(h) as proposed. Paragraph (h)(2) of this section provided examples of acceptable designations such as ''beer aged in an oak barrel,'' ''bourbon barrel aged honey ale,'' and ''wine barrel aged beer.'' NABI noted that in Notice No. 176, TTB proposed a definition of ''oak barrel'' in its part 5 regulations regarding the labeling of distilled spirits and asked that TTB clarify what is meant by the term ''oak barrel'' as it appears in § 7.143(h).

TTB Response

TTB does not believe it is necessary to add a separate definition of ''oak barrel'' in part 7. Section 7.143(h) describes statements relating to barrel aging of malt beverages, and is not limited to oak barrels. TTB also notes that it previously declined to finalize the proposed definition of ''oak barrel'' for purposes of distilled spirits labeling. See T.D. TTB–158.

c. Comments on Existing and Additional Designations

As noted above, TTB proposed in § 7.142(b)(1) to expressly allow descriptions of color (*e.g.,* ''amber,'' ''brown,'' or ''red'') and descriptive terms (*e.g.,* ''dry,'' ''cream,'' or ''pale''). TTB also proposed to recodify at § 7.142(b)(2) a provision from TTB's current regulations at § 7.24(e) stating the requirement that: ''No product other than a malt beverage fermented at a 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) may bear any of these class designations.'' Among other type designations, proposed § 7.143 included a new proposed definition for ''black and tan,'' describing it as a product containing two classes of malt beverage with the names of the two classes displayed together along with the term ''black and tan,'' for example, ''Black and Tan, Stout and Ale.''

Beverly Brewery Consultants suggested adding the terms ''session'' and ''imperial'' to the descriptive terms allowed with class designations included in proposed § 7.142. The Brewers Association submitted comments relating to class-and-type issues in its response to the Treasury Department's RFI. In those comments, the association recommended removing the requirement that products labeled as ''ale,'' ''porter,'' and ''stout'' must be fermented at a comparatively high temperature. The Brewers Association states that ale may be brewed at lower temperatures than in the past because ''modern brewing practice utilizes many yeast strands.'' TTB notes that the association did not specifically address this issue in its comments on Notice No. 176.

Finally, Beverly Brewery Consultants suggested that TTB amend its definition of ''black and tan'' in proposed § 7.143. The comment recommended that because this designation does not imply equal parts of the two classes, a minimum quantity of at least 25 percent of one of the classes should be a requirement for this designation.

TTB Response

TTB did not propose to incorporate into the regulations the additional descriptive terms that Beverly Brewery Consultants requested (''session'' and ''imperial''), but will consider this as a suggestion for future rulemaking. TTB will continue its policy of allowing such terms on labels.

TTB also declines to remove the requirement that ales, porters, and stouts be fermented at a comparatively high temperature, which was simply a reissuing of TTB's current regulation, set forth with only a minor typographical change. Because TTB did not air for public comment any revisions to these longstanding regulatory provisions, it would not be appropriate to adopt changes in this final rule. TTB will consider these comments as suggestions for future rulemaking.

Regarding the proposed type designation for ''black and tan,'' TTB's Beverage Alcohol Manual for Malt Beverages (TTB P 5130.3) currently provides that this type designation covers products where two classes of malt beverage are present in the product, and both classes are stated on the label in conjunction with the words ''black and tan.''

The comment from Beverly Brewery Consultants suggested that a minimum quantity of at least 25 percent of one of the classes should be a requirement for this designation. However, by definition, if the product is composed of only two different classes, at least one of the classes would always make up at least 25 percent of the product. If the commenter meant to instead suggest that each one of the classes should make up at least 25 percent of the finished product, TTB notes that Beverly Brewery Consultants did not articulate, and TTB is not aware of, any reason to believe that such a requirement is necessary in order to avoid consumer deception. Furthermore, such a requirement would also restrict industry flexibility. TTB sees no reason to further restrict the use of the term. Accordingly, TTB is finalizing the proposed type designation in § 7.143.

D. Amendments of the Advertising Regulations

In Notice No. 176, TTB proposed to consolidate its alcohol beverage advertising regulations in a new part, 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages. The proposed part 14 contained only those updates needed to conform certain regulated practices to the updates being proposed for the labeling provisions. Additional updates to the regulations on advertising to address contemporary issues, such as social media, in more detail were not proposed, but TTB stated that such amendments might be proposed in future rulemaking initiatives.

In this final rule, TTB is not moving forward with the reorganization of the advertising regulations into a part 14. Instead, this final rule simply retains the existing regulations on advertising in parts 5 and 7 with minor modifications. As explained earlier, this final rule does not amend the labeling or advertising regulations in part 4, which relate to wine. Instead, TTB plans to address these issues in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which parts 5 and 7 are being reorganized, and which will also address the substantive issues raised by the commenters on the labeling and advertising of wine. At that

time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176.

Pending the reorganization of the advertising regulations into a proposed part 14, this final rule simply retains the existing regulations on advertising in parts 5 and 7, with minor modifications for consistency with changes that were made to the labeling regulations in this final rule. For example, this final rule adopts changes to the advertising regulations to conform to amendments made to the labeling regulations on the use of flags, the use of disparaging statements about competitors, and statements relating to guarantees. These changes are liberalizing in nature. The final rule also includes minor clarifications in § 7.235, consistent with the proposed rule, to clarify that the advertising regulations do not require use of an approved label where a malt beverage container is not subject to the COLA requirements under part 7.

TTB is adding a paragraph to § 5.235 and § 7.235 stating that the use of the term ''organic'' in advertising must comply with the United States Department of Agriculture's National Organic Program rules. This is consistent with the current advertising regulations and is consistent with the finalized labeling regulations.

In §§ 5.234 and 7.234, the provision on the legibility of mandatory information is revised to include clarifying changes from the proposed rule.

The advertising regulations have also been amended to modify the definition of ''Advertisement or Advertising'' to include internet and social media advertisements, as proposed in Notice No. 176. The inclusion of internet and social media advertisements in the definition of ''advertisement'' reflects current TTB policy, and is simply a clarifying change in the part 5 and part 7 regulations. See TTB Industry Circular 2013–1, ''Use of Social Media in the Advertising of Alcohol Beverages,'' dated May 13, 2013, in which TTB noted that the ''regulations list specific types of advertising, including 'any other media.' TTB interprets 'any other media' in the regulations to apply to advertising in all types of media, including types of media that did not exist when the regulations were originally adopted.'' The Industry Circular clarifies that internet advertising and social media advertising, among other types of advertising, are subject to the requirements of the FAA Act and its implementing regulations. That policy will continue to apply to advertisements of wine, distilled spirits, and malt beverages. At this time, TTB is not addressing the more substantive comments that were received with regard to ways in which the TTB regulations should address those issues.

Finally, the numbering of the sections in the subparts on the advertising regulations has changed, due to the reorganization of the labeling regulations in parts 5 and 7.

E. Impact on Public Guidance Documents

The chart below describes the impact of this final rule on rulings, industry circulars, and other public guidance documents issued over the years by TTB and its various predecessor agencies. The following public guidance documents will be superseded by the publication of a final rule:

Document No.	Subject	Incorporated into proposed sections at:
Cross Cutting		
Industry Circular 1963–23	Use of Disparaging Themes or References in Alcoholic Beverage Advertising is Prohibited.	Not incorporated.
Distilled Spirits		
Revenue Ruling 54–592	Relabeling Tax Paid Distilled Spirits	§ 5.42.
Revenue Ruling 55–399	Straight Whiskey	Not Incorporated.
Revenue Ruling 61–15	Labeling of Scotch Whisky	§ 5.90(b).
Revenue Ruling 61–25	Distilled Spirits Labeling	§§ 5.141 and 5.143.
Revenue Ruling 61–71	Use of the Word Straight in Labeling and Advertising of Liqueurs or Cordials.	§ 5.150(a).
Revenue Ruling 62–224	Relabeling by Wholesale Liquor Dealer	§ 5.42.
Revenue Ruling 68–502	Light Whisky from Kentucky	§ 5.66(f)(3).
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 5.68.
ATF Ruling 79–9	Distilled Spirits Labels	§ 5.87.
ATF Ruling 88–1	Alcohol Content on Labels and in Advertisements of Distilled Spirits.	§ 5.65.
ATF Ruling 93–3	Age Statements on Grappa Brandy	§ 5.74(c).
ATF Ruling 94–5	Geographical Names	§ 5.143 and § 5.145(c)(2)–(5).
ATF Ruling 2001–2	Country of Origin Statements on Distilled Spirits Labels.	§ 5.69.
Industry Circular 1971–7	Protection of Names of Bourbon Whiskey and Certain French Brandies.	§§ 5.143 and 5.145.
Industry Circular 76–28	Production of New Charred Barrels using Used Heads.	Not Incorporated.
Malt Beverages		
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 7.68.
ATF Ruling 76–13	Malt Beverages of Less Than ½ of 1% Alcohol by Volume Subject to FAA Act.	§ 7.145.
ATF Ruling 94–3 (superseded only with respect to the provisions related to part 7. The part 25 provisions remain in effect.).	Ice Beer	§ 7.143.

Document No.	Subject	Incorporated into proposed sections at:
ATF Procedure 98–1	Labeling of Imported Malt Beverages Bottled or Packed in the United States, and Labeling of Blends of Imported and Domestic Malt Beverages Bottled or Packed in the United States.	§§ 7.67 and 7.69.
TTB Ruling 2013–1	Malt Beverages Sold Exclusively in Intrastate Commerce.	§§ 7.4 and 7.21.

III. Derivation Tables for Finalized Parts 5 and 7

27 CFR PART 5

Requirements of new section:	Are derived from current section:
5.0	5.1.
Subpart A—General Provisions	
5.1	5.11.
5.2	5.1.
5.3	New.
5.4	[reserved].
5.5	[reserved].
5.6	[reserved].
5.7	New.
5.8	5.1.
5.9	[reserved].
5.10	5.2.
5.11	5.3.
5.12	5.4.
Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval	
5.21	5.31(a).
5.22	5.55.
5.23	5.55(b).
5.24	5.51(a) and 5.55(c).
5.25	5.51.
5.27	5.51 and 5.55.
5.28	5.33(g).
5.29	5.57.
5.30	5.52.
Subpart C—Alteration of Labels, Relabeling and Adding Information to Containers	
5.41	5.31(b).
5.42	5.31(b).
5.43	New.
5.44	5.31(b).
Subpart D—Label Standards	
5.51	5.33(e).
5.52	5.33(a).
5.53	5.33(b)(5) and (6).
5.54	New.
5.55	5.33(c).
5.56	5.33(f).
Subpart E—Mandatory Label Information	
5.61	New.
5.62	5.41.
5.63	5.32.
5.64	5.34.
5.65	5.37.
5.66	5.36.

27 CFR PART 5—Continued

Requirements of new section:	Are derived from current section:
5.67	5.36.
5.68	5.36.
5.69	5.36(e).
5.70	5.38.
5.71	5.39(a).
5.72	5.39(b).
5.73	5.39(c).
5.74	5.40.
Subpart F—Restricted Labeling Statements	
5.81	New.
5.82	5.32a.
5.83	5.32b.
5.84	5.71.
5.85	[reserved].
5.86	[reserved].
5.87	New.
5.88	5.42(b)(4).
5.89	5.42(b)(6).
5.90	5.22(k)(4).
5.91	5.42(b)(5).
Subpart G—Prohibited Labeling Practices	
5.101	New.
5.102	5.42(a)(1).
5.103	5.42(a)(3).
Subpart H—Labeling Practices That are Prohibited if They are Misleading	
5.121	New.
5.122	5.42(a)(1).
5.123	5.42(a)(5).
5.124	5.42(a)(2).
5.125	5.42(a)(4).
5.126	5.42(b)(7).
5.127	[reserved].
5.128	[reserved].
5.129	5.42(b)(8).
5.130	5.42(a)(6).
Subpart I—The Standards of Identity for Distilled Spirits	
5.141	5.22.
5.142	5.22(a).
5.143	5.22(b) and 5.35(c).
5.144	5.22(c).
5.145	5.22(d).
5.146	5.22(e).
5.147	5.22(f).
5.148	5.22(g).
5.149	[reserved].
5.150	5.22(h).
5.151	5.22(i).
5.152	5.22(j).
5.153	New.

27 CFR PART 5—Continued

Requirements of new section:	Are derived from current section:
5.154	5.22(k) and (l).
5.155	5.23.
5.156	5.35(a) and (b).
5.157–5.165	[reserved].
5.166	New.
Subpart J—Formulas	
5.191	5.25.
5.192	5.26.
5.193	5.27.
5.194	5.28.
Subpart K—Distilled spirits containers and Authorized Container Sizes	
5.201	5.45.
5.202	5.46.
5.203	5.47a.
5.204	[reserved].
5.205	New.
Subpart L—[Reserved]	
Subpart M—Penalties and Compromise of Liability	
5.221	New.
5.222	New.
5.223	New.
Subpart N—Advertising of Distilled Spirits	
5.231	5.61.
5.232	5.62.
5.233	5.63.
5.234	5.64.
5.235	5.65.
5.236	5.66.
Subpart O—Paperwork Reduction Act	
5.241	New.

27 CFR PART 7

Requirements of new section:	Are derived from current section:
7.0	7.1.
Subpart A—General Provisions	
7.1	7.10.
7.2	7.2.
7.3	7.20(b) and (c).
7.4	7.20(a) and New.
7.5	7.11.
7.6	7.6.

27 CFR PART 7—Continued

Requirements of new section:	Are derived from current section:
7.7	New.
7.8	7.60.
7.9	[reserved].
7.10	7.4.
7.11	7.3.
7.12	7.5.
Subpart B—Certificates of Label Approval	
7.21	7.20(b), and 7.40–7.42.
7.22	7.40 and 7.41.
7.23	[reserved].
7.24	7.30 and 7.31(b).
7.25	7.30 and 7.31.
7.27	7.42.
7.28	7.31(d).
7.29	7.43.
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	
7.41	7.20(c)(1).
7.42	7.20(c)(2).
7.43	New.
7.44	New.
Subpart D—Label Standards	
7.51	7.28(d).
7.52	7.28(a).
7.53	7.28(b).
7.54	New.
7.55	7.28(c).
7.56	7.28(e).
Subpart E—Mandatory Label Information	
7.61	New.
7.62	7.21(b) and 7.29(h).
7.63	7.22.
7.64	7.23.
7.65	7.71.
7.66	7.25(a) and (d).
7.67	7.25(b).
7.68	7.25(b).
7.69	7.25(c).
7.70	7.27.
Subpart F—Restricted Labeling Statements	
7.81	New.
7.82	7.22a.
7.83	7.22b.
7.84	7.81.
7.85	[reserved].
7.86	[reserved].
7.87	[reserved].
Subpart G—Prohibited Labeling Practices	
7.101	New.
7.102	7.29(a)(1).
7.103	7.29(a)(3).
Subpart H—Labeling Practices That are Prohibited if They are Misleading	
7.121	New.
7.122	7.29(a)(1) and New.
7.123	7.29(a)(5).

27 CFR PART 7—Continued

Requirements of new section:	Are derived from current section:
7.124	7.29(a)(2).
7.125	7.29(a)(4).
7.126	7.29(d).
7.127	[reserved].
7.128	7.29(a)(7) and New.
7.129	7.29(e).
7.130	7.29(a)(6).
7.131	[reserved].
7.132	[reserved].
Subpart I—Classes and Types of Malt Beverages	
7.141	7.24(a).
7.142	7.24(e).
7.143	7.24(b) and (c) and New.
7.144	New.
7.145	7.24(d).
7.146	7.24(g), (f), and (h).
7.147	New.
Subparts J–L—[Reserved]	
Subpart M—Penalties and Compromise of Liability	
7.221	New.
7.222	New.
7.223	New.
Subpart N—Advertising of Malt Beverages	
7.231	7.50.
7.232	7.51.
7.233	7.52.
7.234	7.53.
7.235	7.54.
7.236	7.55.
Subpart O—Paperwork Reduction Act	
7.241	New.

IV. Regulatory Analyses and Notices

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While TTB has determined that the majority of businesses subject to this rule are small businesses, the regulatory amendments in this final rule will not have a significant impact on those small entities as it will not impose, or otherwise cause, an increase in reporting, recordkeeping, or other compliance burdens on regulated industry members. As finalized, this rule will not require industry members to make changes to labels or advertisements. The following analysis provides the factual basis for TTB's certification under 5 U.S.C. 605.

1. Background

In Notice No. 176, published on November 26, 2018, TTB proposed a recodification of the labeling and advertising regulations pertaining to wine, distilled spirits, and malt beverages. The purpose was to clarify and update these regulations to make them easier to understand and to incorporate agency policies. TTB determined that the majority of businesses subject to the proposed rule were small businesses (see Notice No. 176 for more information on this determination). Accordingly, TTB sought comments on the impact of the proposals, and on ways in which the regulations could be improved. TTB also proposed a delayed compliance date to provide all regulated entities 3 years to come into compliance with the proposed regulations, to minimize the costs associated with any label changes.

On April 2, 2020, TTB published T.D. TTB–158, (85 FR 18704), which finalized certain proposals from Notice No. 176, and announced its decision not to move forward with certain other proposals. Generally, the amendments that TTB adopted in T.D. TTB–158 were well supported by commenters, could be implemented relatively quickly, and would either give more flexibility to industry members or help industry members understand existing requirements, while not requiring any current labels or advertisements to be changed. TTB did not incorporate the proposed reorganization of the regulations in T.D. TTB–158 because that final rule only addressed a subset of the issues raised in Notice No. 176. Instead, amendments to the TTB regulations were made within the framework of the existing regulations.

In this rulemaking, TTB is finalizing the reorganization proposed in Notice No. 176 for 27 CFR parts 5 and 7. This includes clarifying regulatory language and breaking up large sections into smaller sections—resulting in a larger number of overall sections, but not a larger number of regulatory requirements. TTB is also adopting many proposals that include incorporation of current policy. This final rule addresses comments that TTB received on the proposed regulatory provisions for all of parts 5 and 7 by incorporating changes in the regulations, announcing that TTB will not move forward with some proposed changes, and identifying proposals or issues commenters raised that TTB will consider for future rulemaking.

2. Comment From SBA Chief Counsel for Advocacy

As required by section 7805(f) of the Internal Revenue Code (26 U.S.C. 7805(f)), TTB submitted Notice No. 176 to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations.

By letter dated August 6, 2019, the Office of Advocacy for the U.S. Small Business Administration (''SBA Office of Advocacy'') provided a comment on Notice No. 176. The comment stated that ''Advocacy commends the TTB on its logical reorganization of the labeling and advertising rules and streamlining some of its processes.'' However, the comment also indicated that in its discussions with small businesses in the alcohol beverage industry, two issues with the proposed rule were brought to its attention—the definition of an ''oak barrel,'' and creating a separate class and type for mead, a type of wine made from honey. The comment suggested that TTB revise the rule to reduce the impacts of the proposed definition of ''oak barrel'' and concluded that:

> Advocacy is concerned that the agency's certification that the rule will not have a significant economic impact on a substantial number of small entities lacks a factual basis. Advocacy suggests the agency revise the rule to reduce the impacts of the definition of 'oak barrel' and to establish a new class and type for mead or publish a supplemental initial regulatory flexibility analysis (IFRA) to propose alternatives to the rule

In T.D. TTB–158, TTB announced it was not moving forward with a number of proposals that received comments raising concerns about regulatory costs and burdens, including the proposed definition of an ''oak barrel.'' The other issue addressed by the comment from the SBA Office of Advocacy dealt with the proposed regulations on mead. This final rule does not address wine labeling issues; thus, TTB will review SBA's comment on mead, along with the other comments received on this issue, when it finalizes the rulemaking on wine labeling.

Because this final rule does not address either of the issues raised by the comment from the SBA Office of Advocacy, there is no need to conduct a supplemental initial regulatory flexibility analysis to propose alternatives to the rule.

3. Other Proposals That Will Not Be Adopted

In addition to not adopting its proposed definition of an ''oak barrel,'' TTB has decided not to adopt certain other proposals, including the following:

- A proposal to codify TTB's current policy, as stated on the label application form, that the issuance of a COLA does not confer trademark protection or relieve the certificate holder from liability for violations of the FAA Act, the IRC, ABLA, or related regulations, and that products covered by a COLA may still be mislabeled if the label contains statements that are false or misleading when applied to the beverage in the container.
- A proposed amendment that would clarify and somewhat expand existing requirements with regard to placing certain label information on closed ''packaging'' of wine, distilled spirits, and malt beverage containers.
- A proposal to codify TTB's current policy with respect to the allowed use of certain non-misleading labeling claims about environmental and sustainability practices.
- A proposal to establish a 5-year retention period for required records and to codify TTB's current substantiation requirements.
- A proposed amendment that would clarify and expand current requirements that certain whisky products distilled in the United States must include the State of distillation on the label, by providing that a bottling address within the State does not suffice unless it includes a representation as to distillation. TTB is not moving forward with this proposal because it might require labeling changes, but will instead clarify current requirements.
- A proposed amendment that would modify the standard of identity for whisky to provide for ''white whisky'' and ''unaged whisky.''
- A proposal that would address ''aggregate'' standards of fill in a manner that is based on current policy.
- A proposed amendment that would increase the alcohol content tolerance for malt beverages from 0.3 percent above or below the labeled alcohol content to 1 percent above or below.

This final rule includes only amendments that TTB believes clarify and liberalize requirements for industry members and that do not conflict with current labels or business practices, while still providing adequate protection for consumers. An example of a liberalizing change is the amendment to the malt beverage regulations that allows mandatory information to appear on keg collars that are not firmly affixed to the keg. Because the final rule will not require changes to labels, advertisements, or business practices, no delayed compliance date is necessary, and the final rule will take effect 30 days from publication in the **Federal Register**.

The preamble of Notice No. 176 explains in detail the reasons why the proposals that have been adopted in this final rule are either clarifying or liberalizing. Examples of clarifying changes include:

- Adding examples in the regulations of how certain requirements may be satisfied;
- Adding to the regulations guidance that had previously been provided in rulings, Industry Circulars, or other documents separate from the regulations;
- Addressing questions the public frequently asks TTB;
- Making definitions, organization, numbering of sections, and phrasing of requirements within the regulations consistent across 27 CFR parts 5 and 7 to the extent possible;
- Breaking large subparts and large sections into smaller subparts and smaller sections to increase readability;
- Providing more cross references in the regulations to relevant regulations and statutes;
- Making it explicit that mandatory information may not be covered or obscured in whole or in part;
- Codifying in the regulations the current requirement that distilled spirits covered by a certificate of exemption must bear a labeling statement that the product is ''For sale in [name of State] only'';
- Codifying current TTB guidance with respect to the use of a COLA by an importer other than the permittee to whom the COLA was issued;
- Codifying current policy with respect to the required name and address statement on labels for distilled spirits and malt beverages that have been subject to certain production activities after importation in bulk;
- Codifying current policy that allows truthful and non-misleading comparisons on labels and in advertisements without violating the prohibition against ''disparaging'' statements;
- Providing that the prohibition against the use of flags and other symbols of a government applies whenever the label may create a misleading impression that the product is endorsed by, or otherwise affiliated with, that government; and
- Specifying how the FAA Act applies to the labeling of malt beverages under the penultimate paragraph of 27 U.S.C. 205(f).

Some examples of liberalizing measures that TTB is finalizing in this document include:

- Allowing greater flexibility in the placement of mandatory information on labels by eliminating the requirement

that mandatory information appear on the ''brand label;''

- Allowing wholesalers to relabel distilled spirits when necessary and when approved by TTB;
- Allowing the use of designations in accordance with trade understanding, rather than statements of composition, in the labeling of malt beverages that are flavored or fermented with ingredients that TTB has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor''; and
- Allowing certain mandatory information to appear on the keg collar or tap cover of malt beverage kegs with a capacity of 5.16 gallons or more, subject to certain requirements.

In summary, while the entities affected by the amendments in this final rule include a substantial number of small entities, the final rule does not require labeling or advertising changes by these small businesses, but instead offers industry members additional flexibility in complying with the regulations. Thus, TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore, a regulatory assessment is not necessary.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has previously reviewed and approved the eight collections of information in the regulations contained in this final rule in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0020, 1513–0064, 1513–0084, 1513–0085, 1513–0087, 1513–0111, 1513–0121, and 1513–0122. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

This final rule includes only amendments that TTB believes offer clarifications and liberalizations of the TTB regulations, including their information collection requirements. The amendments adopted in this final rule are well supported by commenters, can be implemented relatively quickly, and will give more flexibility to industry members or help industry members understand existing regulatory and information collection requirements, but will not require industry members to change any current alcohol beverage label or advertisement. The preamble discussion contained in this final rule document explains in detail the reasons why the proposals adopted in this final rule are either clarifying or liberalizing.

The specific regulatory sections in this final rule that contain approved collections of information are found in part 5 at §§ 5.11, 5.21, 5.22, 5.23, 5.24, 5.25, 5.27, 5.28, 5.29, 5.30, 5.62, 5.63, 5.82, 5.83, 5.84, 5.87, 5.88, 5.89, 5.90, 5.91, 5.192, 5.193, 5.194, 5.203, 5.205, and 5.233, and in part 7 at §§ 7.11, 7.21, 7.22, 7.24, 7.25, 7.27, 7.28, 7.29, 7.62, 7.63, 7.66, 7.67, 7.81, 7.82, 7.83, 7.84, and 7.233.

Regarding OMB control number 1513–0020, the regulations in §§ 5.21, 5.22, 5.23, 5.24, 5.25, 5.29, 5.205, 7.21, 7.22, 7.24, 7.25, 7.27, and 7.29 set forth information collection requirements related to submission of applications for certification of, or exemption from, label or bottle approval. These regulations do not add any new requirements or respondent burden to this previously-approved collection as they merely recodify and clarify existing TTB regulations regarding the submission of such certificate of label approval (COLA) applications, including those for personalized labels.

Regarding OMB control number 1513–0064, which is related to importer records and reports, the regulations in §§ 5.24 and 7.24 state, respectively, that distilled spirits and malt beverages imported in containers are not eligible for release from customs custody for consumption unless the importer removing the products has obtained a COLA for the products in question, and is able to provide it (either electronically or on paper) upon request, which is consistent with TTB's current regulations regarding such imports. In addition, § 5.30 merely makes clarifications to the existing regulations concerning certificates of age and origin for distilled spirits and do not affect the information collection's requirements or estimated burden.

OMB control number 1513–0084 concerns the labeling of sulfites in alcohol beverages. The current TTB requirements that alcohol beverage labels disclose the presence of sulfites (defined as 10 or more parts per million of sulfur dioxide or other sulfating agent measured as total sulfur dioxide) are recodified in § 5.63(c)(7) for distilled spirits and in § 7.63(b)(3) for malt beverages.

OMB control number 1513–0085 concerns the use of the principal place of business of a brewer and place of production coding in lieu of the actual place of bottling on malt beverage labels. The existing requirements for such labeling are recodified for domestic beverages at § 7.66 and for imported beverages at § 7.68. As such, there are no changes to this information collection's estimated burden.

Information collection requirements approved under OMB control number 1513–0087, which concerns Federal Alcohol Administration (FAA) Act-based labeling and advertising information requirements, are contained in §§ 5.62, 5.63, 5.84, 5.87, 5.88, 5.89, 5.90, 5.91, 5.233, 7.62, 7.63, 7.81, 7.84, and 7.233. None of these regulatory amendments require changes to any alcohol beverage label or advertisement, or increase the requirements or estimated burden associated with OMB No. 1513–0087. Rather, these regulations recodify existing TTB label and advertising information requirements or allow for additional options in displaying or providing the required information. For example, § 5.63, which concerns mandatory label information, contains liberalizing changes that will not require any changes to labels, but will allow further flexibility in the placement of labeling information on distilled spirits containers; while §§ 5.233 and 7.233 will allow alcohol beverage advertisers optional ways to provide contact information in their advertisements, such as by displaying a telephone number, website, or email address in lieu of the advertiser's city and State.

Applications to request access TTB's COLA Online system are covered by OMB control number 1513–0111, and TTB's existing requirements to file such applications are recodified in §§ 5.11 and 7.11.

Regarding OMB control number 1513–0121, which covers the label disclosures of major food allergens and petitions from exemption from such labeling, §§ 5.82, 5.83, 7.82, and 7.83 merely recodify TTB's existing regulations regarding those matters, and there are no changes to this collection's requirements or burden estimate.

OMB No. 1513–0122, which covers submission of formulas and processes for domestic and imported alcohol beverages, is found in §§ 5.28 and 7.28. There are no changes to this information collection's existing requirements or estimated burden.

V. Drafting Information

Christopher M. Thiemann, Kara T. Fontaine, and Curtis Eilers of the Regulations and Rulings Division drafted this document with the assistance of other employees of the

Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Regulatory Amendments

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, as follows:

■ 1. Revise part 5 to read as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Sec.
5.0 Scope.

Subpart A—General Provisions

5.1 Definitions.
5.2 Territorial extent.
5.3 General requirements and prohibitions under the FAA Act.
5.4–5.6 [Reserved]
5.7 Other TTB labeling regulations that apply to distilled spirits.
5.8 Distilled spirits for export.
5.9 [Reserved]
5.10 Other related regulations.
5.11 Forms.
5.12 Delegations of the Administrator.

Subpart B—Certificates of Label Approval and Certificates of Exemption From Label Approval

Requirements for Distilled Spirits Bottled in the United States

5.21 Requirement for certificates of label approval (COLAs) for distilled spirits bottled in the United States.
5.22 Rules regarding certificates of label approval (COLAs) for distilled spirits bottled in the United States.
5.23 Application for exemption from label approval for distilled spirits bottled in the United States.

Requirements for Distilled Spirits Imported in Containers

5.24 Certificates of label approval (COLAs) for distilled spirits imported in containers.
5.25 Rules regarding certificates of label approval (COLAs) for distilled spirits imported in containers.

Administrative Rules

5.27 Presenting certificates of label approval (COLAs) to Government officials.
5.28 Formulas, samples, and documentation.
5.29 Personalized labels.
5.30 Certificates of age and origin for imported spirits.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

5.41 Alteration of labels.
5.42 Authorized relabeling activities by distillers and importers.
5.43 Relabeling activities that require separate written authorization from TTB.
5.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Subpart D—Label Standards

5.51 Requirement for firmly affixed labels.
5.52 Legibility and other requirements for mandatory information on labels.
5.53 Minimum type size of mandatory information.
5.54 Visibility of mandatory information.
5.55 Language requirements.
5.56 Additional information.

Subpart E—Mandatory Label Information

5.61 What constitutes a label for purposes of mandatory information.
5.62 Packaging (cartons, coverings, and cases).
5.63 Mandatory label information.
5.64 Brand name.
5.65 Alcohol content.
5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States.
5.67 Name and address for domestically bottled distilled spirits that were bottled after importation.
5.68 Name and address for distilled spirits that were imported in a container.
5.69 Country of origin.
5.70 Net contents.
5.71 Neutral spirits and name of commodity.
5.72 Coloring materials.
5.73 Treatment of whisky or brandy with wood.
5.74 Statements of age, storage, and percentage.

Subpart F—Restricted Labeling Statements

5.81 General.

Food Allergen Labeling

5.82 Voluntary disclosure of major food allergens.
5.83 Petitions for exemption from major food allergen labeling.

Production Claims

5.84 Use of the term ''organic.''
5.85 [Reserved]
5.86 [Reserved]

Other Label Terms

5.87 ''Barrel Proof'' and similar terms.
5.88 Bottled in bond.
5.89 Multiple distillation claims.
5.90 Terms related to Scotland.
5.91 Use of the term ''pure.''

Subpart G—Prohibited Labeling Practices

5.101 General.
5.102 False or untrue statements.
5.103 Obscene or indecent depictions.

Subpart H—Labeling Practices That Are Prohibited If They Are Misleading

5.121 General.
5.122 Misleading statements or representations.
5.123 Guarantees.
5.124 Disparaging statements.
5.125 Tests or analyses.
5.126 Depictions of government symbols.
5.127 [Reserved]
5.128 [Reserved]
5.129 Health-related statements.
5.130 Appearance of endorsement.

Subpart I—Standards of Identity for Distilled Spirits

5.141 The standards of identity in general.
5.142 Neutral spirits or alcohol.
5.143 Whisky.
5.144 Gin.
5.145 Brandy.
5.146 Blended applejack.
5.147 Rum.
5.148 Agave spirits.
5.149 [Reserved].
5.150 Cordials and liqueurs.
5.151 Flavored spirits.
5.152 Imitations.
5.153 Diluted spirits.
5.154 Rules for geographical designations.
5.155 Alteration of class and type.
5.156 Distilled spirits specialty products.
5.157–5.165 [Reserved]
5.166 Statement of composition.

Subpart J—Formulas

5.191 Application.
5.192 Formula requirements.
5.193 Operations requiring formulas.
5.194 Adoption of predecessor's formulas.

Subpart K—Standards of Fill and Authorized Container Sizes

5.201 General.
5.202 Standard liquor containers.
5.203 Standards of fill (container sizes).
5.204 [Reserved]
5.205 Distinctive liquor bottle approval.

Subpart L—[Reserved]

5.211 [Reserved]
5.212 [Reserved]

Subpart M—Penalties and Compromise of Liability

5.221 Criminal penalties.
5.222 Conditions of basic permit.
5.223 Compromise.

Subpart N—Advertising of Distilled Spirits

5.231 Application.
5.232 Definitions.
5.233 Mandatory statements.
5.234 Legibility of mandatory information.
5.235 Prohibited practices.
5.236 Comparative advertising.

Subpart O—Paperwork Reduction Act

5.241 OMB control numbers assigned under the Paperwork Reduction Act.

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

§ 5.0 Scope.

This part sets forth requirements that apply to the labeling and packaging of distilled spirits in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements. This part also sets forth requirements that apply to the advertising of distilled spirits.

Subpart A—General Provisions

§ 5.1 Definitions.

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

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

Advertisement or Advertising. See § 5.232 for meaning of these terms as used in subpart N of this part.

Age. The length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels. ''Age'' for bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, means the period the whisky has been stored in charred new oak barrels.

American proof. See *Proof.*

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR part 5, Labeling and Advertising of Distilled Spirits.

Bottler. Any distiller or processor of distilled spirits who places distilled spirits in containers.

Brand name. The name under which a distilled spirit or a line of distilled spirits is sold.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

Certificate of exemption from label approval. A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval (COLA). A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov).*

Container. Any can, bottle, box, cask, keg, or other closed receptacle, in any size or material, which is for use in the sale of distilled spirits at retail. See subpart K of this part for rules regarding authorized standards of fill for containers.

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof (24 percent alcohol by volume) or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term ''distilled spirits'' also does not include products containing less than one degree of proof (0.5 percent alcohol by volume).

Distilling season. The period from January 1 through June 30, which is the spring distilling season, or the period from July 1 through December 31, which is the fall distilling season.

Distinctive or fanciful name. A descriptive name or phrase chosen to identify a distilled spirits product on the label. It does not include a brand name, class or type designation, or statement of composition.

FAA Act. The Federal Alcohol Administration Act.

Gallon. A U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit.

Grain. Includes cereal grains and the seeds of the pseudocereals amaranth, buckwheat, and quinoa.

In bulk. In barrels or other receptacles having a capacity in excess of 1 wine gallon (3.785 liters).

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

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters or 1,000 milliliters (mL) of distilled spirits at 15.56 degrees Celsius (60 degrees Fahrenheit), and equivalent to 33.814 U.S. fluid ounces.

Net contents. The amount, by volume, of distilled spirits held in a container.

Permittee. Any person holding a basic permit under the FAA Act.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, 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 of a State.

Produced at or distilled at. When used with reference to specific degrees of proof of a distilled spirits product, the phrases ''produced at'' and ''distilled at'' mean the composite proof of the distilled spirits after completion of distillation and before reduction in proof, if any.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percentage of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit that contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Responsible advertiser. The permittee responsible for the publication or broadcast of an advertisement.

Spirits. See Distilled spirits.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

United States (U.S.). The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 5.2 Territorial extent.

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 5.3 General requirements and prohibitions under the FAA Act.

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any bottler of distilled spirits, and any person who removes distilled spirits in containers from customs custody for

sale or any other commercial purpose, is required to first obtain from TTB a COLA covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on distilled spirits containers. This prohibition applies to any person, including retailers, holding distilled spirits for sale in interstate or foreign commerce or any person holding distilled spirits for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for distilled spirits.* It is unlawful for any person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any distilled spirits in containers unless such containers are marked, branded, labeled, and packaged in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of distilled spirits must be in compliance with the following requirements:

(1) It must bear one or more label(s) meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label, container, or packaging (as defined in § 5.81) must comply with the rules for restricted label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any label, container, or packaging (as defined in §§ 5.101 and 5.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of distilled spirits; and

(5) The class and type designation on any label, as well as any designation appearing on containers or packaging, must comply with the standards of identity set forth in subpart I of this part.

(e) *Packaged in accordance with this part.* In order to be packaged in accordance with the regulations in this part, the distilled spirits must be bottled in authorized standards of fill in containers that meet the requirements of subpart K of this part.

§§ 5.4–5.6 [Reserved]

§ 5.7 Other TTB labeling regulations that apply to distilled spirits.

In addition to the regulations in this part, distilled spirits must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including distilled spirits, that contain at least 0.5 percent alcohol by volume, must be labeled with a health warning statement, in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for distilled spirits under the Internal Revenue Code are found in 27 CFR part 19, subpart T (for domestic products) and 27 CFR part 27, subpart E (for imported products).

§ 5.8 Distilled spirits for export.

The regulations in this part shall not apply to distilled spirits exported in bond.

§ 5.9 [Reserved]

§ 5.10 Other related regulations.

(a) *TTB regulations.* Other TTB regulations that relate to distilled spirits are listed in paragraphs (a)(1) through (8) of this section:

(1) 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;

(2) 27 CFR part 13—Labeling Proceedings;

(3) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;

(4) 27 CFR part 19—Distilled Spirits Plants;

(5) 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(6) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(7) 27 CFR Part 28—Exportation of Alcohol; and

(8) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal Regulations.* The regulations listed in paragraphs (b)(1) through (8) of this section issued by other Federal agencies also may apply:

(1) 7 CFR Part 205—National Organic Program;

(2) 19 CFR Part 11—Packing and Stamping; Marking;

(3) 19 CFR Part 102—Rules of Origin;

(4) 19 CFR Part 134—Country of Origin Marking;

(5) 21 CFR Part 1—General Enforcement Regulations, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;

(6) 21 CFR Parts 70–82, which pertain to food and color additives;

(7) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(8) 21 CFR Parts 170–189, which pertain to food additives and secondary direct food additives.

§ 5.11 Forms.

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 5.12 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR part 5, Labeling and Advertising of Distilled Spirits. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval

Requirements for Distilled Spirits Bottled in the United States

§ 5.21 Requirement for certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) *Applicability.* The certificate of label approval (COLA) requirements described in this section apply to distilled spirits bottled in the United States, outside of customs custody.

(b) *Distilled spirits shipped or sold in interstate commerce.* No person may bottle distilled spirits without first applying for and obtaining a COLA issued by the appropriate TTB officer. This requirement applies to distilled spirits produced and bottled in the United States and to distilled spirits imported in bulk, regardless of where produced, and bottled in the United States. Bottlers may obtain an exemption from this requirement only if they satisfy the conditions set forth in § 5.23.

(c) *Evidence of COLA.* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of distilled spirits is covered by a COLA. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved certificate.

§ 5.22 Rules regarding certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of distilled spirits covered by the certificate of label approval (COLA), as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No bottler may bottle distilled spirits, or remove distilled spirits from the premises where bottled, unless a COLA has been obtained.

(c) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 5.23 Application for exemption from label approval for distilled spirits bottled in the United States.

(a) *Exemption.* Any bottler of distilled spirits may apply to be exempt from the requirements of §§ 5.21, 5.22, and 5.30(h), by showing to the satisfaction of the appropriate TTB officer that the distilled spirits to be bottled are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

(b) *Application required.* The bottler must file an application on TTB Form 5100.31 for exemption from label approval before bottling the distilled spirits. The bottler may apply for a certificate of exemption from label approval either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by using the paper form. For procedures regarding the issuance of certificates of exemption from label approval, see part 13 of this chapter.

(c) *Labeling of distilled spirits covered by certificate of exemption.* The application for a certificate of exemption from label approval requires that the applicant identify the State in which the product will be sold. As a condition of receiving exemption from label approval, the label covered by an approved certificate of exemption must include the statement ''For sale in [name of State] only.'' See §§ 19.517 and 19.518 of this chapter for additional labeling rules that apply to distilled spirits covered by a certificate of exemption.

Requirements for Distilled Spirits Imported in Containers

§ 5.24 Certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *Application requirement.* Any person removing distilled spirits in containers from customs custody for consumption must first apply for and obtain a certificate of label approval (COLA) covering the distilled spirits from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued.

(b) *Release of distilled spirits from customs custody.* Distilled spirits, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such distilled spirits from customs custody for consumption, unless the person removing the distilled spirits has obtained a COLA covering the distilled spirits and is able to provide it (either electronically or on paper) upon request. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the product or lot of distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, an importer must provide evidence that a container of distilled spirits is covered by a COLA. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved certificate.

(e) *Scope of this section.* The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. Distilled spirits that are imported in containers are not eligible for a certificate of exemption from label approval. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

(f) *Relabeling in customs custody.* Containers of distilled spirits in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

§ 5.25 Rules regarding certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *What COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the

certificate of label approval (COLA) on containers of distilled spirits, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to the removal of distilled spirits in containers from customs custody for consumption.

(c) *Application for a COLA.* The person responsible for the importation of distilled spirits must obtain approval of the labels by submitting an application to TTB on TTB Form 5100.31. A person may apply for a COLA either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

Administrative Rules

§ 5.27 Presenting certificates of label approval (COLAs) to Government officials.

A certificate holder must present the original or a paper or electronic copy of the appropriate certificate of label approval (COLA) upon the request of any duly authorized representative of the United States Government.

§ 5.28 Formulas, samples, and documentation.

(a) In addition to any formula specifically required under subpart J of this part, TTB may require formulas under certain circumstances in connection with the label approval process. Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the distilled spirits, or a sample of any distilled spirits or ingredients used in producing a distilled spirit. After the issuance of a COLA, or with regard to any distilled spirits required to be covered by a COLA, the appropriate TTB officer may require a full and accurate statement of the contents of the container.

(b) A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. See § 5.11 for more information on forms and Formulas Online.

§ 5.29 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a distiller may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 5.21 or 5.24, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

§ 5.30 Certificates of age and origin for imported spirits.

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be; and

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the container. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy and Cognac.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the container is not less than 2 years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as ''Cognac'' by the laws and regulations of the French Government.

(c) *Rum.* Rum imported in containers that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the container. The age certified shall be the period during which, after distillation and before

bottling, the distilled spirits have been stored in oak containers.

(d) *Tequila.* (1) Tequila imported in containers is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a Certificate of Tequila Export issued by an official duly authorized by the Mexican Government or a conformity assessment body stating that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

(2) If the label of any Tequila imported in containers contains any statement of age, the Tequila is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing the Tequila possesses a Certificate of Tequila Export issued by an official duly authorized by the Mexican Government or a conformity assessment body as to the age of the youngest Tequila in the container. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(e) *Other whiskies.* Whisky, as defined in § 5.143(c)(2) through (7) and (10) through (14), imported in bottles, is not eligible for release from customs custody for consumption, and no person shall remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of a certificate issued by an official duly authorized by the appropriate foreign government certifying:

(1) In the case of whisky (regardless of whether it is mixed or blended) that contains no neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The American proof at which the whisky was distilled;

(iii) That no neutral spirits (or other whisky in the case of straight whisky) have been added or otherwise included in the whisky;

(iv) The age of the whisky; and

(v) The type of oak barrel in which the whisky was aged and whether the barrel was new or reused, charred or uncharred; and

(2) In the case of whisky containing neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The percentage of straight whisky used in the blend, if any;

(iii) The American proof at which any straight whisky in the blend was distilled;

(iv) The percentage of whisky other than straight whisky in the blend, if any;

(v) The percentage of neutral spirits in the blend and the name of the commodity from which the neutral spirits were distilled;

(vi) The age of any straight whisky and the age of any other whisky in the blend; and

(vii) The type of oak barrel in which the age of each whisky in the blend was attained and whether the barrel was new or reused and charred or uncharred.

(f) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) imported in containers are not eligible for release from customs custody for consumption, and no person shall remove such spirits from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits is required by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

(g) *Retention of certificates—distilled spirits imported in containers.* The importer of distilled spirits imported in containers must retain for 5 years following the removal of the bottled distilled spirits from customs custody copies of the certificates (and accompanying invoices, if applicable) required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(h) *Distilled spirits imported in bulk for bottling in the United States.* Distilled spirits that would be required under paragraphs (a) through (f) of this section to be covered by a certificate of age and/or a certificate of origin and that are imported in bulk for bottling in the United States may be removed from the premises where bottled only if the bottler possesses a certificate of age and/or a certificate of origin, issued by the appropriate entity as set forth in paragraphs (a) through (f) of this section, applicable to the spirits that provides the same information as a certificate required under paragraphs (a) through (f) of this section, would provide for like spirits imported in bottles.

(i) *Retention of distilled spirits certificates—distilled spirits in bulk.* The bottler of distilled spirits imported in bulk must retain, for 5 years following the removal of such distilled spirits from the premises where bottled, copies of the certificates required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

§ 5.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on distilled spirits in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by §§ 5.42, 5.43, or 5.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart:

(1) In no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product;

(2) Does not relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law; and,

(3) Does not relieve the person conducting the relabeling operations from any obligation to obtain permission from the owner of the brand where otherwise required.

§ 5.42 Authorized relabeling activities by distillers and importers.

(a) *Relabeling at distilled spirits plant premises.* A proprietor of distilled spirits plant premises may relabel domestically bottled distilled spirits prior to removal from, and after return to bond at, the distilled spirits plant premises, with labels covered by a certificate of label approval (COLA), without obtaining separate permission

from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

(b) *Relabeling after removal from distilled spirits plant premises.* A proprietor of distilled spirits plant premises may relabel domestically bottled distilled spirits (or direct the relabeling of such spirits by an authorized agent) after removal from distilled spirits plant premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

(c) *Relabeling in customs custody.* Under the supervision of U.S. customs officers, imported distilled spirits in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA upon their removal from customs custody for consumption. See § 5.24(b).

(d) *Relabeling after removal from customs custody.* The importer of distilled spirits in containers may relabel imported distilled spirits (or direct the relabeling of such spirits by an authorized agent) after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

§ 5.43 Relabeling activities that require separate written authorization from TTB.

(a) *General.* Any permittee holding distilled spirits for sale who needs to relabel the containers but is not the original bottler may apply for written permission for the relabeling of distilled spirits containers. The appropriate TTB officer may permit relabeling of distilled spirits in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law, or for the purpose of replacing damaged labels.

(b) *Application.* The written application must include:

(1) Copies of the original and proposed new labels;

(2) The circumstances of the request, including the reason for relabeling;

(3) The number of containers to be relabeled;

(4) The location where the relabeling will take place; and

(5) The name and address of the person who will be conducting the relabeling operations.

§ 5.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Any label or other information that identifies the wholesaler, retailer, or consumer of the distilled spirits may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval or certificate of exemption from label approval. Such information may be added before or after the containers have been removed from distilled spirits plant premises or released from customs custody. The information added:

(a) May not violate the provisions of subpart F, G, or H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other labels on the container.

Subpart D—Label Standards

§ 5.51 Requirement for firmly affixed labels.

Any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

§ 5.52 Legibility and other requirements for mandatory information on labels.

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Subject to the exceptions below, mandatory information on labels, except brand names, must be separate and apart from any additional information.

(1) This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as, ''premium vodka'' or ''delicious Tequila''), the name and address statement (such as, ''Proudly distilled and bottled by ABC Distilling Company, Atlanta, GA, for over 30 years'') or other information required by § 5.63(a) and (b). The statements required by § 5.63(c) may not include additional information.

(2) Mandatory information (other than an aspartame declaration required by § 5.63(c)(8)) may be contained among other descriptive or explanatory information if the script, type, or printing of the mandatory information is substantially more conspicuous than that of the descriptive or explanatory information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents are blown into a glass container, they need not be contrasting. The color of the container and of the distilled spirits must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 5.63(c)(8), which must appear in all capital letters, mandatory information prescribed by this part may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

§ 5.53 Minimum type size of mandatory information.

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(a) *Containers of more than 200 milliliters.* All mandatory information must be in script, type, or printing that is at least two millimeters in height.

(b) *Containers of 200 milliliters or less.* All mandatory information must be in script, type, or printing that is at least one millimeter in height.

§ 5.54 Visibility of mandatory information.

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 5.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See subpart N of this part for regulations pertaining to advertising materials.

§ 5.55 Language requirements.

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraph (c) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Distilled spirits for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of distilled spirits bottled for consumption within the Commonwealth of Puerto Rico.

§ 5.56 Additional information.

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subparts F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

Subpart E—Mandatory Label Information

§ 5.61 What constitutes a label for purposes of mandatory information.

(a) *Label.* Certain information, as outlined in § 5.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic, metal, or other matter;

(2) For purposes of the net content statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G and H of this part, but will not satisfy any requirements in this part for mandatory information that must appear on labels:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in subpart N of this part.

§ 5.62 Packaging (cartons, coverings, and cases).

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited on labels by regulations in subpart F, G, or H of this part.

(b) *Sealed opaque cartons.* If containers are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, *e.g.,* by ''Brand'' or ''Product of U.S.A.'', must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

(d) *Labeling of containers within the packaging.* The container within the packaging is subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

§ 5.63 Mandatory label information.

(a) *Mandatory information required to appear within the same field of vision.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) containing the following information within the same field of vision (which means a single side of a container (for a cylindrical container, a side is 40 percent of the circumference) where all of the pieces of information can be viewed simultaneously without the need to turn the container):

(1) Brand name, in accordance with § 5.64;

(2) Class, type, or other designation, in accordance with subpart I of this part; and

(3) Alcohol content, in accordance with § 5.65.

(b) *Other mandatory information.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) anywhere on the container bearing the following information:

(1) Name and address of the bottler or distiller, in accordance with § 5.66, or the importer, in accordance with § 5.67 or § 5.68, as applicable; and

(2) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 5.70.

(c) *Disclosure of certain ingredients, processes and other information.* The following ingredients, processes, and other information must be disclosed on a label, without the inclusion of any additional information as part of the statement, as follows:

(1) *Neutral spirits.* The percentage of neutral spirits and the name of the commodity from which the neutral spirits were distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with § 5.7;

(2) *Coloring or treatment with wood.* Coloring or treatment with wood, in accordance with §§ 5.72 and 5.73;

(3) *Age.* A statement of age or age and percentage of type, when required or used, in accordance with § 5.74;

(4) *State of distillation.* State of distillation of any type of whisky defined in § 5.143(c)(2) through (c)(7), which is distilled in the United States, in accordance with § 5.66(f);

(5) *FD&C Yellow No. 5.* If a distilled spirit contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5'';

(6) *Cochineal extract or carmine.* If a distilled spirit contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the coloring materials was used in a distilled spirit that is removed from bottling premises or from customs custody on or after April 16, 2013;

(7) *Sulfites.* If a distilled spirit contains 10 or more parts per million of sulfur dioxide or other sulfiting agent measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used; and

(8) *Aspartame.* If the distilled spirit contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information:

''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

(d) *Distinctive liquor bottles.* See § 5.205(b)(2) for exemption from placement requirements for certain mandatory information for distinctive liquor bottles.

§ 5.64 Brand name.

(a) *Requirement.* The distilled spirits label must include a brand name. If the distilled spirits are not sold under a brand name, then the name of the bottler, distiller or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the distilled spirits. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification, if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

§ 5.65 Alcohol content.

(a) *General.* The alcohol content for distilled spirits must be stated on the label as a percentage of alcohol by volume. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____ percent alcohol by volume.''

(b) *How the alcohol content must be expressed.* The following rules apply to statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume.

(i) In addition, the alcohol content in degrees of proof may be stated on a label as long as it appears in the same field of vision as the mandatory statement of alcohol content as a percentage of alcohol by volume. Additional statements of proof may appear on the label without being in the same field of vision as the mandatory alcohol by volume statement.

(ii) Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol ____ percent by volume'';

(B) ''____ percent alcohol by volume''; or

(C) ''Alcohol by volume ____ percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(3) The statements listed in paragraph (b)(2)(i) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(4) The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''40% alc/vol'';

(ii) ''Alc. 40 percent by vol.'';

(iii) ''Alc 40% by vol''; and

(iv) ''40% Alcohol by Volume.''

(c) *Tolerances.* A tolerance of plus or minus 0.3 percentage points is allowed for actual alcohol content that is above or below the labeled alcohol content.

§ 5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States.

(a) *General.* Domestically bottled distilled spirits that were wholly made in the United States and contain no imported distilled spirits must be labeled in accordance with this section. (See §§ 5.67 and 5.68 for name and address requirements applicable to distilled spirits that are not wholly made in the United States.) For purposes of this section, a ''processor'' who solely bottles the labeled distilled spirits will be considered the ''bottler.''

(b) *Form of statement.* The bottler, distiller, or processor of the distilled spirits must be identified by a phrase describing the function performed by that person. If that person performs more than one function, the label may (but is not required to) so indicate.

(1) If the name of the bottler appears on the label, it must be preceded by a phrase such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler.

(2) If the name of the processor appears on the label, it must be preceded by a phrase such as ''blended by,'' ''made by,'' ''prepared by,'' ''produced by,'' or ''manufactured by,'' as appropriate, followed by the name and address of the processor. When applied to distilled spirits, the term ''produced by'' indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity.

(3) If the name of the distiller appears on the label, it must be preceded by a phrase such as ''distilled by,'' followed by the name and address of the distiller. If the distilled spirits were bottled for the distiller thereof, the name and address of the distiller may be preceded by a phrase such as ''distilled by and bottled for,'' or ''bottled for.''

(c) *Listing of more than one function.* If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person.

(d) *Form of address*—(1) *General.* The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(2) *More than one address.* If the bottler, distiller, or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing operations, as applicable, the label may state, immediately following the name of the permittee, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) *Principal place of business.* The label may provide the address of the bottler's, distiller's, or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(4) *Distilled spirits bottled for another person.* (i) If distilled spirits are bottled for another person, other than the actual

distiller thereof, the label may state, in addition to (but not in place of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract bottling).

(ii) If the same brand of distilled spirits is bottled by two distillers that are not under the same ownership, the label for each distiller may set forth both locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(5) *Additional addresses.* No additional places or addresses may be stated for the same person unless:

(i) That person is actively engaged in the conduct of an additional bona fide and actual alcohol beverage business at such additional place or address, and

(ii) 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 product (such as ''distilled by.'')

(e) *Special rule for straight whiskies.* If ''straight whiskies'' (see § 5.143) of the same type are distilled in the same State by two or more different distillers and are combined (either at the time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as ''straight whisky,'' that ''straight whisky'' must bear a label that contains name and address information of the bottler. If that combined ''straight whisky'' is bottled by or for the distillers, in lieu of the name and address of the bottler, the label may contain the words ''distilled by,'' followed immediately by the names (or trade names) and addresses of the different distillers who distilled a portion of the ''straight whisky'' and the percentage of ''straight whisky'' distilled by each distiller, with a tolerance of plus or minus 2 percent. If ''straight whisky'' consists of a mixture of ''straight whiskies'' of the same type from two or more different distilleries of the same proprietor located within the same State, and if that ''straight whisky'' is bottled by or for that proprietor, in lieu of the name and address of the bottler, the ''straight whisky'' may bear a label containing the words ''distilled by'' followed by the name (or trade name) of the proprietor and the addresses of the different distilleries that distilled a portion of the ''straight whisky.''

(f) *State of distillation for whisky.* (1) The State of distillation, which is the State in which original distillation takes place, must appear on the label of any type of whisky defined in § 5.143(c)(2) through (7), which is distilled in the United States. The State of distillation may appear on any label and must be shown in at least one of the following ways:

(i) By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location.

(ii) If the address shown in the ''bottled by'' statement includes the State in which distillation occurred, by including a ''bottled by'' statement as part of the mandatory name and address statement, followed by a single location;

(iii) By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky bourbon whisky''), as long as the product was both distilled and aged in that State in conformance with the requirements of § 5.143(b); or

(iv) By including a separate statement, such as ''Distilled in [name of State].''

(2) The appropriate TTB officer may require that the State of distillation or other information appear on a label of any whisky subject to the requirements of paragraph (f)(1) of this section (and may prescribe placement requirements for such information), even if that State appears in the name and address statement, if such additional information is necessary to negate any misleading or deceptive impression that might otherwise be created as regards the actual State of distillation.

(3) In the case of ''light whisky,'' the State name ''Kentucky'' or ''Tennessee'' may not appear on any label, except as a part of a name and address as specified in paragraph (a)(1), (2), or (4) of this section.

(g) *Trade or operating names.* The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the basic permit. In the case of a distillation statement for spirits bottled in bond, the name or trade name under which the spirits were distilled must be shown.

§ 5.67 Name and address for domestically bottled distilled spirits that were bottled after importation.

(a) *General.* This section applies to distilled spirits that were bottled after importation. See § 5.68 for name and address requirements applicable to imported distilled spirits that were imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Distilled spirits bottled after importation in the United States.* Distilled spirits bottled, without further blending, making, preparing, producing, manufacturing, or distilling activities after importation, must bear one of the following name and address statements:

(1) The name and address of the bottler, preceded by the words ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by'';

(2) If the distilled spirits were bottled for the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) If the distilled spirits were bottled by the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(c) *Distilled spirits that were subject to blending or other production activities after importation.* Distilled spirits that, after importation in bulk, were blended, made, prepared, produced, manufactured or further distilled, may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 5.66 for mandatory and optional labeling statements.

(d) *Optional statements.* In addition to the statements required by paragraph (a)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(e) *Form of address.* (1) The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses.

(2) If the bottler or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing

operations, as applicable, the label may state, immediately following the name of the bottler, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) The label may provide the address of the bottler's or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(f) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation.

§ 5.68 Name and address for distilled spirits that were imported in a container.

(a) *General.* This section applies to distilled spirits that were imported in a container, as defined in § 5.1. See § 5.67 for name and address requirements applicable to distilled spirits that were domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* Distilled spirits imported in containers, as defined in § 5.1, must bear a label stating the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit who either makes the original customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(c) *Optional statements.* In addition to the statements required by paragraph (b)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(d) *Form of address.* The ''place'' stated must be the city and State, shown on the basic permit or other qualifying document, of the premises at which the operations took place; and the place for each operation that is designated on the label must be shown.

(e) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation.

§ 5.69 Country of origin.

For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

§ 5.70 Net contents.

The requirements of this section apply to the net contents statement required by § 5.63.

(a) *General.* The volume of spirits in the container must appear on a label as a net contents statement. The word ''liter'' may be alternatively spelled ''litre'' or may be abbreviated as ''L''. The word ''milliliters'' may be abbreviated as ''ml.,'' ''mL.,'' or ''ML.'' Net contents in equivalent U.S. customary units of measurement and in metric equivalents such as centiliters may appear on a label and, if used, must appear in the same field of vision as the metric net contents statement.

(b) *Tolerances.* (1) The following tolerances are permissible for purposes of applying paragraph (a) of this section:

(i) *Errors in measuring.* Discrepancies due to errors in measuring that occur in filling conducted in compliance with good commercial practice;

(ii) *Differences in capacity.* Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing the containers so as to be of uniform capacity, provided that the discrepancy does not result from a container design that prevents the manufacture of containers of an approximately uniform capacity; and

(iii) *Differences in atmospheric conditions.* Discrepancies in measure due to differences in atmospheric conditions in various places, including discrepancies resulting from the ordinary and customary exposure of alcohol beverage products in containers to evaporation, provided that the discrepancy is determined to be reasonable on a case by case basis.

(2) *Shortages and overages.* A contents shortage in certain of the containers in a shipment may not be counted against a contents overage in other containers in the same shipment for purposes of determining compliance with the requirements of this section.

§ 5.71 Neutral spirits and name of commodity.

(a) In the case of distilled spirits (other than cordials, liqueurs, flavored neutral spirits, including flavored vodka, and distilled spirits specialty products) manufactured by blending or other processing, if neutral spirits were used in the production of the spirits, the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits were distilled must appear on a label. The statement of percentage and the name of the commodity must be in substantially the following form: ''____% neutral spirits distilled from____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____ % neutral spirits (vodka) distilled from ____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____ % (grain) (cane products), (fruit) neutral spirits'', or ''____ % grain spirits.''

(b) In the case of gin manufactured by a process of continuous distillation or in the case of neutral spirits, a label on the container must state the name of the commodity from which the gin or neutral spirits were distilled. The statement of the name of the commodity must appear in substantially the following form: ''Distilled from grain'' or ''Distilled from cane products''.

§ 5.72 Coloring materials.

The words ''artificially colored'' must appear on a label of any distilled spirits product containing synthetic or natural materials that primarily contribute color, or when information on a label conveys the impression that a color was derived from a source other than the actual source of the color, except that:

(a) If no coloring material other than a color exempt from certification under FDA regulations has been added, a truthful statement of the source of the color may appear in lieu of the words ''artificially colored,'' for example, ''Contains Beta Carotene'' or ''Colored with beet extract.'' See 21 CFR parts 73 and 74 for the list of such colors under Food and Drug Administration (FDA) regulations;

(b) If no coloring material has been added other than one certified as suitable for use in foods by the FDA, the words ''(to be filled in with name of) certified color added'' or ''Contains Certified Color'' may appear in lieu of the words ''artificially colored''; and

(c) If no coloring material other than caramel has been added, the words ''colored with caramel,'' ''contains caramel color,'' or another statement

specifying the use of caramel color, may appear in lieu of the words ''artificially colored.'' However, no statement of any type is required for the use of caramel color in brandy, rum, or Tequila, or in any type of whisky other than straight whisky if used at not more than 2.5 percent by volume of the finished product.

(d) As provided in § 5.61, the use of FD&C Yellow No. 5, carmine, or cochineal extract must be specifically stated on the label even if the label also contains a phrase such as ''contains certified color'' or ''artificially colored.''

§ 5.73 Treatment of whisky or brandy with wood.

The words ''colored and flavored with wood____ '' (inserting ''chips,'' ''slabs,'' etc., as appropriate) must appear immediately adjacent to, and in the same size of type as, the class and type designation under subpart I of this part for whisky and brandy treated, in whole or in part, with wood through percolation or otherwise during distillation or storage, other than through contact with an oak barrel. However, the statement specified in this section is not required in the case of brandy treated with an infusion of oak chips in accordance with § 5.155(b)(3)(B).

§ 5.74 Statements of age, storage, and percentage.

(a) *General.* (1) As defined in § 5.1, age is the length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels. For bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, aging must occur in charred new oak barrels.

(2) If an age statement is used, it is permissible to understate the age of a product, but overstatements of age are prohibited. However, the age statement may not conflict with the standard of identity, if aging is required as part of the standard of identity. For example, the standard of identity for straight rye whisky requires that the whisky be aged for a minimum of 2 years, so the age statement ''Aged 1 year,'' would be prohibited for a product designated as ''straight'' rye whisky, even if the spirits were actually aged for more than 2 years, because it is inconsistent with the standard of identity.

(3)The age may be stated in years, months, or days.

(b) *Age statements and percentage of type statements for whisky.* For all domestic or foreign whiskies that are aged less than 4 years, including blends containing a whisky that is aged less than 4 years, an age statement and percentage of types of whisky statement is required to appear on a label, unless the whisky is labeled as ''bottled in bond'' in conformity with § 5.88. For all other whiskies, the statements are optional, but if used, they must conform to the formatting requirements listed below. Moreover, if the bottler chooses to include a statement of age or percentage on the label of a product that is 4 years old or more and that contains neutral spirits, the statement must appear immediately adjacent to the neutral spirits statement required by § 5.70. The following are the allowable formats for the age and percentage statements for whisky:

(1)(i) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky in the product. The age statement must appear substantially as follows: ''____ years old''; and

(ii) If a whisky is aged in more than one container, the label may optionally indicate the types of oak containers used.

(2) In the case of whisky containing neutral spirits, whether or not mixed or blended, if any straight whisky or other whisky in the product is less than 4 years old, the percentage by volume of each such whisky and the age of each such whisky (the age of the youngest of the straight whiskies or other whiskies if the product contains two or more of either). The age and percentage statement for a straight whisky and other whisky must appear immediately adjacent to the neutral spirits statement required by § 5.70 and must read substantially as follows:

(i) If the product contains only one straight whisky and no other whisky: ''____ percent straight whisky ____ years old;''

(ii) If the product contains more than one straight whisky but no other whisky: ''____ percent straight whiskies ____ years or more old.'' In this case the age blank must state the age of the youngest straight whisky in the product. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, and ____ percent straight whisky ____ years old'';

(iii) If the product contains only one straight whisky and one other whisky: ''____ percent straight whisky ____ years old, ____ percent whisky ____ years old''; or

(iv) If the product contains more than one straight whisky and more than one other whisky: ''____ percent straight whiskies ____ years or more old, ____ percent whiskies ____ years or more old.'' In this case, the age blanks must state the age of the youngest straight whisky and the age of the youngest other whisky. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, percent straight whisky ____ years old, ____ percent whisky ____ years old, and ____ percent whisky ____ years old'';

(3) In the case of an imported rye whisky, wheat whisky, malt whisky, or rye malt whisky, a label on the product must state each age and percentage in the manner and form that would be required if the whisky had been made in the United States;

(4) In the case of whisky made in the United States and stored in reused oak barrels, other than corn whisky and light whisky, in lieu of the words ''____ years old'' specified in paragraphs (b)(1) and (b)(2) of this section, the period of storage in the reused oak barrels must appear on the label as follows: ''stored ____ years in reused cooperage.''

(c) *Statements of age for rum, brandy, and agave spirits.* A statement of age on labels of rums, brandies, and agave spirits is optional, except that, in the case of brandy (other than immature brandies, fruit brandies, marc brandy, pomace brandy, Pisco brandy, and grappa brandy, which are not customarily stored in oak barrels) not stored in oak barrels for a period of at least 2 years, a statement of age must appear on the label. Any statement of age authorized or required under this paragraph must appear substantially as follows: ''____ years old,'' with the blank to be filled in with the age of the youngest distilled spirits in the product.

(d) *Statement of storage for grain spirits.* In the case of grain spirits, the period of storage in oak barrels may appear on a label immediately adjacent to the percentage statement required under § 5.73, for example: ''____ % grain spirits stored ____ years in oak barrels.''

(e) *Other distilled spirits.* (1) Statements regarding age or maturity or similar statements or representations on labels for all other spirits, except neutral spirits, are permitted only when the distilled spirits are stored in an oak barrel and, once dumped from the barrel, subjected to no treatment besides mixing with water, filtering, and bottling. If batches are made from barrels of spirits of different ages, the label may only state the age of the youngest spirits.

(2) Statements regarding age or maturity or similar statements of neutral spirits (except for grain spirits as stated

in paragraph (c) of this section) are prohibited from appearing on any label.

(f) *Other age representations.* (1) If a representation that is similar to an age or maturity statement permitted under this section appears on a label, a statement of age, in a manner that is conspicuous and in characters at least half the type size of the representation must also appear on each label that carries the representation, except in the following cases:

(i) The use of the word ''old'' or another word denoting age as part of the brand name of the product is not deemed to be an age representation that requires a statement of age; and

(ii) Labels of whiskies and brandies (other than immature brandies, pomace brandy, marc brandy, Pisco brandy, and grappa brandy) not required to bear a statement of age, and rum and agave spirits aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label having to bear an age statement.

(2) Distillation dates (which may be an exact date or a year) may appear on a label of spirits where the spirits are manufactured solely through distillation. A distillation date may only appear if an optional or mandatory age statement is used on the label and must appear in the same field of vision as the age statement.

Subpart F—Restricted Labeling Statements.

§ 5.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on distilled spirits labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

Food Allergen Labeling

§ 5.82 Voluntary disclosure of major food allergens.

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

(1) *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* means the name 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 used in the production of a distilled spirits 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 distilled spirits 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 § 5.83. 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'').

§ 5.83 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 § 5.82. The burden is on the petitioner to provide scientific evidence (as well as 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 § 5.82(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 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 website (*https://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 website will be available to the public pursuant to the Freedom of Information Act, at 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 why 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.

Production Claims

§ 5.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

§ 5.85 [Reserved]

§ 5.86 [Reserved]

Other Label Terms

§ 5.87 "Barrel Proof" and similar terms.

(a) The term ''barrel proof'' or ''cask strength'' may be used to refer to distilled spirits stored in wood barrels only when the bottling proof is not more than two degrees lower than the proof of the spirits when the spirits are dumped from the barrels.

(b) The term ''original proof,'' ''original barrel proof,'' ''original cask strength,'' or ''entry proof'' may be used only if the distilled spirits were stored in wooden barrels and the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same.

§ 5.88 Bottled in bond.

(a) The term ''bond,'' ''bonded,'' ''bottled in bond,'' or ''aged in bond,'' or phrases containing these or synonymous terms, may be used (including as part of the brand name) only if the distilled spirits are:

(1) Composed of the same kind (type, if one is applicable to the spirits, otherwise class) of spirits distilled from the same class of materials;

(2) Distilled in the same distilling season (as defined in § 5.1) by the same distiller at the same distillery.

(3) Stored for at least 4 years in wooden containers wherein the spirits have been in contact with the wood surface, except for vodka, which must be stored for at least 4 years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface, and except for gin, which must be stored in paraffin-lined or unlined wooden containers for at least 4 years;

(4) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain in the finished product or result in a change in class or type);

(5) Reduced in proof by the addition of only pure water to 50 percent alcohol by volume (100 degrees of proof); and

(6) Bottled at 50 percent alcohol by volume (100 degrees of proof).

(b) Imported spirits labeled as ''bottled in bond'' or other synonymous term described above must be manufactured in accordance with paragraphs (a)(1) through (6) of this section and may only be so labeled if the laws and regulations of the country in which the spirits are manufactured authorize the bottling of spirits in bond and require or specifically authorize such spirits to be so labeled. The ''bottled in bond'' or synonymous statement must be immediately followed, in the same font and type size, by the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) Domestically manufactured spirits labeled as ''bottled in bond'' or with some other synonymous statement must bear the real name of the distillery or the trade name under which the distiller distilled and warehoused the spirits, and the number of the distilled spirits plant in which distilled, and the number of the distilled spirits plant in which bottled. The label may also bear the name or trade name of the bottler.

§ 5.89 Multiple distillation claims.

(a) Truthful statements about the number of distillations, such as ''double distilled,'' ''distilled three times,'' or similar terms to convey multiple distillations, may be used if they are truthful statements of fact. For the purposes of this section only, the term ''distillation'' means a single run through a pot still or a single run through a column of a column (reflux) still. For example, if a column still has three separate columns, one complete additional run through the system would constitute three additional distillations.

(b) The number of distillations may be understated but may not be overstated.

§ 5.90 Terms related to Scotland.

(a) The words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands,'' and similar words connoting, indicating, or commonly associated with Scotland, may be used to designate only distilled spirits wholly manufactured in Scotland, except that the term ''Scotch whisky'' may appear in the designation for a flavored spirit (''Flavored Scotch Whisky'') or in a truthful statement of composition (''Scotch whisky with natural flavors'') where the base distilled spirit meets the requirements for a Scotch whisky designation, regardless of where the finished product is manufactured.

(b) In accordance with § 5.127, statements relating to government supervision may appear on Scotch whisky containers only if such labeling statements are required or specifically authorized by the applicable regulations of the United Kingdom.

§ 5.91 Use of the term ''pure.''

Distilled spirits labels, containers, or packaging may not bear the word ''pure'' unless it:

(a) Refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient;

(b) Is part of the bona fide name of a permittee or retailer for which the distilled spirits are bottled; or

(c) Is part of the bona fide name of the permittee that bottled the distilled spirits.

Subpart G—Prohibited Labeling Practices

§ 5.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 5.102 False or untrue statements.

Distilled spirits labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 5.103 Obscene or indecent depictions.

Distilled spirits labels, containers, or packaging may not contain any statement, design, device, picture, or representation that is obscene or indecent.

Subpart H—Labeling Practices That Are Prohibited If They Are Misleading

§ 5.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 5.122 Misleading statements or representations.

(a) *General prohibition.* Distilled spirits labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the distilled spirits, or with regard to any other material factor.

(b) *Ways in which statements or representations may be found to be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression, or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) All claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on distilled spirits labels, containers, or packaging that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, is considered misleading.

§ 5.123 Guarantees.

Distilled spirits labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

§ 5.124 Disparaging statements.

(a) *General.* Distilled spirits labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as, ''Our liqueur contains more strawberries than Brand X'') or statements of opinion (such as, ''We think our rum tastes better than any other distilled spirits on the market'').

§ 5.125 Tests or analyses.

Distilled spirits labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of such a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

§ 5.126 Depictions of government symbols.

Representations of the armed forces and flags. Distilled spirits labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

§ 5.127 [Reserved]

§ 5.128 [Reserved]

§ 5.129 Health-related statements.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 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, distilled spirits, or any substance found within the distilled spirits product, 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, distilled spirits, or any substance found within the distilled spirits, 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 distilled spirits, as well as statements and claims of nutritional value (for example, statements of vitamin content).

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of distilled spirits, alcohol, or any substance found within the distilled spirits, 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 alcohol, distilled spirits, or any substance found within the distilled spirits, and a disease or health-related condition.

(3) *Health-related directional statement* means 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 distilled spirits or alcohol consumption.

(b) *Rules for labeling*—(1) *Health-related statements.* In general, distilled spirits 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.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on the distilled spirits. 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 the distilled spirits.

(ii) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific or medical evidence; is 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.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) 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 distilled spirits or alcohol consumption; and

(ii)(A) 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

(B) 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.

§ 5.130 Appearance of endorsement.

(a) *General.* Distilled spirits labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence, or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization, if its use is likely to lead a consumer to falsely 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. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

(c) *Exception.* This section does not apply to the use of the name of any person engaged in business as a distiller, rectifier (processor), blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman of distilled spirits. This section also does not apply 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 the industry member or its predecessors in interest prior to August 29, 1935.

Subpart I—Standards of Identity for Distilled Spirits

§ 5.141 The standards of identity in general.

(a) *General.* Distilled spirits are divided, for labeling purposes, into classes, which are further divided into specific types. As set forth in § 5.63, a distilled spirits product label must bear the appropriate class, type or other designation. The standards that define the classes and types are known as the ''standards of identity.'' The classes and types of distilled spirits set forth in this subpart apply only to distilled spirits for beverage or other nonindustrial purposes.

(b) *Rules.* (1) Unless otherwise specified, when a standard of identity states that a mash is of a particular ingredient (such as ''fermented mash of grain''), the mash must be made entirely of that ingredient without the addition of other fermentable ingredients.

(2) Some distilled spirits products may conform to the standards of identity of more than one class. Such products may be designated with any single class designation defined in this subpart to which the products conform.

(c) *Designating with both class and type.* If a product is designated with both the class and the type, the type designation must be as conspicuous as the class designation, and must appear in the same field of vision.

(d) *Words in a designation.* All words in a designation must be similarly conspicuous and must appear together.

§ 5.142 Neutral spirits or alcohol.

(a) *The class neutral spirits.* ''Neutral spirits'' or ''alcohol'' are distilled spirits distilled from any suitable material at or above 95 percent alcohol by volume (190° proof), and, if bottled, bottled at not less than 40 percent alcohol by volume (80° proof). Neutral spirits other than the type ''grain spirits'' may be designated as ''neutral spirits'' or ''alcohol'' on a label. Neutral spirits (other than the type ''grain spirits'') may not be aged in wood barrels at any time.

(b) *Types.* The following chart lists the types of neutral spirits and the rules that apply to the type designation.

Type designation	Standards
(1) Vodka	Neutral spirits which may be treated with up to two grams per liter of sugar and up to one gram per liter of citric acid. Products to be labeled as vodka may not be aged or stored in wood barrels at any time except when stored in paraffin-lined wood barrels and labeled as bottled in bond pursuant to § 5.88. Vodka treated and filtered with not less than one ounce of activated carbon or activated charcoal per 100 wine gallons of spirits may be labeled as ''charcoal filtered.'' Addition of any other flavoring or blending materials changes the classification to flavored vodka or to a distilled spirits specialty product, as appropriate. Vodka must be designated on the label as ''neutral spirits,'' ''alcohol,'' or ''vodka''.
(2) Grain spirits	Neutral spirits distilled from a fermented mash of grain and stored in oak barrels. ''Grain spirits'' must be designated as such on the label. Grain spirits may not be designated as ''neutral spirits'' or ''alcohol'' on the label.

§ 5.143 Whisky.

(a) *The class whisky.* ''Whisky'' or ''whiskey'' is distilled spirits that is an alcoholic distillate from a fermented mash of any grain distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to whisky, stored in oak barrels (except that corn whisky need not be so stored), and bottled at not less than 40 percent alcohol by volume (80° proof), and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(b) *Label designations.* The word whisky may be spelled as either ''whisky'' or ''whiskey''. The place, State, or region where the whisky was distilled may appear as part of the designation on the label if the distillation and any required aging took place in that location (*e.g.,* ''New York Bourbon Whisky'' must be distilled and aged in the State of New York); however, blending and bottling need not have taken place in the same place, State, or region. However, if any whisky is made partially from whisky distilled in a country other than that indicated by the type designation, the label must indicate the percentage of such whisky and the country where that whisky was distilled. Additionally, the label of whisky that does not meet one of the standards for specific types of whisky and that is comprised of components distilled in more than one country must contain a statement of composition indicating the country of origin of each component (such as ''Whisky—50% from Japan, 50% from the United States''). The word ''bourbon'' may not be used to describe any whisky or whisky-based distilled spirits not distilled and aged in the United States. The whiskies defined in paragraphs (c)(2) through (6) and (10) through (14) of this section are distinctive products of the United States and must have the country of origin stated immediately adjacent to the type designation if it is distilled outside of the United States, or the whisky designation must be proceeded by the term ''American type'' if the country of origin appears elsewhere on the label. For example, ''Brazilian Corn Whisky,'' ''Rye Whisky distilled in Sweden,'' and ''Blended Whisky—Product of Japan'' are statements that meet this country of origin requirement. ''Light whisky'', ''Blended light whisky'', and ''Whisky distilled from bourbon (rye, wheat, malt, rye malt, or other named grain) mash'' may only be produced in the United States.

(c) *Types of whisky.* The following tables set out the designations for whisky. Table 1 sets forth the standards for whisky that are defined based on production, storage, and processing standards, while Table 2 sets forth rules for the types of whisky that are defined as distinctive products of certain foreign countries. For the whiskies listed in Table 1, a domestic whisky may be labeled with the designation listed, when it complies with the production standards in the subsequent columns. The ''source'' column indicates the source of the grain mash used to make the whisky. The ''distillation proof'' indicates the allowable distillation proof for that type. The ''storage'' column indicates the type of packages (barrels) in which the spirits must be stored and limits for the proof of the spirits when entering the packages. The ''neutral spirits permitted'' column indicates whether neutral spirits may be used in the product in their original state (and not as vehicles for flavoring materials), and if so, how much may be used. The ''harmless coloring, flavoring, blending materials permitted'' column indicates whether harmless coloring, flavoring, or blending materials, other than neutral spirits in their original form, described in § 5.142, may be used in the product. The use of the word ''straight'' is a further designation of a type, and is optional.

TABLE 1 TO PARAGRAPH (c)—TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS

Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
(1) Whisky, which may be used as the designation for any of the type designations under the class ''whisky,'' or may be used as the designation if the whisky does not meet one of the type designations but satisfies the class designation.	Fermented grain mash	Less than 190°	Oak barrels with no minimum time requirement.	No	Yes.

TABLE 1 TO PARAGRAPH (c)—TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS—Continued

Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
(2) Bourbon Whisky, Rye Whisky, Wheat Whisky, Malt Whisky, Rye Malt Whisky, or [name of other grain] Whisky.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain, [Other grain].	160° or less	Charred new oak barrels at 125° or less.	No	Yes, except for bourbon whisky.
(3) Corn Whisky. (Whisky conforming to this standard must be designated as "corn whisky.").	Fermented mash of not less than 80% corn.	160° or less	Required only if age is claimed on the label. If stored, must be stored at 125° or less in used or uncharred new oak barrels.	No	Yes.
(4) Straight Whisky	Fermented mash of less than 51% corn, rye, wheat, malted barley, malted rye [or other] grain. (Includes mixtures of straight whiskies made in the same state.).	160° or less	Charred new oak barrels at 125° or less for a minimum of 2 years.	No	No.
(5) Straight Bourbon Whisky, Straight Rye Whisky, Straight Wheat Whisky, Straight Malt Whisky, or Straight Rye Malt Whisky.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain.	160° or less	Charred new oak barrels at 125° or less for a minimum of 2 years.	No	No.
(6) Straight Corn Whisky	Fermented mash of not less than 80% corn.	160° or less	125° or less in used or uncharred new oak barrels for a minimum of 2 years.	No	No.
(7) Whisky distilled from Bourbon/Rye/Wheat/Malt/Rye Malt/[Name of other grain] mash.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain, [Other grain].	160° or less	Used oak barrels	No	Yes.
(8) Light Whisky	Fermented grain mash	More than 160°	Used or uncharred new oak barrels.	No	Yes.
(9) Blended Light Whisky (Light Whisky—a blend).	Light whisky blended with less than 20% Straight Whisky on a proof gallon basis.	Blend	Will contain a blend.	No	Yes.
(10) Blended Whisky (Whisky—a blend).	At least 20% Straight Whisky on a proof gallon basis plus Whisky or Neutral Spirits alone or in combination.	160° or less	Will contain a blend of spirits, some stored and some not stored.	Maximum of 80% on a proof gallon basis.	Yes.
(11) Blended Bourbon Whisky, Blended Rye Whisky, Blended Wheat Whisky, Blended Malt Whisky, Blended Rye Malt Whisky, Blended Corn Whisky (or Whisky—a blend).	At least 51% on a proof gallon basis of: Straight Bourbon, Rye, Wheat, Malt, Rye Malt, or Corn Whisky; the rest comprised of Whisky or Neutral Spirits alone or in combination.	Blend	Will contain a blend of spirits, some stored and some not stored.	Maximum of 49% on a proof gallon basis.	Yes.
(12) Blend of Straight Whiskies (Blended Straight Whiskies).	Mixture of Straight Whiskies that does not conform to "Straight Whisky".	160° or less	Will contain a blend of spirits which were aged at least 2 years.	No, except as part of a flavor.	Yes.
(13) Blended Straight Bourbon Whiskies, Blended Straight Rye Whiskies, Blended Straight Wheat Whiskies, Blended Straight Malt Whiskies, Blended Straight Rye Malt Whiskies, Blended Straight Corn Whiskies, (or a blend of straight whiskies).	Mixture of Straight Whiskies of the same named type produced in different states or produced in the same state but contains coloring, flavoring or blending material.	160° or less	Will contain a blend of spirits which were aged at least 2 years.	No, except as part of a flavor.	Yes.
(14) Spirit Whisky	Mixture of Neutral Spirits and 5% or more on a proof gallon basis of: Whisky or Straight Whisky or a combination of both. The Straight Whisky component must be less than 20% on a proof gallon basis.	Blend	Will contain a blend of spirits, some stored and some not stored.	Maximum of 95% on a proof gallon basis.	Yes.

TABLE 2 TO PARAGRAPH (c)—TYPES OF WHISKY THAT ARE DISTINCTIVE PRODUCTS

(16) Scotch whisky	Whisky which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whisky for consumption in the United Kingdom: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Scotch whisky'' or ''Scotch whisky—a blend''.
(17) Irish whisky	Whisky which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Irish whisky'' or ''Irish whisky—a blend''.
(18) Canadian whisky	Whisky which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whisky for consumption in Canada: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Canadian whisky'' or ''Canadian whisky—a blend''.

§ 5.144 Gin.

(a) *The class gin.* ''Gin'' is distilled spirits made by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and, optionally, with or over other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It must derive its main characteristic flavor from juniper berries and be bottled at not less than 40 percent alcohol by volume (80° proof). Gin may be aged in oak containers.

(b) *Distilled gin.* Gin made exclusively by original distillation or by redistillation may be further designated as ''distilled,'' ''Dry,'' ''London,'' ''Old Tom'' or some combination of these four terms.

§ 5.145 Brandy.

(a) *The class brandy.* ''Brandy'' is spirits that are distilled from the fermented juice, mash, or wine of fruit, or from the residue thereof, distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designations.* Brandy conforming to one of the type designations must be designated with the type name or specific designation specified in the requirements for that type. The term ''brandy'' without further qualification (such as ''peach'' or ''marc'') may only be used as a designation on labels of grape brandy as defined in paragraph (c)(1) of this section. Brandy conforming to one of the type designations defined in paragraphs (c)(1) through (12) of this section must be designated on the label with the type name unless a specific designation is included in the requirements for that type. Brandy, or mixtures thereof, not conforming to any of the types defined in this section must be designated on the label as ''brandy'' followed immediately by a truthful and adequate statement of composition.

(c) *Types.* Paragraphs (c)(1) through (12) of this section set out the types of brandy and the standards for each type.

Type	Standards
(1) Fruit brandy	Brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape or other fruit wine, with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy includes mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy derived solely from grapes and stored for at least 2 years in oak containers must be designated ''grape brandy'' or ''brandy.'' Grape brandy that has been stored in oak barrels for fewer than 2 years must be designated ''immature grape brandy'' or ''immature brandy.'' Fruit brandy, other than grape brandy, derived from one variety of fruit, must be designated by the word ''brandy'' qualified by the name of such fruit (for example, ''peach brandy''), except that ''apple brandy'' may be designated ''applejack,'' ''plum brandy'' may be designated ''Slivovitz,'' and ''cherry brandy'' may be designated ''Kirschwasser.'' Fruit brandy derived from more than one variety of fruit must be designated as ''fruit brandy'' qualified by a truthful and adequate statement of composition, for example ''Fruit brandy distilled from strawberries and blueberries.''
(2) Cognac or ''Cognac (grape) brandy''	Grape brandy distilled exclusively in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French government.
(3) Armagnac	Grape brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Armagnac for consumption in France.
(4) Brandy de Jerez	Grape brandy distilled exclusively in Spain in accordance with the laws and regulations of Spain regulating the manufacture of Brandy de Jerez for consumption in Spain.
(5) Calvados	Apple brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Calvados for consumption in France.
(6) Pisco	Grape brandy distilled in Peru or Chile in accordance with the laws and regulations of the country of manufacture of Pisco for consumption in the country of manufacture, including: (i) ''Pisco Perú'' (or ''Pisco Peru''), which is Pisco manufactured in Peru in accordance with the laws and regulations of Peru governing the manufacture of Pisco for consumption in that country; and (ii) ''Pisco Chileno'' (or ''Chilean Pisco''), which is Pisco manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco for consumption in that country.
(7) Dried fruit brandy	Brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, must be designated ''raisin brandy.'' Dried fruit brandy, other than raisin brandy, must be designated by the word ''brandy'' qualified by the name of the dried fruit(s) from which made preceded by the word ''dried'', for example, ''dried apricot brandy.''

Type	Standards
(8) Lees brandy	Brandy distilled from the lees of standard grape or other fruit wine, and such brandy derived solely from grapes must be designated ''grape lees brandy'' or ''lees brandy.'' Lees brandy derived from fruit other than grapes must be designated as ''lees brandy,'' qualified by the name of the fruit from which such lees are derived, for example, ''cherry lees brandy.''
(9) Pomace brandy or Marc brandy	Brandy distilled from the skin and pulp of sound, ripe grapes or other fruit, after the withdrawal of the juice or wine therefrom. Such brandy derived solely from grape components must be designated ''grape pomace brandy,'' ''grape marc brandy'', ''pomace brandy,'' or ''mark brandy.'' Grape pomace brandy may alternatively be designated as ''grappa'' or ''grappa brandy.'' Pomace or marc brandy derived from fruit other than grapes must be designated as ''pomace brandy'' or ''marc brandy'' qualified by the name of the fruit from which derived, for example, ''apple pomace brandy'' or ''pear marc brandy.''
(10) Residue brandy	Brandy distilled wholly or in part from the fermented residue of fruit or wine. Such brandy derived solely from grapes must be designated ''grape residue brandy,'' or ''residue brandy.'' Residue brandy, derived from fruit other than grapes, must be designated as ''residue brandy'' qualified by the name of the fruit from which derived, for example, ''orange residue brandy.'' Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (b)(1) and (7) through (9) of this section may, regardless of such fact, be designated ''residue brandy'', but the use of such designation shall be conclusive, precluding any later change of designation.
(11) Neutral brandy	Any type of brandy distilled at more than 85% alcohol by volume (170° proof) but less than 95% alcohol by volume. Such brandy derived solely from grapes must be designated ''grape neutral brandy,'' or ''neutral brandy.'' Other neutral brandies, must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''neutral''; for example, ''neutral citrus residue brandy''.
(12) Substandard brandy	Any brandy: (i) Distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 degrees Celsius); measurements of volatile acidity must be calculated exclusive of water added to facilitate distillation. (ii) Distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material. (iii) Such brandy derived solely from grapes must be designated ''substandard grape brandy,'' or ''substandard brandy.'' Other substandard brandies must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''substandard''; for example, ''substandard fig brandy''.

§ 5.146 Blended applejack.

(a) *The class blended applejack.* ''Blended applejack'' is a mixture containing at least 20 percent on a proof gallon basis of apple brandy (applejack) that has been stored in oak barrels for not less than 2 years, and not more than 80 percent of neutral spirits on a proof gallon basis. Blended applejack must be bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designation.* The label designation for blended applejack may be ''blended applejack'' or ''applejack–a blend.''

§ 5.147 Rum.

(a) *The class rum.* ''Rum'' is distilled spirits that is distilled from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to rum, and bottled at not less than 40 percent alcohol by volume (80° proof); and also includes mixtures solely of such spirits. All rum may be designated as ''rum'' on the label, even if it also meets the standards for a specific type of rum.

(b) *Types.* Paragraph (b)(1) of this section describes a specific type of rum and the standards for that type.

Type	Standards
(1) Cachaça	Rum that is a distinctive product of Brazil, manufactured in Brazil in compliance with the laws of Brazil regulating the manufacture of Cachaça for consumption in that country. The word ''Cachaça'' may be spelled with or without the diacritic mark (i.e., ''Cachaça'' or ''Cachaca''). Cachaça may be designated as ''Cachaça'' or ''rum'' on labels.
(2) [Reserved]	

§ 5.148 Agave spirits.

(a) *The class agave spirits.* ''Agave spirits'' are distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus Agave and up to 49 percent is derived from other sugars. Agave spirits must be distilled at less than 95 percent alcohol by volume (190° proof) and bottled at or above 40 percent alcohol by volume (80° proof). Agave spirits may be stored in wood barrels. Agave spirits may contain added flavoring or coloring materials as authorized by § 5.155. This class also includes mixtures of agave spirits. Agave spirits that meet the standard of identity for ''Tequila'' or ''Mezcal'' may be designated as ''agave spirits,'' or as ''Tequila'' or ''Mezcal'', as applicable.

(b) *Types.* Paragraphs (b)(1) and (2) of this section describe the types of agave spirits and the rules for each type.

Type	Standards
(1) Tequila	An agave spirit that is a distinctive product of Mexico. Tequila must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Tequila for consumption in that country.
(2) Mezcal	An agave spirit that is a distinctive product of Mexico. Mezcal must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Mezcal for consumption in that country.

§ 5.149 [Reserved]

§ 5.150 Cordials and liqueurs.

(a) *The class cordials and liqueurs.* Cordials and liqueurs are flavored distilled spirits that are made by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing sugar (such as sucrose, fructose, dextrose, or levulose) in an amount of not less than 2.5 percent by weight of the finished product. Designations on labels may be ''Cordial'' or ''Liqueur,'' or, in the alternative, may be one of the type designations below. Cordials and liqueurs may not be designated as ''straight''. The designation of a cordial or liqueur may include the word ''dry'' if sugar is less than 10 percent by weight of the finished product.

(b) *Types.* Paragraph (b)(1) through (12) of this section list definitions and standards for optional type designations.

Type	Rule
(1) Sloe gin	A cordial or liqueur with the main characteristic flavor derived from sloe berries.
(2) Rye liqueur, bourbon liqueur (or rye cordial or bourbon cordial).	Liqueurs, bottled at not less than 30 percent alcohol by volume, in which not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic rye or bourbon flavor derived from such whisky. Wine, if used, must be within the 2.5 percent limitation provided in § 5.155 for coloring, flavoring, and blending materials.
(3) Rock and rye; Rock and bourbon; Rock and brandy; Rock and rum.	Liqueurs, bottled at not less than 24 percent alcohol by volume, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2.5 percent limitation provided in § 5.155 for harmless coloring, flavoring, and blending materials.
(4) Rum liqueur, gin liqueur, brandy liqueur.	Liqueurs, bottled at not less than 30 percent alcohol by volume, in which the distilled spirits used are entirely rum, gin, or brandy, respectively, and which possess, respectively, a predominant characteristic rum, gin, or brandy flavor derived from the distilled spirits used. In the case of brandy liqueur, the type of brandy must be stated in accordance with paragraph (d) of this section, except that liqueurs made entirely with grape brandy may be designated simply as ''brandy liqueur.'' Wine, if used, must be within the 2.5 percent limitation provided for in § 5.155 for harmless coloring, flavoring, and blending materials.
(5) Amaretto	Almond flavored liqueur/cordial
(6) Kummel	Caraway flavored liqueur/cordial
(7) Ouzo, Anise, Anisette	Anise flavored liqueurs/cordials
(8) Sambuca	Anise flavored liqueur. See § 5.154(b)(2) for designation rules for Sambuca not produced in Italy.
(9) Peppermint Schnapps	Peppermint flavored liqueur/cordial
(10) Triple Sec and Curacao	Orange flavored liqueurs/cordials. Curacao may be preceded by the color of the liqueur/cordial (for example, Blue Curacao).
(11) Crème de	A liqueur/cordial where the blank is filled in with the predominant flavor (for example, Crème de menthe is mint flavored liqueur/cordial.)
(12) Goldwasser	Herb flavored liqueur/cordial and containing gold flakes. See § 5.154(b)(2) for designation rules for Goldwasser not made in Germany.

§ 5.151 Flavored spirits.

(a) *The class flavored spirits.* ''Flavored spirits'' are distilled spirits that are spirits conforming to one of the standards of identity set forth in §§ 5.142 through 5.148 to which have been added nonbeverage natural flavors, wine, or nonalcoholic natural flavoring materials, with or without the addition of sugar, and bottled at not less than 30 percent alcohol by volume (60° proof). The flavored spirits must be specifically designated by the single base spirit and one or more of the most predominant flavors (for example, ''Pineapple Flavored Tequila'' or ''Cherry Vanilla Flavored Bourbon Whisky''). The base spirit must conform to the standard of identity for that spirit before the flavoring is added. Base spirits that are a distinctive product of a particular place must be manufactured in accordance with the laws and regulations of the country as designated in the base spirit's standard of identity. If the finished product contains more than 2.5 percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation (whether the wine is added directly to the product or whether it is first mixed into an intermediate product), except that a flavored brandy may contain an additional 12.5 percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(b) [Reserved]

§ 5.152 Imitations.

(a) Imitations must bear, as a part of the designation thereof, the word ''imitation'' and include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits specialty products as defined in § 5.156) to which has been added flavors considered to be artificial or imitation.

(3) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(4) Any type of whisky to which beading oil has been added;

(5) Any rum to which neutral spirits or distilled spirits other than rum have been added;

(6) Any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine; and

(7) Any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(b) If any of the standards set forth in paragraphs (a)(1) through (7) of this section apply, the ''Imitation'' class designation must be used in front of the appropriate class as part of the designation (for example, Imitation Whisky).

§ 5.153 [Reserved]

§ 5.154 Rules for geographical designations.

(a) *Geographical designations.* (1) Geographical names for distinctive types of distilled spirits (other than names found by the appropriate TTB officer under paragraph (a)(2) of this section to have become generic) may not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless:

(i) There appears the word ''type'' or the word ''American'' or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name; and

(ii) The distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits may be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(2) Only such geographical names for distilled spirits as the appropriate TTB officer finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic shall be deemed to have become generic. Examples are London dry gin, Geneva (Hollands) gin.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Armagnac, Greek brandy, Jamaica rum, Puerto Rico rum, Demerara rum and Andong Soju.

(b) *Products without geographical designations but distinctive of a particular place.* (1) The whiskies of the types specified in paragraphs (c)(2) through (6) and (10) through (14) of § 5.143 are distinctive products of the United States and if produced in a foreign country shall be designated by the applicable designation prescribed in such paragraphs, together with the words ''American type'' or the words ''produced (distilled, blended) in ____'', the blank to be filled in with the name of the foreign country: *Provided,* That the word ''bourbon'' shall not be used to describe any whisky or whisky-based distilled spirits not produced in the United States. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whisky and the country of origin thereof.

(2) The name for other distilled spirits which are distinctive products of a particular place or country (such as Habanero), may not be given to the product of any other place or country unless the designation for such product includes the word ''type'' or an adjective such as ''American'', or the like, clearly indicating the true place of production. The provision for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the appropriate TTB officer finds they have become generic. Examples of generic designations are Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

§ 5.155 Alteration of class and type.

(a) *Definitions*—(1) *Coloring, flavoring, or blending material.* For the purposes of this section, the term ''coloring, flavoring, or blending material'' means a harmless substance that is an essential component of the class or type of distilled spirits to which it is added; or a harmless substance, such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Administrator, or wine, that is not an essential component part of the distilled spirits product to which it is added but which is customarily employed in the product in accordance with established trade usage.

(2) *Certified color.* For purposes of this section, the term ''certified color'' means a color additive that is required to undergo batch certification in accordance with part 74 or part 82 of the Food and Drug Administration regulations (21 CFR parts 74 and 82). An example of a certified color is FD&C Blue No. 2.

(b) *Allowable additions.* Except as provided in paragraph (c) of this section, the following may be added to distilled spirits without changing the class or type designation:

(1) Coloring, flavoring, and blending materials that are essential components of the class or type of distilled spirits to which added;

(2) Coloring, flavoring, and blending materials that are not essential component parts of the distilled spirits to which added, provided that such coloring, flavoring, or blending materials do not total more than 2.5 percent by volume of the finished product; and

(3) Wine, when added to Canadian whisky in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian whisky.

(c) *Special rules.* The addition of the following will require a redesignation of the class or type of the distilled spirits product to which added:

(1) Coloring, flavoring, or blending materials that are not essential component parts of the class or type of distilled spirits to which they are added, if such coloring, flavoring, and blending

materials total more than 2.5 percent by volume of the finished product;

(2) Any material, other than caramel, infusion of oak chips, and sugar, added to Cognac brandy;

(3) Any material whatsoever added to neutral spirits or straight whisky, except that vodka may be treated with sugar, in an amount not to exceed two grams per liter, and with citric acid, in an amount not to exceed one gram per liter;

(4) Certified colors, carmine, or cochineal extract;

(5) Any material that would render the product to which it is added an imitation, as defined in § 5.152; or

(6) For products that are required to be stored in oak barrels in accordance with a standard of identity, the storing of the product in an additional barrel made of another type of wood.

(d) *Extractions from distilled spirits.* The removal of any constituents from a distilled spirits product to such an extent that the product no longer possesses the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits will alter the class or type of the product, and the resulting product must be redesignated appropriately. In addition, in the case of straight whisky, the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or the removal of more than 25 percent of the soluble color, constitutes an alteration of the class or type of the product and requires a redesignation of the product.

(e) *Exceptions.* Nothing in this section has the effect of modifying the standards of identity specified in § 5.150 for cordials and liqueurs, and in § 5.151 for flavored spirits, or of authorizing any product defined in § 5.152 to be designated as other than an imitation.

§ 5.156 Distilled spirits specialty products.

(a) *General.* Distilled spirits that do not meet one of the other standards of identity specified in this subpart are distilled spirits specialty products and must be designated in accordance with trade and consumer understanding, or, if no such understanding exists, with a distinctive or fanciful name (which may be the name of a cocktail) appearing in the same field of vision as a statement of composition. The statement of composition and the distinctive or fanciful name serve as the class and type designation for these products. The statement of composition must follow the rules found in § 5.166. A product may not bear a designation which indicates it contains a class or type of distilled spirits unless the distilled spirits therein conform to such class and type.

(b) *Products designated in accordance with trade and consumer understanding.* Products may be designated in accordance with trade and consumer understanding without a statement of composition if the appropriate TTB officer has determined that there is such understanding.

§§ 5.157–5.165 [Reserved]

§ 5.166 Statements of composition.

(a) *Rules for the statement of composition.* When a statement of composition is required as part of a designation for a distilled spirits specialty product, the statement must be truthful and adequate.

(b) *Cocktails.* A statement of the classes and types of distilled spirits used in the manufacture thereof will be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

Subpart J—Formulas

§ 5.191 Application.

The requirements of this subpart apply to the following persons:

(a) Proprietors of distilled spirits plants qualified as processors under part 19 of this chapter;

(b) Persons in the Commonwealth of Puerto Rico who manufacture distilled spirits products for shipment to the United States. However, the filing of a formula for approval by TTB is only required for those products that will be shipped to the United States; and

(c) Persons who ship Virgin Islands distilled spirits products into the United States.

§ 5.192 Formula requirements.

(a) *General.* An approved formula is required to blend, mix, purify, refine, compound, or treat distilled spirits in a manner that results in a change of class or type of the spirits.

(b) *Preparation and submission.* In order to obtain formula approval, a person listed in § 5.191 must file a formula in accordance with the instructions on TTB Form 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages (if filing by paper) or on Formulas Online, if filing electronically. When a product will be made or processed under the same formula at more than one location operated by the distiller or processor, the distiller or processor must identify on the form each place of production or processing by name and address, and by permit number, if applicable, and must ensure that a copy of the approved formula is maintained at each location.

(c) *Existing approvals.* Any approval of a formula will remain in effect until revoked, superseded, or voluntarily surrendered, and if the formula is revoked, superseded, or voluntarily surrendered, any existing qualifying statements on such approval as to the rate of tax or the limited use of alcoholic flavors will be made obsolete.

(d) *Change in formula.* Any change in an approved formula requires the filing of a new TTB Form 5100.51 for approval of the changed formula. After a changed formula is approved, the filer must surrender the original formula approval to the appropriate TTB officer.

§ 5.193 Operations requiring formulas.

The following operations change the class or type of distilled spirits and therefore require formula approval under § 5.192: *Provided,* That, TTB may exempt categories of distilled spirits products from specific regulatory formula requirements upon a finding that the filing of a formula is no longer necessary in order to properly classify the finished product:

(a) The compounding of distilled spirits through the mixing of a distilled spirits product with any coloring or flavoring material, wine, or other material containing distilled spirits, unless TTB has issued public guidance recognizing that such ingredients are harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to the standards set forth in § 5.155;

(b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;

(c) Any filtering or stabilizing process that results in a distilled spirits product's no longer possessing the taste, aroma, and characteristics generally attributed to the class or type of distilled spirits before the filtering or stabilizing, or, in the case of straight whisky, that results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(d) The mingling of spirits that differ in class or in type of materials from which made;

(e) The mingling of distilled spirits that were stored in charred cooperage with distilled spirits that were stored in plain or reused cooperage, or the mixing of distilled spirits that have been treated with wood chips with distilled spirits not so treated, or the mixing of distilled spirits that have been subjected to any treatment which changes their character

with distilled spirits not subjected to such treatment, unless it is determined by the appropriate TTB officer in each of these cases that the composition of the distilled spirits is the same notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) Except when authorized for production or storage operations by part 19 of this chapter, the use of any physical or chemical process or any apparatus that accelerates the maturing of the distilled spirits;

(g) The steeping or soaking of plant materials, such as fruits, berries, aromatic herbs, roots, or seeds, in distilled spirits or wines at a distilled spirits plant;

(h) The artificial carbonating of distilled spirits;

(i) In Puerto Rico, the blending of distilled spirits with any liquors manufactured outside Puerto Rico;

(j) The production of gin by:

(1) Redistillation, over juniper berries and other natural aromatics or over the extracted oils of such materials, of spirits distilled at or above 190 degrees of proof that are free from impurities, including such spirits recovered by redistillation of imperfect gin spirits; or

(2) Mixing gin with other distilled spirits;

(k) The treatment of gin by:

(1) The addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; or

(2) The addition of any substance or material other than juniper berries or other natural aromatics or the extracted oils of such materials, or the addition of pure water, before or during redistillation, in a manner that would change its class and type designation; and

(l) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits that have previously been entered for deposit. However, no formula approval is required for spirits redistilled into any type of neutral spirits other than vodka or for spirits redistilled at less than 190 degrees of proof that lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin and that are designated as ''Spirits'' preceded or followed by a word or phrase descriptive of the material from which distilled. Such spirits may not be designated ''Spirits Grain'' or ''Grain Spirits'' on any label.

§ 5.194 Adoption of predecessor's formulas.

A successor to a person listed in § 5.191 may adopt a predecessor's approved formulas by filing an application with the appropriate TTB officer. The application must include a list of the formulas for adoption and must identify each formula by formula number, name of product, and date of approval. The application must clearly show that the predecessor has authorized the use of the previously approved formulas by the successor.

Subpart K—Standards of Fill and Authorized Container Sizes.

§ 5.201 General.

No person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment in interstate or foreign commerce, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any distilled spirits in containers, unless the distilled spirits are bottled in conformity with §§ 5.202 and 5.203.

§ 5.202 Standard liquor containers.

(a) *General.* Except as provided in paragraph (d) of this section and in § 5.205, distilled spirits must be bottled in standard liquor containers, as defined in this paragraph. A standard liquor container is a container that is made, formed, and filled in such a way that it does not mislead purchasers as regards its contents. An individual carton or other container of a bottle may not be so designed as to mislead purchasers as to the size of the bottle it contains.

(b) *Headspace.* A filled liquor container of a capacity of 200 milliliters (6.8 fl. oz.) or more is deemed to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the container after closure.

(c) *Design.* Regardless of the correctness of the stated net contents, a liquor container is deemed to mislead the purchaser if it is made and formed in such a way that its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exception for distinctive liquor bottles.* The provisions of paragraphs (b) and (c) of this section do not apply to liquor bottles for which a distinctive liquor bottle approval has been issued pursuant to § 5.205.

§ 5.203 Standards of fill (container sizes).

(a) *Authorized standards of fill.* The following metric standards of fill are authorized for distilled spirits, whether domestically bottled or imported:

(1) *Containers other than cans.* For containers other than cans described in paragraph (a)(2) of this section—

(i) 1.8 Liters.
(ii) 1.75 Liters.
(iii) 1.00 Liter.
(iv) 900 mL.
(v) 750 mL.
(v) 720 mL.
(vi) 700 mL.
(vii) 375 mL.
(viii) 200 mL.
(ix) 100 mL.
(x) 50 mL.

(2) *Metal cans.* For metal containers that have the general shape and design of a can, that have a closure that is an integral part of the container, and that cannot be readily reclosed after opening—

(i) 355 mL.
(ii) 200 mL.
(iii) 100 mL.
(iv) 50 mL.

(b) *Spirits bottled using outdated standards.* Paragraph (a) of this section does not apply to:

(1) Imported distilled spirits in the original containers in which entered into customs custody prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits imported in 500 mL containers); or

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

§ 5.204 [Reserved]

§ 5.205 Distinctive liquor bottle approval.

(a) *General.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval from the appropriate TTB officer. The distinctive liquor bottle approval will provide an exemption only from those requirements that are specified in paragraph (b) of this section. A distinctive liquor bottle is a container that is not the customary shape and that may obscure the net contents of the distilled spirits.

(b) *Exemptions provided by the distinctive liquor bottle approval.* The distinctive liquor bottle approval issued pursuant to this section will provide that:

(1) The provisions of § 5.202(b) and (c) do not apply to the liquor containers

for which the distinctive liquor bottle approval has been issued; and

(2) The information required to appear in the same field of vision pursuant to § 5.63(a) may appear elsewhere on a distinctive liquor bottle for which the distinctive liquor bottle approval has been issued, if the design of the container precludes the presentation of all mandatory information in the same field of vision.

(c) *How to apply.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval as part of the application for a certificate of label approval (COLA).

Subpart L [Reserved]

§ 5.211 [Reserved]

§ 5.212 [Reserved]

Subpart M—Penalties and Compromise of Liability

§ 5.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 5.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling and advertising provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 5.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

Subpart N—Advertising of Distilled Spirits

§ 5.231 Application.

No person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler of distilled spirits, 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 by electronic or internet media, or any other printed or graphic matter, any advertisement of distilled spirits, 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 this subpart: *Provided,* That such sections shall not apply to outdoor advertising in place on September 7, 1984, but shall apply upon replacement, restoration, or renovation of any such advertising; *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 or internet broadcast, unless such retailer or publisher or broadcaster is engaged in business as a distiller, rectifier (processor), importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

§ 5.232 Definition.

As used in this subpart, the term ''advertisement'' ''or advertising'' 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, internet or other electronic site or social network, or in any written, printed, graphic, or other matter (such as hang tags) accompanying, but not firmly affixed to, the bottle, representations made on shipping cases or in any billboard, sign, other outdoor display, 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 bottle of distilled spirits; or any individual covering, carton, or other container of the bottle which constitute a part of the labeling under this part.

(b) Any editorial or other reading material (such as a news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration or thing of value is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

§ 5.233 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

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

(c) *Alcohol content*—(1) *Mandatory statement.* The alcohol content for distilled spirits must be stated as a percentage of alcohol by volume, in the manner set forth in § 5.65 of this chapter for labels. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____ percent-alcohol-by-volume.''

(2) *Optional statement.* In addition, the advertisement may also state the alcohol content in degrees of proof if this information appears in the same field of vision as the statement expressed in percent-alcohol-by-volume.

(d) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, flavored neutral spirits, including flavored vodka, and distilled spirits specialty products) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: ''____% neutral spirits distilled from ____ (insert grain, cane products, or fruit, or other products as appropriate)''; or ____% neutral spirits (vodka) distilled from ____ (insert grain, cane product, fruit, or other commodity, as appropriate)''; or ''____% grain (cane products), (fruit) neutral spirits''; or ''____% grain spirits''. The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

(2) In the case of gin manufactured by a process of continuous distillation or in the case of neutral spirits, there shall be stated the name of the commodity from which such gin or neutral spirits were distilled. The statement of the name of the commodity shall be made in substantially the following form: ''Distilled from grain'', or ''Distilled from cane products'', or ''Distilled from

fruit.'' The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

(e) *Exception.* (1) If an advertisement refers to a general distilled spirits line or all of the distilled spirits products of one company, whether by the company name or by the brand name common to all the distilled spirits in the line, the only mandatory information necessary is the responsible advertiser's name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted. This exception does not apply where only one type of distilled spirits is marketed under the specific brand name advertised.

(2) On consumer specialty items (such as T-shirts, hats, bumper stickers, or refrigerator magnets), the only information necessary is the company name of the responsible advertiser or brand name of the product.

§ 5.234 Legibility of mandatory information.

(a) Statements required under this subpart to 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 or name and other contact information (such as, telephone number, website, or email) 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 audio-visual media that it will be readily apparent to the persons viewing the advertisement.

§ 5.235 Prohibited practices.

(a) *Restrictions.* An advertisement of distilled spirits shall 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 false or misleading statement that explicitly or implicitly disparages a competitor's product. This does not prevent truthful and accurate comparisons between products (such as, ''Our liqueur contains more strawberries than Brand X'') or statements of opinion (such as, ''We think our rum tastes better than any other distilled spirits on the market'').

(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) The words ''bond'', ''bonded'', ''bottled in bond'', ''aged in bond'', or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to § 5.88, on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label.

(7) The word ''pure'' unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer from whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(8) The words ''double distilled'' or ''triple distilled'' or any similar terms unless it is a truthful statement of fact. For purposes of this paragraph only, a distillation means a single run through a pot still or a single run through a column of a column (reflux) still. The number of distillations may be understated but may not be overstated.

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

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

(c) *Statement of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of § 5.74. An advertisement for any whisky or brandy (except immature brandies, pomace brandy, marc brandy, Pisco brandy, and grappa brandy) which is not required to bear a statement of age on the label or an advertisement for any rum or agave spirits, which has been aged for not less than 4 years may, however, contain inconspicuous, general representations as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Health-related statements*—(1) *Definitions.* When used in this paragraph (d), 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, distilled spirits, or any substance found within the distilled spirits, 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, distilled spirits, or any substance found within the distilled spirits, 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 distilled spirits, 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 distilled spirits, alcohol, or any substance found within the distilled spirits, 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 distilled spirits, alcohol, or any substance found within the distilled spirits, 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 distilled spirits 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 distilled spirits 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 distilled spirits 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.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or 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 provisions of this subpart or are in any respect untrue.

(g) *Representations of the armed forces or flags.* Advertisements may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this subpart, 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.

(i) Any use of the term ''organic'' in the advertising of distilled spirits must comply with the United States Department of Agriculture's (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

§ 5.236 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product in a manner that is false or misleading.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging in a false or misleading manner; 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.

Subpart O—Paperwork Reduction Act

§ 5.241 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Table.* The following table identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

TABLE 1 TO PARAGRAPH (b)

Section where contained	Current OMB control No.
5.11	1513–0111
5.21	1513–0020
5.22	1513–0020
5.23	1513–0020
5.24	1513–0020
	1513–0064
5.25	1513–0020
5.27	1513–0020
5.28	1513–0122
5.29	1513–0020
5.30	1513–0064
5.62	1513–0087
5.63	1513–0084
	1513–0087
5.82	1513–0121
5.83	1513–0121
5.84	1513–0087
5.87	1513–0087
5.88	1513–0087
5.89	1513–0087
5.90	1513–0087
5.91	1513–0087
5.192	1513–0122
5.193	1513–0122
5.194	1513–0122
5.203	1513–0064
5.205	1513–0020
5.233	1513–0087

■ 2. Revise part 7 to read as follows:

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Sec.
7.0 Scope.

Subpart A—General Provisions

7.1 Definitions.

7.2 Territorial extent.
7.3 General requirements and prohibitions under the FAA Act.
7.4 Jurisdictional limits of the FAA Act.
7.5 Ingredients and processes.
7.6 Brewery products not covered by this part.
7.7 Other TTB labeling regulations that apply to malt beverages.
7.8 Malt beverages for export.
7.9 [Reserved]
7.10 Other related regulations.
7.11 Forms.
7.12 Delegations of the Administrator.

Subpart B—Certificates of Label Approval

Requirements for Malt Beverages Bottled in the United States

7.21 Requirement for certificates of label approval (COLAs) for malt beverages bottled in the United States.
7.22 Rules regarding certificates of label approval (COLAs) for malt beverages bottled in the United States.
7.23 [Reserved]

Requirements for Malt Beverages Imported in Containers

7.24 Certificates of label approval (COLAs) for malt beverages imported in containers.
7.25 Rules regarding certificates of label approval (COLAs) for malt beverages imported in containers.

Administrative Rules

7.27 Presenting certificates of label approval (COLAs) to Government officials.
7.28 Formulas, samples, and documentation.
7.29 Personalized labels.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

7.41 Alteration of labels.
7.42 Authorized relabeling activities by brewers and importers.
7.43 Relabeling activities that require separate written authorization from TTB.
7.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Subpart D—Label Standards

7.51 Requirement for firmly affixed labels.
7.52 Legibility and other requirements for mandatory information on labels.
7.53 Type size of mandatory information and alcohol content statements.
7.54 Visibility of mandatory information.
7.55 Language requirements.
7.56 Additional information.

Subpart E—Mandatory Label Information

7.61 What constitutes a label for purposes of mandatory information.
7.62 Packaging (cartons, coverings, and cases).
7.63 Mandatory label information.
7.64 Brand name.
7.65 Alcohol content.
7.66 Name and address for domestically bottled malt beverages that were wholly fermented in the United States.
7.67 Name and address for domestically bottled malt beverages that were bottled after importation.
7.68 Name and address for malt beverages that are imported in a container.
7.69 Country of origin.
7.70 Net contents.

Subpart F—Restricted Labeling Statements

7.81 General.

Food Allergen Labeling

7.82 Voluntary disclosure of major food allergens.
7.83 Petitions for exemption from major food allergen labeling.

Production and Other Claims

7.84 Use of the term ''organic.''
7.85 [Reserved]
7.86 [Reserved]
7.87 [Reserved]

Subpart G—Prohibited Labeling Practices

7.101 General.
7.102 False or untrue statements.
7.103 Obscene or indecent depictions.

Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

7.121 General.
7.122 Misleading statements or representations.
7.123 Guarantees.
7.124 Disparaging statements.
7.125 Tests or analyses.
7.126 Depictions of government symbols.
7.127 [Reserved]
7.128 Claims related to distilled spirits.
7.129 Health-related statements.
7.130 Appearance of endorsement.
7.131 [Reserved]
7.132 [Reserved]

Subpart I—Classes and Types of Malt Beverages

7.141 Class and type.
7.142 Class designations.
7.143 Class and type—special rules.
7.144 Malt beverages fermented or flavored with certain traditional ingredients.
7.145 Malt beverages containing less than 0.5 percent alcohol by volume.
7.146 Geographical names.
7.147 Statement of composition.

Subparts J–L—[Reserved]

Subpart M—Penalties and Compromise of Liability

7.221 Criminal penalties.
7.222 Conditions of basic permit.
7.223 Compromise.

Subpart N—Advertising of Malt Beverages

7.231 Application.
7.232 Definitions.
7.233 Mandatory statements.
7.234 Legibility of mandatory information.
7.235 Prohibited practices.
7.236 Comparative advertising.

Subpart O—Paperwork Reduction Act

7.241 OMB control numbers assigned under the Paperwork Reduction Act.

Authority: 27 U.S.C. 205 and 207.

§ 7.0 Scope.

This part sets forth requirements that apply to the labeling and packaging of malt beverages in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements. This part also sets forth requirements that apply to the advertising of malt beverages.

Subpart A—General Provisions

§ 7.1 Definitions.

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

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

Advertisement or Advertising. See § 7.232 for meaning of these terms as used in subpart N of this part.

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

Bottler. Any brewer or wholesaler who places malt beverages in containers.

Brand name. The name under which a malt beverage or a line of malt beverages is sold.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

Certificate of exemption from label approval. A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval (COLA). A certificate issued on form TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the product bears labels

identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

Container. Any can, bottle, box, cask, keg, barrel or other closed receptacle, in any size or material, which is for use in the sale of malt beverages at retail.

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

Distinctive or fanciful name. A descriptive name or phrase chosen to identify a malt beverage product on the label. It does not include a brand name, class or type designation, statement of composition, or designation known to the trade or consumers.

FAA Act. The Federal Alcohol Administration Act.

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

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

Keg collar. A disk that is pushed down over the keg's bung or tap cover.

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 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. See § 7.5 for standards applying to the use of processing methods and flavors in malt beverage production.

Net contents. The amount, by volume, of a malt beverage held in a container.

Permittee. Any person holding a basic permit under the FAA Act.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, 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 of a State.

Responsible advertiser. The permittee or brewer responsible for the publication or broadcast of an advertisement.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Tap cover. A cap, usually made of plastic, that fits over the top of the tap (or bung) of a keg.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

United States (U.S.). The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 7.2 Territorial extent.

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 7.3 General requirements and prohibitions under the FAA Act.

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any brewer or wholesaler who bottles malt beverages, and any person who removes malt beverages in containers from customs custody for sale or any other commercial purpose, is required to first obtain from TTB a certificate of label approval (COLA) covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on malt beverage containers. This prohibition applies to any person, including retailers, holding malt beverages for sale in interstate or foreign commerce or any person holding malt beverages for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for malt beverages.* Subject to the jurisdictional limits of the FAA Act, as set forth in § 7.4, it is unlawful for any person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any malt beverages in containers unless such containers are marked, branded, labeled, and packaged in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of malt beverages must be in compliance with the following requirements:

(1) It must bear one or more labels meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label, container, or packaging (as defined in § 7.81) must comply with the rules for restricted label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any malt beverage label, container, or packaging (as defined in §§ 7.101 and 7.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of malt beverages; and

(5) The class and type designation on any label, as well as any designation appearing on containers or packaging, must comply with the standards for classes and types set forth in subpart I of this part.

§ 7.4 Jurisdictional limits of the FAA Act.

(a) *Malt beverages sold in interstate or foreign commerce*—(1) *General.* The labeling provisions of this part 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 laws or regulations of such State impose requirements similar to the requirements of the regulations in this part, with respect to the labels and 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.

(2) *Similar State law.* For purposes of this section, a ''similar'' State law may be found in State laws or regulations that apply specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages but that do apply to malt beverages. In order to be ''similar'' to the Federal requirements, the State requirements need not be identical to the Federal requirements. Nonetheless, if the label in question does not violate the laws or regulations of the State or States into which the brewer, wholesaler, or importer is shipping the malt beverages, it does not violate this part.

(b) *Malt beverages not sold in interstate or foreign commerce.* The labeling regulations in this part do not apply to domestically bottled malt beverages that are not and will not be sold, or offered for sale, or shipped or delivered for shipment, or otherwise

introduced in interstate or foreign commerce.

§ 7.5 Ingredients and processes.

(a) *Use of nonbeverage flavors and other nonbeverage ingredients containing alcohol.* (1) Nonbeverage flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage (sometimes referred to as a ''flavored malt beverage''). Except as provided in paragraph (a)(2) of this section, no more than 49 percent of the overall alcohol content (determined without regard to any tolerance otherwise allowed by this part) of the finished product may be derived from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0 percent alcohol by volume must derive a minimum of 2.55 percent alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45 percent alcohol by volume from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(2) In the case of malt beverages with an alcohol content of more than 6 percent by volume (determined without regard to any tolerance otherwise allowed by this part), no more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from added nonbeverage 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.

§ 7.6 Brewery products not covered by this part.

Certain fermented products that are regulated as ''beer'' under the Internal Revenue Code (IRC) do not fall within the definition of a ''malt beverage'' under the FAA Act and thus are not subject to this part. See § 7.7 for related TTB regulations that may apply to these products. See §§ 25.11 and 27.11 of this chapter for the definition of ''beer'' under the IRC.

(a) *Saké and similar products.* Saké and similar products (including products that fall within the definition of ''beer'' under parts 25 and 27 of this chapter) that fall within the definition of a ''wine'' under the FAA Act are covered by the labeling regulations for wine in 27 CFR part 4.

(b) *Other beers not made with both malted barley and hops.* The regulations in this part do not cover beer products that are not made with both malted barley and hops, or their parts or their products, or that do not fall within the definition of a ''malt beverage'' under § 7.1 for any other reason. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

§ 7.7 Other TTB labeling regulations that apply to malt beverages.

In addition to the regulations in this part, malt beverages must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including malt beverages, that contain at least 0.5 percent alcohol by volume, must be labeled with a health warning statement in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for beer under the Internal Revenue Code are found in 27 CFR part 25, subpart J (for domestic breweries) and 27 CFR part 27, subpart E (for importers).

§ 7.8 Malt beverages for export.

The regulations in this part shall not apply to malt beverages exported in bond.

§ 7.9 [Reserved]

§ 7.10 Other related regulations.

(a) *TTB regulations.* Other TTB regulations that relate to malt beverages are listed in paragraphs (a)(1) through (8) of this section:

(1) 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;

(2) 27 CFR part 13—Labeling Proceedings;

(3) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;

(4) 27 CFR part 25—Beer;

(5) 27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(6) 27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer;

(7) 27 CFR part 28—Exportation of Alcohol; and

(8) 27 CFR part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal regulations.* The regulations listed in paragraphs (b)(1) through (8) of this section issued by other Federal agencies also may apply:

(1) 7 CFR part 205—National Organic Program;

(2) 19 CFR part 11—Packing and Stamping; Marking;

(3) 19 CFR part 102—Rules of Origin;

(4) 19 CFR part 134—Country of Origin Marking;

(5) 21 CFR part 1—General Enforcement Provisions, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;

(6) 21 CFR parts 70–82, which pertain to food and color additives;

(7) 21 CFR part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(8) 21 CFR parts 170–189, which pertain to food additives and secondary direct food additives for human consumption.

§ 7.11 Forms.

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 7.12 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR part 7, Labeling and Advertising of Malt Beverages. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax

and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

Subpart B—Certificates of Label Approval

Requirements for Malt Beverages Bottled in the United States

§ 7.21 Requirement for certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *COLA requirement.* Subject to the requirements and exceptions set forth in paragraphs (b) and (c) of this section, a brewer or wholesaler bottling malt beverages must obtain a certificate of label approval (COLA) covering the malt beverages from TTB prior to bottling the malt beverages or removing the malt beverages from the premises where they were bottled.

(b) *Malt beverages shipped or sold in interstate commerce.* Persons bottling malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State (from outside of that State) are required to obtain a COLA covering those malt beverages only if the laws or regulations of the State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. This requirement applies when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements that are identical in effect to those set forth in subparts D through I of this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State laws or regulations.

(c) *Products not shipped or sold in interstate commerce.* Persons bottling malt beverages that will not be shipped or delivered for sale or shipment in interstate or foreign commerce are not required to obtain a COLA or a certificate of exemption from label approval. (Note: A certificate of exemption from label approval is a certificate issued by TTB to cover a wine or distilled spirits product that will not be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced, in interstate or foreign commerce.)

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence of label approval for a label used on a container of malt beverages that is subject to the COLA requirements of this part. This requirement may be satisfied by providing original COLAs, photocopies, or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved COLA.

§ 7.22 Rules regarding certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of malt beverages covered by the certificate of label approval (COLA), as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise, (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No brewer or wholesaler may bottle malt beverages or remove malt beverages from the premises where bottled unless a COLA has been obtained.

(c) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 7.23 [Reserved]

Requirements for Malt Beverages Imported in Containers

§ 7.24 Certificates of label approval (COLAs) for malt beverages imported in containers.

(a) *Application requirement.* Any person removing malt beverages in containers from customs custody for consumption must first apply for and obtain a certificate of label approval (COLA) covering the malt beverages from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued.

(b) *Release of malt beverages from customs custody.* Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained a COLA covering the malt beverages and is able to provide it (either electronically or on paper) upon request. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the product or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, an importer must provide evidence of label approval for a label used on a container of malt beverages that is subject to the COLA requirements of this part. This requirement may be satisfied by providing original COLAs, photocopies, or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved COLA.

(e) *Scope of this section.* The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of malt beverages.

(f) *Relabeling in customs custody.* Containers of malt beverages in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

(g) *State law.* Paragraphs (a) through (c) of this section apply only if the laws or regulations of the State in which the malt beverages are withdrawn require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. A State

requires that malt beverages be labeled in conformity with the requirements of subparts D through I of this part when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical in effect to those set forth in subparts D through I in this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State law or regulation.

§ 7.25 Rules regarding certificates of label approval (COLAs) for malt beverages imported in containers.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the certificate of label approval (COLA) on containers of malt beverages, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to the removal of malt beverages in containers from customs custody for consumption.

(c) *Application for a COLA.* The person responsible for the importation of malt beverages must obtain approval of the labels by submitting an application to TTB on Form 5100.31. A person may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

Administrative Rules

§ 7.27 Presenting certificates of label approval (COLAs) to Government officials.

A certificate holder must present the original or a paper or electronic copy of the appropriate certificate of label approval (COLA) upon the request of any duly authorized representative of the United States Government.

§ 7.28 Formulas, samples, and documentation.

(a) Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the malt beverage, or a sample of any malt beverage or ingredients used in producing a malt beverage. After the issuance of a COLA, or with regard to any malt beverage required to be covered by a COLA, the appropriate TTB officer may require a full and accurate statement of the contents of the container.

(b) A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. See § 7.11 for more information on forms and Formulas Online.

§ 7.29 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a brewer may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 7.21 or 7.24, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

§ 7.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on malt beverages in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by §§ 7.42, 7.43, or 7.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart:

(1) In no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product;

(2) Does not relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law: and,

(3) Does not relieve the person conducting the relabeling operations from any obligation to obtain permission from the owner of the brand where otherwise required.

§ 7.42 Authorized relabeling activities by brewers and importers.

(a) *Relabeling at brewery premises.* A brewer may relabel domestically bottled malt beverages prior to removal from, and after return to bond at, the brewery premises, with labels covered by a certificate of label approval (COLA) without obtaining separate permission from TTB for the relabeling activity, provided that the brewer is the certificate holder (and bottler).

(b) *Relabeling after removal from brewery premises.* A brewer may relabel domestically bottled malt beverages (or direct the relabeling of such malt beverages by an authorized agent) after removal from brewery premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that

the brewer is the certificate holder (and bottler).

(c) *Relabeling in customs custody.* Under the supervision of U.S. customs officers, imported malt beverages in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a certificate of label approval (COLA) upon their removal from customs custody for consumption. See § 7.24(b).

(d) *Relabeling after removal from customs custody.* The importer of malt beverages in containers may relabel such malt beverages (or direct the relabeling of such malt beverages by an authorized agent) after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

§ 7.43 Relabeling activities that require separate written authorization from TTB.

(a) *General.* Any permittee or brewer holding malt beverages for sale who needs to relabel the containers but is not the original bottler may apply for written permission for the relabeling of malt beverage containers. The appropriate TTB officer may permit relabeling of malt beverages in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law, or for the purpose of replacing damaged labels.

(b) *Application.* The written application must include:

(1) Copies of the original and proposed new labels;

(2) The circumstances of the request, including the reason for relabeling;

(3) The number of containers to be relabeled;

(4) The location where the relabeling will take place; and,

(5) The name and address of the person who will be conducting the relabeling operations.

§ 7.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Any label or other information that identifies the wholesaler, retailer, or consumer of the malt beverage may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval. Such information may be added before or after the containers are removed from brewery premises or released from customs custody. The information added:

(a) May not violate the provisions of subparts F, G, and H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other label on the container.

Subpart D—Label Standards

§ 7.51 Requirement for firmly affixed labels.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

(b) *Exception for keg labels.* The following provisions apply to labels on kegs with a capacity of 5.16 gallons or more that bear mandatory information, as defined by § 7.61(a)(5), and are in the form of a keg collar or tap cover, as defined in § 7.1.

(1) Such keg collars or tap covers are considered to be firmly affixed if removal would break or destroy the keg collar or tap cover in such a way that it cannot be reused.

(2) Such keg collars or tap covers are not required to be firmly affixed, provided that the name of the bottler or importer of the malt beverage, as applicable under §§ 7.66–7.68, is permanently or semi-permanently stated on the keg in the form of embossing, engraving, stamping, or through the use of a sticker or ink jet method.

(c) This section in no way affects the requirements of part 16 of this chapter regarding the mandatory health warning statement.

§ 7.52 Legibility and other requirements for mandatory information on labels.

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Subject to the exceptions below, mandatory information on labels, except brand names, must be separate and apart from any additional information.

(1) This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as ''premium malt beverage''), the name and address statement (such as ''Proudly brewed and bottled by ABC Brewing Co. in Pittsburgh, PA, for over 30 years''), or other information required by § 7.63(a). The statements required by § 7.63(b) may not include additional information.

(2) Mandatory information (other than an aspartame declaration required by § 7.63(b)(4)) may be contained among other descriptive or explanatory information if the script, type, or printing of the mandatory information is substantially more conspicuous than that of the descriptive or explanatory information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents or the name and address are blown into a glass container, they need not be contrasting. The color of the container and of the malt beverages must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 7.63(b)(4), which must appear in all capital letters, mandatory information may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

§ 7.53 Type size of mandatory information and alcohol content statements.

(a) All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(1) *Minimum type size—Containers of more than one-half pint.* All mandatory information (including an alcohol content statement required by § 7.63(a)(3)) must be in script, type, or printing that is at least two millimeters in height.

(2) *Minimum type size—Containers of one-half pint or less.* All mandatory information (including an alcohol content statement required by § 7.63(a)(3)) must be in script, type, or printing that is at least one millimeter in height.

(b) *Maximum type size for mandatory and optional alcohol content statements*—(1) *Containers of more than 40 fluid ounces.* An alcohol content statement, whether required or optional under this part, may not appear in script, type, or printing that is more than four millimeters in height on containers of malt beverages of more than 40 fluid ounces.

(2) *Containers of 40 fluid ounces or less.* An alcohol content statement, whether required or optional under this

part, may not appear in script, type, or printing that is more than three millimeters in height on containers of malt beverages of 40 fluid ounces or less.

§ 7.54 Visibility of mandatory information.

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 7.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See subpart N of this part for regulations pertaining to advertising materials.

§ 7.55 Language requirements.

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraph (c) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Malt beverages for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of malt beverages bottled for consumption within the Commonwealth of Puerto Rico.

§ 7.56 Additional information.

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subpart F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

Subpart E—Mandatory Label Information

§ 7.61 What constitutes a label for purposes of mandatory information.

(a) *Label.* Certain information, as outlined in § 7.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic, metal, or other matter;

(2) For purposes of the net contents statement and the name and address statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container;

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container; and

(5) Information on a keg collar or a tap cover of a keg, only if it includes mandatory information that is not repeated elsewhere on a label firmly affixed to the container and only if it meets the requirements of § 7.51.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G, and H of this part, but will not satisfy any requirements in this part for mandatory information that must appear on labels:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks, or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in subpart N of this part.

§ 7.62 Packaging (cartons, coverings, and cases).

(a) *General.* The term ''packaging'' includes any covering, carton, case, carrier, or other packaging of malt beverage containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Prohibition.* Any packaging of malt beverage containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited on labels by regulations in subpart F, G, or H of this part.

(c) *Other information on packaging.* The following requirements apply to optional information on packaging.

(1) The packaging may display any information that is not in conflict with the labeling on the container or containers within the packaging.

(2) If the packaging displays a brand name, it must display the brand name in its entirety. For example, if a brand name is required to be modified with additional information on the container or containers within the packaging, the packaging must also display the same modifying language.

(3) If the packaging displays a class or type designation it must be identical to the class or type designation appearing on the container or containers within the packaging. For example, if the packaging displays a class or type designation for a specialty product for which a statement of composition is required on the container, the packaging must include the statement of composition as well.

(d) *Labeling of containers within the packaging.* The container or containers within the packaging are subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

§ 7.63 Mandatory label information.

(a) *Mandatory information.* Malt beverage containers must bear a label or labels (as defined in § 7.61(a)) containing the following information:

(1) Brand name, in accordance with § 7.64;

(2) Class, type, or other designation, in accordance with subpart I of this part;

(3) Alcohol content, in accordance with § 7.65, for malt beverages that contain any alcohol derived from added nonbeverage flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol;

(4) Name and address of the bottler or importer (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.66, 7.67, or 7.68, as applicable; and

(5) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.70.

(b) *Disclosure of certain ingredients.* Certain ingredients must be declared on a label without the inclusion of any additional information as part of the statement as follows:

(1) *FD&C Yellow No. 5.* If a malt beverage contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5.''

(2) *Cochineal extract or carmine.* If a malt beverage contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as, ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the

coloring materials is used in a malt beverage that is removed from bottling premises or from customs custody on or after April 16, 2013.

(3) *Sulfites.* If a malt beverage contains 10 or more parts per million of sulfur dioxide or other sulfiting agent(s) measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used.

(4) *Aspartame.* If the malt beverage contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

§ 7.64 Brand name.

(a) *Requirement.* The malt beverage label must include a brand name. If the malt beverage is not sold under a brand name, then the name of the bottler or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the malt beverage. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

§ 7.65 Alcohol content.

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

(b) *How the alcohol content must be expressed.* The following rules apply to both mandatory and optional statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2) For malt beverages containing one half of one percent (0.5 percent) or more alcohol by volume, statements of alcohol content must be expressed to the nearest one-tenth of a percentage point, subject to the tolerance permitted by paragraph (c) of this section. For malt beverages containing less than 0.5 percent alcohol by volume, alcohol content may be expressed either to the nearest one-tenth or the nearest one-hundredth of a percentage point, and such statements are not subject to any tolerance. See paragraph (e) of this section for the rules applicable to such statements.

(3)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol percent by volume'';

(B) ''percent alcohol by volume''; or

(C) ''Alcohol by volume: percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(4) The statements listed in paragraph (b)(3) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(5) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''4.2% alc/vol'';

(ii) ''Alc. 4.0 percent by vol.'';

(iii) ''Alc 4% by vol''; and

(iv) ''5.9% Alcohol by Volume.''

(c) *Tolerances.* Except as provided by paragraph (d) of this section, a tolerance of 0.3 percentage points will be permitted, either above or below the stated alcohol content, for malt beverages containing 0.5 percent or more alcohol by volume. However, any malt beverage that 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. The tolerance provided by this paragraph does not apply in determining compliance with the provisions of § 7.5 regarding the percentage of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(d) *Low alcohol and reduced alcohol.* The terms ''low alcohol'' or ''reduced alcohol'' may be used only on labels of malt beverages containing less than 2.5 percent alcohol by volume. The actual alcohol content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c) of this section.

(e) *Non-alcoholic.* The term ''non-alcoholic'' may be used on labels of malt beverages only if the statement ''contains less than 0.5 percent (or .5%) alcohol by volume'' appears immediately adjacent to it, in readily legible printing, and on a completely contrasting background. No tolerances are permitted for malt beverages labeled as ''non-alcoholic'' and containing less than 0.5 percent alcohol by volume. A malt beverage may not be labeled with an alcohol content of 0.0 percent alcohol by volume, unless it is also labeled as ''alcohol free'' in accordance with paragraph (f) of this section, and contains no alcohol.

(f) *Alcohol free.* The term ''alcohol free'' may be used only on malt beverages containing no alcohol. No tolerances are permitted for ''alcohol free'' malt beverages.

§ 7.66 Name and address for domestically bottled malt beverages that were wholly fermented in the United States.

(a) *General.* Domestically bottled malt beverages that were wholly fermented in the United States and contain no imported malt beverages must be labeled in accordance with this section. (See §§ 7.67 and 7.68 for name and address requirements applicable to malt beverages that are not wholly fermented in the United States.)

(b) *Mandatory statement.* A label on the container must state the name and address of the bottler, in accordance with the rules set forth in this section.

(c) *Form of address.* The address consists of the city and State and must be consistent with the information reflected on the brewer's notice required under part 25 of this chapter. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(d) *Optional statements.* The bottler may, but is not required to, be identified by a phrase describing the function performed by that person, such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler. If one person performs more than one function, the label may so indicate (for

example, ''brewed and bottled by XYZ Brewery.'') If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person. The appropriate TTB officer may require specific information about the functions performed if necessary to prevent a misleading impression on the label.

(e) *Principal place of business.* The bottler's principal place of business may be shown in lieu of the actual place where the malt beverage was bottled if the address shown is a location where a bottling 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 malt beverage. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(f) *Multiple breweries under the same ownership.* If two or more breweries are owned or operated by the same person, the place where the malt beverage is bottled within the meaning of paragraph (a) of this section may be shown in one of the following two ways:

(1) *Listing of where bottled.* The place where the malt beverage is bottled may be shown as the only location on the label; or

(2) *Listing of all brewer's locations.* The place where the malt beverage is bottled may appear in a listing of the locations of breweries owned by that person if the place of bottling is not given less emphasis than any of the other locations. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(g) *Malt beverages bottled for another person.* (1) If malt beverages are bottled for another person, the label may state, in addition to (but not in lieu of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''brewed and bottled for'' or ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract brewing).

(2) If the same brand of malt beverage is brewed and bottled by two or more breweries that are not under the same ownership, the label for each brewery may set forth all the locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(h) *Use of trade names.* The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the brewer's notice.

§ 7.67 Name and address for domestically bottled malt beverages that were bottled after importation.

(a) *General.* This section applies to domestically bottled malt beverages that were bottled after importation. See § 7.68 for name and address requirements applicable to imported malt beverages that are imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Malt beverages that were subject to blending or other production activities after importation.* Malt beverages that were subject, after importation, to blending or other production may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 7.66 with regard to mandatory and optional labeling statements.

(c) *Malt beverages bottled after importation without blending or other production activities.* The label on malt beverages that are bottled without being subject to blending or other production activities in the United States after the malt beverages were imported must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer. The label must also state the words ''bottled by'' or ''packed by,'' followed by the name and address of the bottler, except that the following phrases are acceptable in lieu of the name and address of the bottler under the circumstances set forth below:

(1) If the malt beverages were bottled for the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(2) If the malt beverages were bottled by the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) In the situations set forth in paragraphs (c)(1) and (2) of this section, the address shown on the label may be that of the principal place of business of the importer who is also the bottler, provided that the address shown is a location where bottling takes place.

(d) *Use of trade names.* A trade name may be used if the trade name is listed on the importer's basic permit.

§ 7.68 Name and address for malt beverages that are imported in a container.

(a) *General.* This section applies to malt beverages that are imported in a container, as defined in § 7.1. See § 7.67 for rules regarding name and address requirements applicable to malt beverages that are domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* The label on malt beverages imported in containers, as defined in § 7.1, must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit that either makes the original customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit that is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and that places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 7.69 Country of origin.

For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

§ 7.70 Net contents.

The following rules apply to the net contents statement required by § 7.63.

(a) The volume of malt beverage in the container must appear on a label as a net contents statement using the following measures:

(1) If less than one pint, the net contents must be stated in fluid ounces or fractions of a pint.

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

(3) If more than one pint, but less than one quart, the net contents must be

stated in fractions of a quart, or in pints and fluid ounces.

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

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

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

(c) Metric measures may be used in addition to, but not in lieu of, the U.S. customary units of measurement and must appear in the same field of vision.

Subpart F—Restricted Labeling Statements

§ 7.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on malt beverage labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

Food Allergen Labeling

§ 7.82 Voluntary disclosure of major food allergens.

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

(1) *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 the 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* means the name 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);

(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 names ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a malt beverage product may, on a voluntary basis, be declared on a label. 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 § 7.83. 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, aspartame, and cochineal extract or carmine, see § 7.63(b).

§ 7.83 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 § 7.82. The burden is on the petitioner to provide scientific evidence (as well as 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 § 7.82(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 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 website (*https://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 website will be available to the public pursuant to the Freedom of Information Act (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.

Production and Other Claims

§ 7.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with the United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

§ 7.85 [Reserved]

§ 7.86 [Reserved]

§ 7.87 [Reserved]

Subpart G—Prohibited Labeling Practices

§ 7.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 7.102 False or untrue statements.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 7.103 Obscene or indecent depictions.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

§ 7.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 7.122 Misleading statements or representations.

(a) *General prohibition.* Malt beverage labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the malt beverage, or with regard to any other material factor.

(b) *Ways in which statements or representations may be found to be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) All claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on malt beverage labels, containers, or packaging that does not have a reasonable basis in fact or cannot be adequately substantiated upon the request of the appropriate TTB officer is considered misleading.

§ 7.123 Guarantees.

Malt beverage labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely

to mislead the consumer. However, money-back guarantees are not prohibited.

§ 7.124 Disparaging statements.

(a) *General.* Malt beverage labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as ''Our ale contains more hops than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

§ 7.125 Tests or analyses.

Malt beverage labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

§ 7.126 Depictions of government symbols.

Representations of the armed forces or flags. Malt beverage labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

§ 7.127 [Reserved]

§ 7.128 Claims related to distilled spirits.

(a) *General.* Except as provided in paragraph (b) of this section, 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 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.

(b) *Exceptions.* This section does not prohibit:

(1) A truthful and accurate statement of alcohol content, in conformity with § 7.65;

(2) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall label does not create a misleading impression as to the identity of the product;

(3) The use of a cocktail name as a brand name or a distinctive or fanciful name of a malt beverage, provided that the overall labeling does not present a misleading impression about the identity of the product; or

(4) The use of truthful and accurate statements about the production of the malt beverage as part of a statement of composition or otherwise, such as ''aged in whisky barrels,'' as long as such statements do not create a misleading impression as to the identity of the product.

§ 7.129 Health-related statements.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 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, a malt beverage, or any substance found within the malt beverage product, 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 alcohol beverage product, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of the calorie, carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of malt beverages, 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 alcohol, malt beverages, or any substance found within the malt beverage, and a disease or health-related condition.

(3) *Health-related directional statement* means 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.

(b) *Rules for malt beverage labels, containers, and packaging*—(1) *Health-related statements.* In general, malt beverage labels, containers, or packaging 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.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA) as needed on the use of specific health claims on labels, containers, or packaging. If FDA determines that the use of such a 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 the malt beverage label.

(ii) 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; is 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.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) 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

(ii)(A) 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

(B) 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.

§ 7.130 Appearance of endorsement.

(a) *General.* Malt beverage labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization if its use is likely to lead a consumer to falsely 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. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

(c) *Exception.* This section does 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. This section also does not apply to the use by any industry member 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 the industry member or its predecessors in interest prior to August 29, 1935.

§ 7.131 [Reserved]

§ 7.132 [Reserved]

Subpart I—Classes and Types of Malt Beverages

§ 7.141 Class and type.

(a) *Products known to the trade.* The class of the malt beverage must be stated on the label (see § 7.63). The type of the malt beverage may be stated, but is not required to appear on the label. Statements of class and type must conform to the designation of the product as known to the trade. All parts of the designation must appear together.

(b) *Malt beverage specialty products*—(1) *General.* A malt beverage specialty product is a malt beverage that does not fall under any of the class designations set forth in §§ 7.142 through 7.144 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials or the use of certain types of production processes where the appropriate TTB officer has not determined that such ingredients or processes are generally recognized as traditional in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.''

(2) *Designation.* A malt beverage specialty product must be designated with a distinctive or fanciful name, together with a statement of the composition of the product, in accordance with § 7.147. This statement will be considered the class designation for the purposes of this part. All parts of the designation must appear together.

§ 7.142 Class designations.

The following class designations may be used in accordance with this section:

(a) Any malt beverage, as defined in § 7.1, may be designated simply as a ''malt beverage.''

(b)(1) The class designations ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade understanding of those designations. These designations may be preceded or followed by descriptions of the color of the product (such as ''amber,'' ''brown,'' ''red,'' or ''golden'') as well as descriptive terms such as ''dry,'' ''export,'' ''cream,'' and ''pale.''

(2) No product other than a malt beverage fermented at a 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) may bear any of these class designations.

§ 7.143 Class and type—special rules.

The following special rules apply to specified class and type designations:

(a) *Reconstituted malt beverages.* Malt beverages that have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide must 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 must appear immediately adjacent to, 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 must appear in lettering of substantially the same size and kind. However, ice beers, described in paragraph (c) of this section, which are produced by the removal of less than 0.5 percent of the volume of the beer in the form of ice crystals and that retain beer character are not considered concentrated.

(b) *Half and half.* No product may be designated with the type designation ''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 immediately adjacent to the designation ''half and half'' (for example, ''Half and Half, Porter and Stout''). This does not preclude the use of terms such as ''half and half'' as part of a distinctive or fanciful name that refers to flavors added to a malt beverage designated in accordance with trade understanding or with a statement of composition.

(c) *Ice beer.* Malt beverages supercooled during the brewing process to form ice crystals may be labeled with the type designation ''ice'' preceding the class designation (beer, ale, etc.).

(d) *Black and tan.* A product composed of two classes of malt beverages may be designated with the type designation ''black and tan,'' and the class and type designation is the names of the two classes of malt beverages in conjunction with ''black and tan'' (for example, ''Black and Tan, Stout and Ale'').

(e) *Wheat beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted wheat may be designated with the type designation ''wheat'' preceding the applicable class designation.

(f) *Rye beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted rye may be designated with the type designation ''rye'' preceding the applicable class designation.

(g) *Barley wine ale.* The term ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) wine style ale'' may be used in accordance with trade understanding.

(h) *Malt beverages aged in barrels*—(1) *General.* Label designations for malt beverages aged in barrels or with woodchips, spirals, or staves derived

from barrels may, but are not required to, include a description of how the product was aged. Thus, for example, acceptable designations for a standard beer aged in an oak barrel would include ''beer,'' ''oak aged beer,'' and ''beer aged in an oak barrel.''

(2) *Barrels previously used in the production or storage of wine or distilled spirits.* Malt beverages aged in barrels previously used in the production or storage of wine or distilled spirits, or with woodchips, spirals, or staves derived from barrels previously used in the production or storage of wine or distilled spirits, or from woodchips previously used in the aging of distilled spirits or wine may, but are not required to, include a description of how the product was aged.

(i) Examples of acceptable designations for a standard beer aged in a wine barrel include ''beer,'' ''beer aged in a wine barrel,'' and ''wine barrel aged beer.''

(ii) Examples of acceptable designations for an ale brewed with honey and aged in a bourbon barrel include ''honey ale'' and ''bourbon barrel aged honey ale'' but not simply ''ale'' or ''bourbon barrel aged ale.''

(3) *Misleading designations.* Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited. As set forth in § 7.122, designations may not mislead consumers as to the age, origin, identity, or other characteristics of the malt beverage. Examples of designations that would be prohibited under this provision are ''bourbon ale,'' ''bourbon-flavored lager,'' ''Chardonnay lager,'' or ''lager with whisky flavors.''

(i) *Other designations.* Other type designations (such as ''milk'' preceding the class designation ''stout'') may be applied in conformance with trade understanding.

§ 7.144 Malt beverages fermented or flavored with certain traditional ingredients.

(a) *General.* Any malt beverage that has been fermented or flavored only with one or more ingredients (such as honey or certain fruits) that the appropriate TTB officer has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' may be labeled in accordance with trade understanding following the rules set forth in this section.

(1) A list of such traditional ingredients may be found on the TTB website (*https://www.ttb.gov*).

(2) If the malt beverage has also been fermented or flavored with ingredients that the appropriate TTB officer has not determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor,'' it is a malt beverage specialty and must be labeled in accordance with the statement of composition rules in § 7.147.

(b) *Rules for designation.* (1) A designation in accordance with trade understanding must identify the base product, such as ''malt beverage,'' ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' along with a modifier or explanation that provides the consumer with adequate information about the fruit, honey, or other food ingredient used in production of the malt beverage. The label may include additional information about the production process (such as ''beer fermented with cherry juice'').

(2) Where more than one exempted ingredient is included, a designation in accordance with trade understanding may identify each ingredient (such as ''Ale with cherry juice, cinnamon, and nutmeg''), refer to the ingredients by category (such as ''Fruit ale,'' ''Spiced ale,'' or ''Ale with natural flavors''), or simply include the ingredient or ingredients that the bottler or importer believes best identify the product (such as ''Cherry ale,'' ''Cinnamon ale,'' or ''Nutmeg ale''). The designation must distinguish the product from a malt beverage, beer, ale, porter, stout, lager, or malt liquor that is not brewed or flavored with any of these ingredients; thus, unmodified designations such as ''beer,'' ''stout,'' or ''ale'' would not be acceptable.

(c) *Other requirements.* All parts of the designation must appear together and must be readily legible on a contrasting background. Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited.

§ 7.145 Malt beverages containing less than 0.5 percent alcohol by volume.

(a) Products containing less than 0.5 percent of alcohol by volume must bear the class designation ''malt beverage,'' ''cereal beverage,'' or ''near beer.''

(b) 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.

(c) No product containing less than 0.5 percent of alcohol by volume may bear the class designations ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or any other class or type designation commonly applied to malt beverages containing 0.5 percent or more of alcohol by volume.

§ 7.146 Geographical names.

(a) Geographical names for distinctive types of malt beverages (other than names found under paragraph (b) 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.

(b) 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.

(c) Except as provided in § 7.64(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.

§ 7.147 Statement of composition.

(a) A statement of composition is required to appear on the label for malt beverage specialty products, as defined in § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

(b) When required by this part, a statement of composition must contain all of the following information, as applicable:

(1) *Identify the base class and/or type designation.* The statement of composition must clearly identify the base class and/or type designation of the malt beverage product (*e.g.,* ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or ''malt beverage'').

(2) *Identify added flavoring material(s) used before, during, and after fermentation.* The statement of composition must disclose fermentable or non-fermentable flavoring materials added to the malt beverage base class.

(i) If the flavoring material is used before or during the fermentation process, the statement of composition must indicate that the malt beverage was fermented or brewed with the flavoring material (such as ''Beer Fermented with grapefruit juice'' or ''Grapefruit Ale''). If the flavoring material is added after fermentation, the statement of composition must describe that process, using terms such as ''added,'' ''with,'' ''infused,'' or ''flavored'' (such as ''Grapefruit-flavored ale.'').

(ii) If a single flavoring material is used in the production of the malt beverage product, the flavoring material may be specifically identified (such as ''Ale Fermented with grapefruit juice'') or generally referenced (such as ''Ale with natural flavor''). If two or more flavoring materials are used in the production of the malt beverage, each flavoring material may be specifically identified (such as ''lemon juice, kiwi juice'' or ''lemon and kiwi juice'') or the characterizing flavoring material may be specifically identified and the remaining flavoring materials may be generally referenced (such as ''kiwi and other natural and artificial flavor(s)''), or all flavors may be generally referenced (such as ''with artificial flavors'').

(3) *Identify added coloring material(s).* The statement of composition must disclose the addition of coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (such as ''caramel color,'' ''FD&C Red #40,'' ''annatto,'' etc.) or as a general statement, such as ''Contains certified color'' for colors approved under 21 CFR subpart 74 or ''artificially colored'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5, carmine, and cochineal extract require specific disclosure in accordance with § 7.63(b)(1) and (2) and that specific disclosure may appear either in the statement of composition or elsewhere in accordance with those sections.

(4) *Identify added artificial sweeteners.* The statement of composition must disclose any artificial sweetener that is added to a malt beverage product, whether the artificial sweetener is added directly or through flavoring material(s). The artificial sweetener may be identified specifically by either generic name or trademarked brand name, or as a general statement (such as ''artificially sweetened'') to indicate the presence of any one or combination of artificial sweeteners. However, if aspartame is used, an additional warning statement is required in accordance with § 7.63(b)(4).

Subparts J–L—[Reserved]

Subpart M—Penalties and Compromise of Liability

§ 7.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 7.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling and advertising provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 7.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

Subpart N—Advertising of Malt Beverages

§ 7.231 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 by electronic or internet media, 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 this subpart: *Provided,* That such sections shall not apply to outdoor advertising in place on September 7, 1984, but shall apply upon replacement, restoration, or renovation of any such advertising; and *provided further,* that this subpart 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 or internet broadcast, unless such retailer or publisher or broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages, directly or indirectly, or through an affiliate.

§ 7.232 Definitions.

As used in this subpart, the term ''advertisement'' or ''advertising'' 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, internet or other electronic site or social network, or in any written, printed, graphic, or other matter (such as hang tags) accompanying, but not firmly affixed to, the container, representations made on shipping cases, or in any billboard, sign, or other outdoor display, 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 this part.

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

§ 7.233 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

(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 responsible advertiser's name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted. 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.

§ 7.234 Legibility of mandatory information.

(a) Statements required under this subpart that appear in any written, printed, or graphic advertisement must 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 or name and other contact information (such as, telephone number, website, or email) 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 must be so stated as to be clearly a part of the advertisement and may 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 must be so stated in both the print and audiovisual media that it will be readily apparent to the persons viewing the advertisement.

§ 7.235 Prohibited practices.

(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 false or misleading statement that explicitly or implicitly disparages a competitor's product. This does not prevent truthful and accurate comparisons between products (such as ''Our ale contains more hops than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

(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) [Reserved].

(7) [Reserved].

(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. Advertisements may include the types of statements that are listed as being not prohibited on labels in § 7.128(b).

(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 container in an advertisement shall be a reproduction of an approved label, except that malt beverage labels not required to be covered by a COLA in accordance with the rules in § 7.21 of this chapter may also appear on advertisements.

(c) [Reserved]

(d) *Class.* (1) No product containing less than 0.5 percent 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 0.5 percent 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 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 to the other or others, and if as to such latter the representations contravene any provision of this subpart or are in any respect untrue.

(g) *Representations of the armed forces or flags.* Advertisements may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(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.

(i) *Organic.* Any use of the term ''organic'' in the 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.

§ 7.236 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product in a manner that is false or misleading.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging in a false or misleading manner, 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.

Subpart O—Paperwork Reduction Act

§ 7.241 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Table.* The following table identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

TABLE 1 TO PARAGRAPH (b)

Section where contained	Current OMB Control No.
7.11	1513–0111
7.21	1513–0020
7.22	1513–0020
7.24	1513–0020
	1513–0064
7.25	1513–0020
7.27	1513–0020
7.28	1513–0122
7.29	1513–0020
7.62	1513–0087
7.63	1513–0084
	1513–0087
7.66	1513–0085
7.67	1513–0085
7.81	1513–0087
7.82	1513–0121
7.83	1513–0121
7.84	1513–0087
7.233	1513–0087

Signed: January 7, 2022.

Mary G. Ryan,

Administrator.

Approved: January 7, 2022.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2022–00841 Filed 2–8–22; 8:45 am]

BILLING CODE 4810–31–P