This document is scheduled to be published in the
Federal Register on 11/26/2018 and available online at
https://federalregister.gov/d/2018-24446, and on **govinfo.gov**

[BILLING CODE: 4810–31–P]

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, 14, and 19

[Docket No. TTB–2018–0007; Notice No. 176]

RIN: 1513–AB54

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

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is proposing to amend its regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages. TTB proposes to reorganize and recodify these regulations in order to simplify and clarify regulatory standards, incorporate guidance documents and current policy into the regulations, and reduce the regulatory burden on industry members where possible.

DATES: TTB must receive comments on this proposal on or before [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please send your comments on this document to one of the following addresses:

- Internet: https://www.regulations.gov (via the online comment form for this document as posted within Docket No. TTB–2018–0007 at "Regulations.gov," the Federal e-rulemaking portal);
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the **Public Participation** section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

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. Current TTB Alcohol Beverage Labeling and Advertising Regulations

C. The Certificate of Label Approval (COLA) Process

D. Modernization of the Alcohol Beverage Labeling and Advertising Regulations

E. Plain Language Principles

F. Scope of this Rulemaking

II. Proposed Revisions

A. General Reorganization of the Parts

B. Proposed Changes that Apply to Parts 4, 5 and 7

C. Proposed Changes Specific to 27 CFR Part 4 (Wine)

D. Proposed Changes Specific to 27 CFR Part 5 (Distilled Spirits)

E. Proposed Changes Specific to 27 CFR Part 7 (Malt Beverages)

F. Proposed 27 CFR Part 14 (Advertising)

G. Impact on Public Guidance Documents

H. Impact on Current Labels

III. Derivation Tables for Proposed Parts 4, 5, 7, and 14

IV. Public Participation

A. Comments Sought

B. Submitting Comments

C. Confidentiality

D. Public Disclosure

V. Regulatory Analyses and Notices

A. Regulatory Flexibility Act

B. Executive Order 12866

C. Paperwork Reduction Act

VI. 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. The FAA Act was enacted in 1935 and also contains provisions regarding the requirements for basic permits that allow people to engage in business as producers, importers, and wholesalers, and the regulation of unfair trade practices.

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 various authorities to administer and enforce this law to the TTB Administrator through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), "Alcohol and Tobacco Tax and Trade Bureau," dated January 24, 2003).

1. History of the FAA Act

After the repeal of Prohibition by the enactment of the Twenty-First Amendment in 1933, the alcohol beverage industry was subject to Federal regulation under the codes of fair competition authorized by the National Industrial Recovery Act. By Executive order, the President created the Federal Alcohol Control Administration to administer the codes of fair competition for the alcohol beverage industry. In 1935, the Supreme Court struck down the

provisions of the National Industrial Recovery Act as unconstitutional. See Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). After that decision, in order to provide for the orderly regulation of the alcohol beverage industry, Congress enacted the FAA Act in August of 1935.

The legislative history of the FAA Act provides some insight concerning the general purpose of the FAA Act's labeling provisions, which authorize TTB to regulate the labeling of alcohol beverage products:

> * * * the provisions of this bill show that the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary. The purpose was to provide such regulations, not laid down in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary. Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straight-forward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle. (See Hearings on H.R. 8539 before the Committee on Ways and Means, House of Representatives, 74th Cong., 1st Sess. 10 (1935).)

2. Labeling and Advertising Provisions of the FAA Act

Section 105(e) of the FAA Act, codified in the United States Code at 27 U.S.C. 205(e), sets forth requirements for labeling of wine (which is defined in the FAA Act to cover only wines that contain at least 7 percent alcohol by volume), distilled spirits, and malt beverages (collectively referred to as "alcohol beverages" throughout this document). This section of the FAA Act authorizes the Secretary to issue regulations to prevent deception of the consumer, to

provide the consumer with "adequate information" as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product.

3. FAA Act Prohibition of Sale or Shipment of Mislabeled Products

Section 105(e) of the FAA Act (27 U.S.C. 205(e)) also 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. Violations of section 105(e) are misdemeanors that are punishable by a fine. See 27 U.S.C. 207.

The prohibition in section 105(e) applies to any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of wine, distilled spirits or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits. The law makes it unlawful for such persons, directly or indirectly or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce, in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any wine, distilled spirits, or malt beverages in bottles, unless the products are bottled, packaged, and labeled in conformity with the regulations.

4. Authorization of Labeling Regulations in the FAA Act

The FAA Act provides specific guidance as to what the labeling regulations should cover, but builds in a "zone of discretion" for TTB to exercise in implementing these regulations. See Center for Science in the Public Interest v. Department of the Treasury, 797 F.2d 995 (D.C. Cir. 1986). The

following provides a summary of the statutory provisions with regard to the labeling of wine, distilled spirits, and malt beverages under section 105(e) of the FAA Act (27 U.S.C. 205(e)).

a. Prohibition of consumer deception. Section 105(e)(1) of the FAA Act (27 U.S.C. 205(e)(1)) authorizes the issuance of regulations that prohibit deception of the consumer with respect to such products or the quantity thereof, and prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that the Secretary finds to be likely to be misleading to the consumer. This section provides the basis for many of TTB's regulations on prohibited practices with respect to labeling statements.

b. Adequate information as to the identity, quality, and alcohol content of products, as well as the net contents and the manufacturer/bottler/importer. Section 105(e)(2) of the FAA Act (27 U.S.C. 205(e)(2)) authorizes the issuance of regulations to ensure that labels provide the consumer with adequate information as to the identity and quality of the product, the alcohol content thereof, the net contents of the package, and the manufacturer or bottler or importer of the product. This section provides the basis for most of the mandatory information requirements in the TTB labeling regulations.

With regard to alcohol content, section 105(e)(2) sets out different requirements for wine, distilled spirits, and malt beverages. This section provides the Secretary with the authority to issue regulations that require alcohol content statements on labels of distilled spirits products and for wines with an alcohol

content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content at or below 14 percent. Furthermore, the FAA Act contains language that specifically prohibits placement of alcohol content statements on malt beverage labels, unless required by State law. In 1995, that statutory ban was struck down on First Amendment grounds by the U.S. Supreme Court in Rubin v. Coors Brewing Co., 514 U.S. 476 (1995) (hereinafter referred to as the "Coors" decision).

c. Statement of neutral spirits. Section 105(e)(3) of the FAA Act (27 U.S.C. 205(e)(3)) authorizes the issuance of regulations that require an accurate statement in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in the case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled. These very specific statutory provisions are incorporated into the TTB distilled spirits labeling regulations.

d. Prohibition of statements that are disparaging, false, misleading, obscene, or indecent. Section 105(e)(4) (27 U.S.C. 205(e)(4)) authorizes the issuance of regulations to prohibit labeling statements that are disparaging of a competitor's products or are false, misleading, obscene or indecent. This provision is reflected in TTB's current regulations on prohibited practices.

e. Prohibition of implied endorsements that are false or misleading. Section 105(e)(5) (27 U.S.C. 205(e)(5)) authorizes the issuance of regulations that prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or an abbreviation thereof, and will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. Certain "grandfathering" provisions are included in this section. These provisions are incorporated into the current regulations on prohibited practices.

5. Prohibition of Alteration, Mutilation, Destruction, Obliteration, or Removal of Labels

Section 105(e) makes it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein. An exception is made where the activity is authorized by Federal law. The FAA Act also authorizes the Secretary to issue regulations authorizing relabeling for the purposes of compliance with the requirements of section 105(e) or of State law. These regulations are found in parts 4, 5 and 7 of 27 CFR.

6. Certificate of Label Approval Requirements

Section 105(e) of the FAA Act sets out very specific requirements for the issuance of certificates of label approval (COLAs) by the Secretary. The law

provides that "[i]n order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection," certain persons are required to obtain a COLA prior to bottling distilled spirits, wine, or malt beverages.

The persons covered by this requirement under the law are bottlers of distilled spirits; producers, blenders, and wholesalers of wine, and proprietors of a bonded wine storeroom; and brewers and wholesalers of malt beverages. With regard to imported products, the law provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without first obtaining a COLA. The law provides that such COLAs are to be issued in such manner and form as the Secretary shall prescribe by regulations.

The law goes on to allow for the issuance of certificates of exemption, pursuant to regulations issued by the Secretary, when an applicant has shown to the satisfaction of the Secretary that the wine, distilled spirits, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. The law provides for the issuance of these certificates to bottlers of distilled spirits; producers, blenders, or wholesalers of wine, or proprietors of a bonded wine storeroom; and brewers and wholesalers of malt beverages. However, the law does not authorize the issuance of certificates of exemption to persons removing alcohol beverages in containers from customs custody,

presumably because those products will by definition be introduced in interstate or foreign commerce.

7. Advertising Provisions of the FAA Act

Section 105(f) of the FAA Act (27 U.S.C 205(f)) provides similar authority to the Secretary to prescribe regulations with respect to the advertising of wine, distilled spirits, and malt beverages.

The Secretary is authorized to prescribe regulations that will prevent deception of the consumer and to prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that the Secretary finds to be likely to mislead the consumer. See 27 U.S.C. 205(f)(1). The Secretary is also authorized to prescribe regulations to ensure that advertisements provide the consumer with adequate information as to the identity and quality of the products advertised, the alcohol content thereof, and the person responsible for the advertisement. See 27 U.S.C. 205(f)(2). The statute bans alcohol content statements on advertisements of both wine and malt beverages; this provision was not the subject of the Supreme Court's decision in Coors.

The FAA Act contains advertising provisions that are very similar to the labeling provisions with regard to disclosure of neutral spirits (27 U.S.C. 205(f)(3)) and the prohibition of statements that are disparaging, false, misleading, obscene, or indecent (27 U.S.C. 205(f)(4)). The FAA Act also authorizes the issuance of regulations to prevent advertising statements that are

inconsistent with any statement on the labeling of the products advertised. (27 U.S.C. 205(f)(5)).

8. Special Rules for Malt Beverages under the FAA Act

The statutory requirements for malt beverages under the FAA Act differ from the requirements for distilled spirits and wine. Most notably for purposes of this document, the labeling provisions of the FAA Act apply to the labeling of 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 to the extent that the law of such State imposes similar requirements with respect to the labeling" of malt beverages sold within that State. See 27 U.S.C. 205(f).

The penultimate paragraph of section 105(f) also provides that the advertising provisions of the FAA Act apply to the advertising 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 of that State, only to the extent that the law of that State imposes "similar requirements" with respect to the advertising of malt beverages to be sold within that State.

9. Alcoholic Beverage Labeling Act (ABLA)

The Alcoholic Beverage Labeling Act of 1988 (ABLA) 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. This requirement applies to both interstate and intrastate sale and distribution of alcoholic beverages. In addition, the health warning statement must appear on containers of alcoholic beverages that are sold, distributed, or shipped to

members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement required by ABLA advises consumers of the risks of birth defects to pregnant women, impairment of the ability to operate a car or other machinery, and other potential health problems resulting from the consumption of alcoholic beverages. As stated in 27 U.S.C. 213:

> The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information * * *.

ABLA provides that no State may require any statement concerning alcoholic beverages and health, other than the required health warning statement, on any alcoholic beverage container, box, carton, or other package that contains such a container. See 27 U.S.C. 216.

This proposed rule does not affect ABLA labeling requirements.

10. Internal Revenue Code Marking Requirements

In addition to the FAA Act and ABLA, Chapter 51 of the Internal Revenue Code of 1986 (IRC), (26 U.S.C. 5001 et seq.), sets forth certain marking requirements for alcohol beverage products. Chapter 51 of the IRC imposes Federal excise taxes on beer, wine, and distilled spirits, and provides for the regulation of alcohol beverages to protect the revenue associated with those taxes. The tax rates differ depending on the product, and the marking

requirements provide for the proper determination of tax liability based on the identity of the product.

This proposed rule does not amend IRC labeling requirements. However, some IRC labeling regulations require compliance with certain FAA Act labeling regulations by cross-referencing labeling provisions in 27 CFR parts 4, 5 or 7, as applicable.

B. Current TTB Alcohol Beverage Labeling and Advertising Regulations

1. History

The first regulations implementing the labeling and advertising provisions of the FAA Act were promulgated in 1936 by the Federal Alcohol Administration (FAA). Over the next several decades, various amendments to these regulations were published by TTB's other predecessor agencies, the Internal Revenue Service (IRS), and the Bureau of Alcohol, Tobacco and Firearms (ATF). TTB assumed responsibility for the enforcement and implementation of these regulations in January of 2003, pursuant to the Homeland Security Act of 2002.

2. FAA Act-based Regulations

The TTB regulations that implement the labeling and advertising provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I). Specifically, these regulations are codified in 27 CFR Part 4, Labeling and Advertising of Wine (27 CFR part 4); 27 CFR Part 5, Labeling and Advertising of Distilled Spirits (27 CFR part 5); and 27 CFR Part 7, Labeling and Advertising of Malt Beverages (27 CFR part 7).

a. Mandatory and prohibited labeling information. The TTB regulations contained in 27 CFR parts 4, 5, and 7 require that all wine, distilled spirits, and malt beverages sold or shipped in, or otherwise introduced into, interstate commerce bear labels that contain certain mandatory information. The regulations also set conditions on the use of certain non-mandatory information and specifically prohibit labeling statements that are false or tend to create a misleading impression.

Provisions in parts 4, 5, and 7 currently require similar mandatory information to appear on labels of wine, distilled spirits, and malt beverages, with some exceptions and with some notable differences among the commodities. The regulations in some circumstances also contain provisions regarding the placement of the mandatory information. Commodity-specific rules are discussed more fully in later sections of this document, but a general description of the current labeling requirements is provided here.

The mandatory information that must appear on alcohol beverage labels includes such things as the brand name of the product; a statement of the class, type, or other designation of the product; the name and address of the bottler or importer; a statement of the net contents; and declarations relating to sulfites or added colors in the product. Alcohol content statements, expressed as a percentage of alcohol by volume, are required for distilled spirits, wine over 14 percent alcohol by volume, and certain flavored malt beverages. These requirements, as well as certain exceptions to these requirements, are set forth later in this preamble.

With regard to the class, type, or other designation, the regulations specify and describe 9 “classes” of wine, including “grape wine” and “fruit wine,” and 12 “classes” of distilled spirits, including “whisky” and “brandy.” Some classes are further subdivided into “types.” For example, types of “grape wine” include “table wine” and “dessert wine,” while types of whisky include “bourbon whisky” and “blended whisky.” For malt beverages, the TTB regulations refer to certain classes but do not provide specific standards of identity for those classes. Instead, the regulations provide that statements of class and type must “conform to the designation of the product as known to the trade.”

If a wine or distilled spirit does not fall within any class, and if a malt beverage is not known to the trade under a particular designation, the regulations require that a truthful and adequate statement of composition appear on the label as the statement of class and type. While the term “statement of composition” is not currently defined in the regulations, TTB’s general policy has been to require that such a statement identify the base product and any added flavoring or coloring materials. For example, a statement of composition may be “grape wine with raspberry flavor added,” “a blend of vodka and coconut liqueur,” or “ale brewed with watermelon juice.”

As noted above, the “net contents” must appear on containers. This is required for all three commodities. TTB regulations provide standards of fill for wine and distilled spirits products but not for malt beverages. This means that the net contents of wine and distilled spirits containers must be consistent with

specified quantities prescribed by the standards of fill requirements (such as 750 milliliters).

Certain types of information or representations are prohibited from appearing on alcohol beverage labels, and these are set forth in regulations entitled "prohibited practices." See current 27 CFR §§ 4.39, 5.42, and 7.29, for wine, distilled spirits, and malt beverages, respectively. Some labeling practices are prohibited outright on alcohol beverage labels for any of the commodities. For example, no false or obscene statement may appear on any alcohol beverage label or container. Other practices are prohibited if presented in a manner that is misleading.

Some practices may be prohibited for just one of the commodities. For example, existing regulations prohibit certain uses of the term "pure" on distilled spirits labels. Other labeling practices may be used on labels if they comply with certain rules. These include the use of a living person's name or likeness and statements making claims about whether the product is organic.

b. Alcohol advertising regulations. TTB also promulgates regulations covering the advertising of wine, distilled spirits, and malt beverages. These regulations prescribe mandatory information that must be included in an advertisement (such as identification of the responsible party) and also prohibit certain practices similar to the prohibited practices for labels. The advertising regulations are currently found in subpart G of part 4, subpart H of part 5, and subpart F of part 7.

3. TTB's ABLA-based Regulations

As previously noted, all alcohol beverages bottled or imported for sale or distribution in the United States must bear the health warning statement required by the ABLA, even if the product is not sold in interstate commerce. The regulations promulgated under the authority of the ABLA are set forth in 27 CFR Part 16, Alcoholic Beverage Health Warning Statement (27 CFR part 16). As noted above, this proposal does not affect ABLA labeling requirements.

4. TTB's IRC Marking Regulations

Finally, regulations implementing the IRC marking requirements appear in 27 CFR parts 19, 24, and 25 (relating to, respectively, domestic producers and bottlers of distilled spirits, wines, and beer), as well as 27 CFR parts 26, 27, and 28 (relating to distilled spirits, wine, and beer that are, respectively, brought into the United States from Puerto Rico and the Virgin Islands, imported into the United States, and exported from the United States). As noted above, this proposal does not affect these IRC-based regulations.

C. The Certificate of Label Approval (COLA) Process

As noted above, a person who intends to bottle wine, distilled spirits, or malt beverages, or remove those products from customs custody in bottles, for introduction into interstate or foreign commerce must, before doing so, obtain approval of the labels for the bottles through a COLA issued by TTB. Currently, each application for a COLA is reviewed by a TTB specialist for compliance with the FAA Act and TTB regulations. In fiscal year 2015, TTB received over

153,000 applications for label approval. The time between the date of application and final TTB determination on the application averaged approximately 24 days.

In part, the increase in the number of COLA applications is due to the growing number of industry members submitting applications and to product innovations and expansions in product lines by industry members. In addition, because industry members seek to bring products to market quickly, they may submit label approval applications early in their product development process, before the product and its marketing have been finalized. These industry members may submit several applications for different potential labels to cover the different possible ways that product may eventually be formulated and marketed once ready for market.

To implement the FAA Act provision requiring the issuance of COLAs, TTB regulations provide a process through which a person can submit an application for approval of a label, along with a copy of the label, and obtain TTB approval of the label through the issuance by TTB of a COLA. The COLA is evidence that a label has been reviewed for compliance with the TTB regulations and approved for use. The requirement to obtain a COLA for domestic and imported products is set forth in subparts E and F of part 4 (for wine), subparts E and F of part 5 (for distilled spirits), and subparts D and E of part 7 (for malt beverages). The procedures governing the issuance and revocation of COLAs are set forth in 27 CFR Part 13, Labeling Proceedings (27 CFR part 13).

The regulations also authorize the issuance of certificates of exemption for wine and distilled spirits when the applicant establishes that the wine or distilled

spirits product is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. It should be noted that TTB and its predecessor agencies have never issued regulations requiring certificates of exemption for malt beverages that will not be sold or otherwise introduced in interstate or foreign commerce. Furthermore, the regulations do not require malt beverages that will not be sold or otherwise introduced in interstate or foreign commerce to be covered by a certificate of label approval. See TTB Ruling 2013–1. This issue will be discussed later in this preamble.

1. COLA Streamlining Initiatives

TTB has undertaken several initiatives to streamline the label approval process. In 2003, TTB implemented COLAs Online, a system that allows industry members to submit electronic applications for label approval. Currently, over 90 percent of COLA applications are submitted and processed electronically. More recently, in 2013, TTB began electronically processing applications that are received on paper.

On July 5, 2012, TTB published a revised version of TTB Form 5100.31, "Application for and Certification/Exemption of Label/Bottle Approval." The most significant change was to expand the list of items that may be changed on an approved alcohol beverage label without resubmission of the label for TTB approval. This new policy, which is reflected on the form, reduces the number of label applications that industry members would otherwise send to TTB. As a result, label applications were reduced by 8 percent. In 2014 TTB expanded the

list of changes that may be made to approved labels without requiring those labels to be resubmitted to TTB for review – this expanded list has been incorporated into the form (see TTB Industry Circular 2014-02 and TTB F 5100.31).

TTB has also been working on additional initiatives to streamline label review. These include making processing improvements designed to speed up review turnaround times; updating labeling guidance on the TTB Web site (https://www.ttb.gov) to help industry members comply with its labeling requirements; and researching industry needs and studying other Federal agencies' best practices so that TTB can continue to improve its label review process in the future.

D. Modernization of the Alcohol Beverage Labeling and Advertising Regulations

As part of the Department of the Treasury's "Plan for Retrospective Analysis of Existing Rules," TTB has been reviewing its existing labeling and advertising of wine, distilled spirits, and malt beverages regulations. TTB proposes to amend these regulations to improve their clarity and readability, to improve compliance, and to ease burdens on the regulated industry. The amended regulations will take into account modern business practices and contemporary consumer understanding in order to modernize the regulations.

In this proposed rule, TTB intends to clarify, update, and consolidate labeling requirements and, where possible, to set forth objective standards for meeting those requirements. This effort also will help TTB use its limited resources more efficiently, facilitate the development and use of more efficient

systems for processing applications, and reduce the processing time for label applications.

In preparation for this rulemaking, TTB reviewed its regulations, public guidance, and labeling review practices to identify policies and interpretations that are relevant but have not yet been codified in the regulations, as well as those that are no longer relevant and can be eliminated. In all, TTB reviewed 90 rulings and industry circulars, and incorporated all or parts of approximately 38 of them into the proposed regulations. When these proposed regulations become final, those rulings and industry circulars, or parts thereof, will be superseded by the regulations. TTB also determined that eight rulings and industry circulars were no longer relevant and thus could be superseded without being incorporated.

As a result, the proposed regulations, when finalized, will provide industry with a more comprehensive source for the general rules applicable to alcohol beverage labeling. In addition, in updating these regulations, TTB sought to make the rules applicable to all three commodities as consistent as possible, recognizing that some differences in treatment are required by statute and others by the nature of the commodity or industry practice.

E. Plain Language Principles

On June 1, 1998, the President issued a memorandum that requires Federal agencies to write regulations in ''plain language.'' These proposed regulations have been written in the plain language style. The proposed regulations:

- Use the active voice in the regulations, whenever possible;

- Use shorter sentences, paragraphs, and sections;
- Minimize the use of jargon and unnecessary technical terms;
- Clarify and simplify the regulatory requirements;
- Create consistency in the treatment of the three commodities, as appropriate;
- Break large sections into smaller, more focused sections for better readability; and
- Make it easier for readers to find information through the tables of contents.

F. Scope of this Rulemaking

As mentioned above, TTB is undertaking this modernization effort to improve understanding of the regulatory requirements and to make compliance easier and less burdensome. In addition, the proposed rule will incorporate changes in labeling standards that have come about through statutory changes (such as the change to the labeling of wines with semi-generic designations) and international agreements (through the incorporation of various designations of geographic significance). In the case of wine, we are proposing greater flexibility in the use of certain appellations of origin and multiple varietal designations, both to comply with international commitments and to provide more information to consumers through greater flexibility in the use of this optional information on labels. For all products, TTB is proposing greater flexibility with regard to the placement of mandatory information on labels.

TTB is also reflecting contemporary case law with regard to the protection of commercial speech under the First Amendment. In some cases, this means codifying longstanding interpretations, such as our policy that the prohibition on disparaging statements on labels and in advertisements does not prohibit truthful and accurate comparisons with a competitor's product.

With regard to malt beverages and wine, TTB is updating the alcohol content regulations for the first time since the Supreme Court's decision in Rubin v. Coors Brewing Company, 514 U.S. 476 (1995), which struck down on First Amendment grounds the FAA Act's ban on alcohol content statements on malt beverage labels. In 1993, after the district court decision in the Coors case but prior to the Supreme Court decision, TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), issued interim regulations allowing optional statements of alcohol content on malt beverage labels. See T.D ATF–339 (58 FR 21228, April 19, 1993). TTB is now proposing to finalize updated alcohol content regulations, including, in this document, amendments that would modernize the regulations on strength claims to remove outdated language, such as the ban on use of the term "pre-war strength," which refers to the period before World War I.

This proposed rule would also incorporate certain proposals previously aired for comment by TTB in notices or advance notices of proposed rulemaking, including proposals on the use of "estate grown" on wine labels, and the use of aggregate packaging to satisfy standards of fill for distilled spirits and wine containers.

TTB is also proposing several amendments that would protect consumers by providing certain more specific labeling and packaging rules. For example, existing regulations require mandatory information to appear on opaque packaging of distilled spirits and wine, because consumers are unable to see the label on the container without removing the container from the packaging. TTB is proposing to extend this requirement to malt beverages.

TTB is also proposing to require mandatory information to appear on any "closed packaging" of wine, distilled spirits, or malt beverages. The proposed amendments define closed packaging to include packaging where the mandatory information on the label of the container is not visible to the consumer because the container cannot be readily removed from the packaging. 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.

TTB has noted that today's industry increasingly uses terms that apply to one commodity on labels of a different commodity. For example, TTB sees many wine and malt beverage labels that include distilled spirits terms or malt beverage labels that include wine terms. TTB is proposing a specific regulatory provision to prohibit the use of such terms when they might mislead consumers as to the identity of the product, while allowing the non-misleading use of certain terms (such as references to aging malt beverages in barrels previously used for the storage of distilled spirits or wine).

TTB solicits comments on whether these proposals will protect consumers and whether they will require significant labeling changes by industry members. TTB proposes to give all affected parties three years to come into compliance with the proposed regulations, should they be finalized. This will allow industry members to coordinate new labeling requirements with scheduled labeling changes, and to use up existing stocks of labeling and packaging.

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.

In addition, this document is not intended to specifically address proposals that were submitted to the Department of the Treasury in response to a Request for Information (RFI) published in the **Federal Register** (82 FR 27212)

on June 14, 2017. The RFI invited members of the public to submit views and recommendations for Treasury Department regulations that can be eliminated, modified, or streamlined, in order to reduce burdens. The comment period for the RFI closed on October 31, 2017.

Eight comments on the FAA Act labeling regulations, including 28 specific recommendations, were submitted in response to the RFI. For ease of reference, TTB will post the labeling comments in the docket for this rulemaking. We will consider all of the labeling recommendations submitted in response to the RFI either as comments to this proposed rule or as suggestions for separate agency action, as appropriate. We note that our preliminary review of the comments submitted in response to the RFI indicates that many of the topics that were included in those recommendations are addressed in this proposed rule, although our proposals may in some cases differ from those set forth in the comments.

Finally, in this notice TTB proposes 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 contains 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, are not proposed in this rulemaking but may be proposed in future rulemaking initiatives. Because this proposed rule deals with such a broad scope of modernization

changes, TTB will deal with these more specific issues in separate rulemaking documents.

II. Proposed Revisions

A. General Reorganization of the Parts

TTB is proposing to reorganize the contents of 27 CFR parts 4, 5, and 7, and to add a new 27 CFR part 14. As proposed, 27 CFR parts 4, 5, and 7 continue to contain the labeling regulations for wine, distilled spirits, and malt beverages, respectively, while the current subparts of parts 4, 5, and 7 that relate to advertising are removed from those parts and consolidated into a new part 14. As part of TTB's review of the labeling regulations, TTB reviewed the various sections and subparts and determined that much of their basic structure needs to be amended. Under the current structure, information is not always located where a reader would expect to find it. As a result of amendments to the regulations over the years, certain provisions that would logically be grouped together are instead spread throughout a given part. Accordingly, TTB is proposing to group topics together in a more logical order, with related provisions, where appropriate, appearing in a single subpart.

The new subparts are restructured in a progressive order starting with general provisions, such as defining the terms used in that part and specifying who is subject to the regulations in that part. The "general provisions" subpart is followed by subparts setting forth the circumstances under which a certificate of label approval (COLA) is required, how to obtain a COLA, and what information is required on the labels and where it must appear.

Proposed parts 4, 5, and 7 of 27 CFR are each structured similarly. Furthermore, within each part, regulatory provisions that appear in more than one part will have the same number within the part. For example, the regulations that set out the mandatory information for wine, distilled spirits, and malt beverage labels, respectively, are found in proposed §§ 4.63, 5.63, and 7.63. TTB believes that this revised numbering of the regulations will make it easier for the public to find relevant regulations and to compare regulations in the three parts.

The table below shows the organization of the proposed subparts in parts 4, 5, and 7.

Proposed Subparts: 27 CFR Parts 4, 5, and 7		
Part 4 (Wine)	**Part 5 (Distilled Spirits)**	**Part 7 (Malt Beverages)**
Subpart A—General Provisions	Subpart A—General Provisions	Subpart A—General Provisions
Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval	Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval	Subpart B—Certificates of Label Approval
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers
Subpart D—Label Standards	Subpart D—Label Standards	Subpart D—Label Standards
Subpart E—Mandatory Label Information	Subpart E—Mandatory Label Information	Subpart E—Mandatory Label Information
Subpart F—Restricted Labeling Statements	Subpart F—Restricted Labeling Statements	Subpart F—Restricted Labeling Statements

Subpart G—Prohibited Labeling Practices	Subpart G—Prohibited Labeling Practices	Subpart G—Prohibited Labeling Practices
Subpart H—Labeling Practices That are Prohibited if They are Misleading	Subpart H— Labeling Practices That are Prohibited if They are Misleading	Subpart H— Labeling Practices That are Prohibited if They are Misleading
Subpart I—Standards of Identity for Wine	Subpart I—Standards of Identity for Distilled Spirits	Subpart I—Classes and Types of Malt Beverages
Subpart J—American Grape Variety Names	Subpart J—Formulas	Subpart J—Reserved
Subpart K—Standards of Fill and Authorized Container Sizes	Subpart K—Standards for Fill and Authorized Container Sizes	Subpart K—Reserved
Subpart L—Recordkeeping and Substantiation Requirements	Subpart L—Recordkeeping and Substantiation Requirements	Subpart L—Recordkeeping and Substantiation Requirements
Subpart M—Penalties and Compromise of Liability	Subpart M—Penalties and Compromise of Liability	Subpart M—Penalties and Compromise of Liability
Subpart N—Paperwork Reduction Act	Subpart N—Paperwork Reduction Act	Subpart N—Paperwork Reduction Act

B. Proposed Changes that Apply to Parts 4, 5 and 7

As discussed above, in proposing to update its labeling regulations, one of TTB's purposes has been to apply the same rules to wine, distilled spirits, and malt beverages, to the extent possible, as long as different treatment is not required by statute or by the nature of the commodity. Therefore, a number of the proposed changes to the regulations apply to parts 4, 5 and 7. These proposed changes are described below, in the general order in which they

appear in the proposed regulations. See the discussion in sections II C, II D, and II E of this document for provisions specific to wine, distilled spirits, and malt beverages, respectively.

1. Subpart A—General Provisions

a. Definitions. Proposed subpart A includes several sections of general applicability. These sections include definitions of terms used throughout these regulations, as well as sections cross-referencing other regulations that relate to the production and labeling of the alcohol beverage products at issue.

With regard to definitions, TTB is proposing to amend the sections in parts 4, 5, and 7 that define the terms used in those parts (proposed §§ 4.1, 5.1, and 7.1), to add definitions of the following terms: "brand name," "certificate holder," "certificate of exemption from label approval," "certificate of label approval (COLA)," "distinctive or fanciful name," and "net contents."

The proposed rule defines the term "brand name" as the name under which a product or product line is sold. This definition is consistent with the current understanding of the term and with guidance provided in the Beverage Alcohol Manuals (BAMs), TTB P 5120.3, 5110.7, and 5130.3, for wine, distilled spirits, and malt beverages, respectively, which are guidance documents that provide the public with interpretations of some of TTB's labeling regulations.

The term "certificate holder" is used in the proposed text of parts 4, 5, and 7 to refer to industry members that have obtained a COLA, certificate of exemption from label approval, or distinctive liquor bottle approval from TTB. The proposed rule sets forth a definition of "certificate holder" for parts 4, 5,

and 7 that is largely consistent with that definition of that term in part 13 of the TTB regulations (27 CFR part 13), which governs the issuance, denial, and revocation of COLAs. The definition of the term "certificate of exemption from label approval" is consistent with the definition already in part 13 of the TTB regulations.

The definition of the term "Certificate of label approval (COLA)" is derived from the definition set forth in part 13 of the TTB regulations, but includes some proposed revisions. The proposed definition is "A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and 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." The current definition in part 13 recognizes that the COLA form itself authorizes certain allowable revisions to a label that may be made by the certificate holder without having to obtain TTB approval. The revisions made in the proposed definition specifically recognize that TTB may authorize revisions in other ways, such as by issuing guidance on the TTB Web site.

The term "distinctive or fanciful name" currently refers to a term that must be used on a distilled spirits label, together with a truthful and adequate statement of composition, when a distilled spirits product does not fall within a class and type that is specified in the regulations or on a malt beverage label when a malt beverage is not known to the trade under a particular designation. A

distinctive or fanciful name is optional on other distilled spirits or malt beverage products. A distinctive or fanciful name is also optional for a wine, whether or not it bears a statement of composition.

The proposed rule defines the term “distinctive or fanciful name,” which is used in proposed parts 4, 5, and 7. The term “distinctive or fanciful name” is defined as a descriptive name or phrase chosen to identify a product on the label. It 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.

The proposed rule adds a definition of “net contents” in parts 4, 5, and 7. The “net contents” is the amount, by volume, of wine, distilled spirits, or malt beverages, respectively, held in a container. The net contents statement is mandatory labeling information.

The proposed regulations also include amendments to several definitions that appear in the current regulations. These changes reflect current TTB policy and are clarifying in nature.

The definition of the term “container” is amended in parts 4 and 7 and is added to part 5 to replace the definition of the term “bottle.” The proposed rule defines “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.”

The term “container” will replace the term “bottle” in the part 5 regulations for distilled spirits and is defined as any can, bottle, box used to protect an internal bladder, cask, keg, or other closed receptacle, in any size or material, that is for use in the sale of distilled spirits at retail. TTB believes that the revised definition will make it clearer that containers of distilled spirits may be made in a variety of materials and sizes, and that the term is not restricted to traditional glass bottles. Because of the restrictions on the size of distilled spirits containers, the proposed definition does not include references to barrels. Furthermore, because there are prescribed standards of fill for both wine and distilled spirits, the definitions in parts 4 and 5 include a cross reference to those standard of fill regulations, to clarify that containers must be in certain sizes.

The proposed rule amends the definition of the term “interstate or foreign commerce” in parts 4, 5 and 7 to remove the provision that included commerce within any Territory as being interstate or foreign commerce. The FAA Act extends to the 50 States, the District of Columbia, and Puerto Rico. As set forth in the definitions in the FAA Act, the term “State” included a Territory and the District of Columbia, and the term “Territory” meant Alaska, Hawaii, and Puerto Rico. See 27 U.S.C. 211(a)(1). Since the enactment of the FAA Act in 1935, Alaska and Hawaii have become states. Furthermore, Puerto Rico is now a Commonwealth, which has affected the status of transactions that occur solely within Puerto Rico under the FAA Act. See ATF Ruling 85–5, which addressed this issue in the context of the trade practice regulations and relied, in part, on Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, 649 F.

2d 36 (1st Cir. 1981). Therefore, the proposed rule amends the definition of "interstate or foreign commerce" to remove the language indicating that commerce within Puerto Rico is interstate commerce.

The proposed rule amends the definition of the term "person" in all three parts by adding "limited liability company" to specifically reflect TTB's current position that limited liability companies fall under the definition of a "person."

The proposed rule removes the term "advertisement" from the definition sections in parts 4, 5, and 7, because these parts will no longer provide substantive rules regarding advertisements. Instead, the proposed rule moves the regulations regarding advertisements to a new proposed part 14.

Finally, in this subsection and throughout parts 4 and 5, the proposed rule updates references to the IRC. The existing regulations include certain references to terms (such as "rectifier" or "bonded wine storeroom") from previous versions of the IRC. These terms are no longer used in the current tax laws. The proposed rule updates these references to include terms that are currently used in the IRC.

b. General requirements and prohibitions under the FAA Act. Proposed §§ 4.3, 5.3, and 7.3 set out the general requirements and prohibitions under the FAA Act. Proposed §§ 4.3(a), 5.3(a), and 7.3(a) summarize the general requirements regarding COLAs, as set forth in greater detail in subpart B. Proposed §§ 4.3(b), 5.3(b), and 7.3(b) similarly summarize the prohibition against alteration, mutilation, destruction, obliteration, or removal of labels, as set forth in greater detail in subpart C. Proposed §§ 4.3(c) and (d), 5.3(c) and (d), and 7.3(c)

and (d) set out the general labeling requirements of this part, as set forth in greater detail in subparts D, E, F, G, H, and I. Finally, proposed §§ 4.3(e) and 5.3(e) summarize the general bottling and standards of fill requirements, which are set out in subpart K for wine and distilled spirits. (Malt beverages are not subject to standard of fill requirements.)

Proposed §§ 4.3(d), 5.3(d), and 7.3(d) also set out for the first time in the regulations TTB's position that in order to be labeled in accordance with the regulations in these parts, a container may not contain an adulterated alcohol beverage within the meaning of the Federal Food, Drug, and Cosmetic Act. It is TTB's longstanding position that adulterated distilled spirits, wines, and malt beverages are 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. See Industry Circular 2010–8, dated November 23, 2010. No adulterated distilled spirits, wines, or malt beverages can satisfy the labeling requirements of the FAA Act. Subject to the jurisdictional requirements of the FAA Act, mislabeled distilled spirits, wines, and malt beverages, including adulterated products, may not be sold or shipped, delivered for sale or shipment, or otherwise introduced or received in interstate or foreign commerce, or removed from customs custody for consumption, by a producer, importer, or wholesaler, or other industry member subject to 27 U.S.C. 205(e).

c. Exports in bond. The current regulations exempting products for export from the labeling regulations under the FAA Act are somewhat inconsistent. In existing §§ 4.80 and 7.60, wine and malt beverages "exported in bond" are

exempted from the requirements of those respective parts. However, current § 5.1, which is entitled "General," provides that part 5 "does not apply to distilled spirits for export."

TTB believes that the exemptions in all three parts should be consistent and should be restricted to exportations in bond. In general, the bottler is required to obtain a COLA prior to removal of the product from the premises. Products that are removed subject to tax may subsequently be exported or may end up in the domestic market, and therefore are not exempted from the labeling requirements of the FAA Act.

Accordingly, proposed §§ 4.8, 5.8, and 7.8 provide that products exported in bond directly from a bonded wine premises, distilled spirits plant, or brewery, respectively, or from customs custody, are not subject to the regulations under these parts. The amendment clarifies that exportation in bond does not include exportation after wine, distilled spirits, or malt beverages have been removed for consumption or sale in the United States, with appropriate tax determination or payment. This is only a clarifying change in parts 4 and 7. With regard to part 5, TTB seeks comments on whether this proposed change will impact existing practices, and if so, what the impact will be.

d. Compliance with Federal and State requirements. For the first time, parts 4, 5, and 7, will make clear that compliance with the requirements of the respective parts relating to the labeling and bottling of wine, distilled spirits and malt beverages does not relieve industry members from responsibility for

complying with other applicable Federal and State requirements (see proposed §§ 4.9, 5.9, and 7.9).

These sections also provide that it remains the responsibility of the industry member to ensure that any ingredient used in the production of alcohol beverages complies fully with all applicable Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives and that TTB may at any time request documentation to establish such compliance. In addition, these three sections provide that it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of alcohol beverages for consumption and that TTB may at any time request documentation to establish such compliance.

It is TTB's longstanding position that its review of labels and formulas does not relieve the industry member from its responsibility to ensure compliance with applicable FDA regulations. See, e.g., Industry Circular 2010–8, dated November 23, 2010, entitled "Alcohol Beverages Containing Added Caffeine," in which TTB reminded industry members as follows:

> * * * each producer and importer of alcohol beverages is responsible for ensuring that the ingredients in its products comply with the laws and regulations that FDA administers. TTB's approval of a COLA or formula does not imply or otherwise constitute a determination that the product complies with the [Federal Food, Drug, and Cosmetic Act], including a determination as to whether the product is adulterated because it contains an unapproved food additive.

See also Industry Circular 62–33. The instructions on the forms for formula approval repeat this message. Now, TTB is proposing to codify this position in the regulations.

e. Cross references to other regulations. Proposed §§ 4.10, 5.10, and 7.10 are derived from current §§ 4.5, 5.2, and 7.4 and include an expanded list of regulations implemented by other Federal agencies of which industry members should be aware. While the list does not purport to be comprehensive, TTB believes it will be helpful to industry members.

2. Subpart B—Certificates of Label Approval (for wine, distilled spirits and malt beverages) and Certificates of Exemption from Label Approval (for wine and distilled spirits)

a. Certificates of label approval (COLAs) and certificates of exemption from label approval. The regulations implementing the statutory requirement for (COLAs) (for wine, distilled spirits and malt beverages) and certificates of exemption (for wine and distilled spirits) are reorganized for clarity. The proposed regulations also set forth, for the first time, some of the things that a COLA does not do. Specifically, the proposed regulations provide that, among other things, a COLA does not confer trademark protection; 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 FDA with regard to ingredient safety; or relieve the certificate holder from liability for violations of the FAA Act, the ABLA, the IRC, or related regulations and rulings.

The proposed revisions reflect 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 believes that these revisions will clarify this position for the public and industry members.

b. Certificates of exemption. Proposed §§ 4.23 and 5.23 incorporate current regulatory requirements with regard to the issuance of certificates of exemption to bottlers of wine and distilled spirits. Consistent with the current regulations, the proposed rule provides that the bottler may obtain a certificate of exemption upon establishing, to the satisfaction of the appropriate TTB officer, that the wine or spirits to be bottled will be offered for sale only within the State in which bottled, and that they will not be sold, offered for sale, shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

Consistent with the instructions for Item 18 that currently appear on the TTB Form 5100.31, the proposed regulations provide that, as a condition for receiving exemption from label approval, the label covered by a certificate of exemption must include the statement, "For sale in [name of State] only." It should be noted that it is TTB's current practice to issue certificates of exemption conditioned on the applicant's agreement to add this statement to the container. Under the proposed regulations, TTB will require applicants to include this statement on a label submitted with the application for a certificate of exemption.

c. COLAs for Imported Wine, Distilled Spirits, and Malt Beverages. Consistent with 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 and is in possession of a COLA. The 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), require importers who file electronically to file with CBP the identification number assigned to the approved COLA. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry.

d. Administrative rules. In proposed subpart B of parts 4, 5, and 7, several sections are grouped under the heading of "Administrative Rules." These sections set forth requirements for presenting COLAs to government officials; submitting formulas, samples, and other documentation related to obtaining or using COLAs; and applying for and obtaining permission to use personalized labels.

The requirement that a certificate holder must present a COLA upon request by any duly authorized representative of the United States Government (at proposed §§ 4.27, 5.27, and 7.27) reflects current provisions (at current §§ 4.51, 5.55(c), and 7.42) but adds the provision that the COLA may be the original or a copy (including an electronic copy).

i. Formula requirements. TTB currently has specific formula requirements for certain domestic products. These are found in parts 5 and 19 for distilled spirits, in part 24 for wine, and in part 25 for beer. However, TTB often finds it necessary to obtain more specific information about a product that is not otherwise subject to the formula requirements in connection with the COLA review process.

For many imported alcohol beverage products, TTB requires a product evaluation to determine whether a proposed label identifies the product in an adequate and non-misleading way. Pre-COLA product evaluation entails a review of a product's ingredients and formulation and also may include a laboratory analysis of the product. Laboratory analysis involves a chemical analysis of a product. Such pre-COLA product evaluations ensure that:

- No alcohol beverage contains a prohibited ingredient.
- Ingredients are used within limitations or restrictions prescribed by TTB or another Federal agency, as applicable.
- Appropriate tax and product classifications are made.
- Alcohol beverages labeled without a sulfite declaration contain less than 10 parts per million (ppm) of sulfur dioxide.

The type of pre-COLA product evaluation required for a particular product depends on that product's formulation and origin. Industry Circular 2007–4, "Pre-COLA Product Evaluation," dated September 11, 2007, includes a list of the imported products for which TTB currently requires formulas and other pre-COLA analyses.

The Industry Circular also announced that TTB had developed a new form that may be submitted in lieu of the various forms and formats otherwise prescribed in the regulations for specific products. TTB developed the form, TTB F 5100.51, "Formula and Process for Domestic and Imported Alcohol Beverages," to simplify the formula submission process and to provide a more consistent means of information collection across all commodity areas for both imported and domestic products. The Circular stated that TTB intended to pursue a regulatory change that will make use of this form mandatory, entirely replacing the various industry-specific forms and formats currently set forth in the TTB regulations. Until such a change occurs, this form may be used voluntarily as an alternate procedure. A producer or importer who wishes to use TTB F 5100.51 may submit that form in lieu of the forms prescribed in the regulations without first requesting approval from TTB to do so.

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 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. 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.

TTB is proposing to standardize the regulatory language in parts 4, 5 and 7 on this issue. Accordingly, proposed §§ 4.28, 5.28, and 7.28 provide 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 provide 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. The proposed regulations also provide 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. These amendments reflect current TTB policy.

As noted above, 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, we propose in this document to amend the TTB regulations in parts 4, 5, and 7 to provide that a formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. TTB anticipates proposing similar revisions to the IRC regulations in the near future.

TTB notes that many industry members now use Formulas Online to submit formulas, and encourages all industry members to consider the advantages of online filing.

ii. Personalized labels. The proposed regulations also set forth, for the first time, the process for applicants seeking label approval to receive permission from TTB to make certain changes in order to personalize labels without having to resubmit the labels for TTB approval (see §§ 4.29, 5.29, and 7.29). 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 producer may offer custom labels to individuals or businesses that commemorate an event such as a wedding or grand opening.

Consistent with current policy, as set forth in TTB G 2011–5 and TTB G 2010–1, the proposed regulations provide that label applicants who intend to offer personalized labels must submit a template for the personalized label with their application for label approval, and note on the application a description of the specific personalized information that may change. If the application complies with the regulations, TTB will issue a COLA with a qualification that allows 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.

The proposed rule provides that certain changes are not permitted on personalized labels. These include the addition of any information that discusses either the alcohol beverage or the characteristics of the alcohol beverage, as well as information that is inconsistent with or in violation of the provisions of the TTB regulations or any other applicable law or regulation.

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

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)) further provides:

> It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of 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.

In proposed subpart C of parts 4, 5, and 7, TTB proposes conforming changes to the regulations that implement this statutory prohibition. This subpart also sets forth the situations in which a person must apply for and obtain written approval prior to relabeling.

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 provides that the prohibition applies to any persons, including retailers, holding wine for sale in (or after shipment in) interstate or foreign commerce.

Proposed §§ 4.41(b), 5.41(b), and 7.41(b) provide 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) contain 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.

The existing 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 believes that the regulations in parts 4, 5 and 7 should be updated to cover all of the situations in which people need to relabel. The existing regulations in part 5 allow persons who are eligible to obtain COLAs covering the products, such as bottlers and importers, to relabel the products even after they have been removed from bottling premises or customs custody, respectively. The proposed rule extends this provision to parts 4 and 7. However, the language in existing parts 4 and 7 allows 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 extends this provision to part 5.

Accordingly, proposed §§ 4.42(a), 5.42(a), and 7.42(a) provide that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, respectively, 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. Proposed §§ 4.42(b), 5.42(b), and 7.42(b) provide that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, respectively, 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, for

example, allow a brewer to replace damaged labels on containers that are being held at a wholesaler's premises, as long as the labels are covered by a COLA, without obtaining separate permission from TTB to remove the existing labels and replace them with either identical or different approved labels.

Similarly, proposed §§ 4.42(c) and (d), 5.42(c) and (d), and 7.42(c) and (d) provide that, under the supervision of U.S. customs officers, imported wine, distilled spirits, and malt beverages, respectively, 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 if and when they are removed from customs custody for consumption.

Proposed §§ 4.43, 5.43, and 7.43 cover relabeling activities that require separate written authorization from TTB. 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 unlabeled wine containers are transferred between bonded wine premises. While the bottler is required to obtain a COLA to cover these containers prior to bottling, the transferee, who is labeling the containers, will sometimes want to put additional labels on the containers. In this case, the transferee must obtain TTB approval to place the new labels on the products and must be in possession of the necessary documentation to substantiate any new claims that will appear on the labels.

Thus, the proposed regulations provide that persons who are not eligible to obtain a COLA (such as retailers or permittees other than the bottler) may obtain written authorization for relabeling if the facts show that the relabeling is

for the purpose of compliance with the requirements of this part or of State law. 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 is proposing to add to the malt beverage regulations a provision that is already found in slightly different forms in parts 4 and 5. This provision authorizes, without any requirement for separate written permission from TTB, the addition of a label identifying the wholesaler, retailer, or consumer as long as the label contains no reference to the characteristics of the product, does not violate the labeling regulations, and does not obscure any existing labels. The proposed regulations will standardize this provision for wine, distilled spirits, and malt beverages (see proposed §§ 4.44, 5.44, and 7.44).

TTB believes that the proposed regulations will enable permittees, brewers, and retailers to relabel alcohol beverage containers when there is a good reason to do so, while still restricting the alteration of labels for containers that are in the marketplace. We seek comments from the industry on whether the proposed regulations will protect the integrity of labels in the marketplace without imposing undue burdens on the industry.

4. Subpart D—Label Standards

The current provisions governing legibility of labels, type size, and language requirements are found within one section of parts 4, 5, and 7 for wine,

distilled spirits, and malt beverages, respectively. See current §§ 4.38, 5.33, and 7.28. Proposed subpart D includes those and other general provisions. These provisions are predominantly derived from and consistent with requirements set forth in the current regulations.

TTB is proposing to amend the sections that set forth legibility requirements for the mandatory information that is required to be placed on labels (proposed §§ 4.52, 5.52, and 7.52). These sections are derived from current §§ 4.38(a), 5.33(a) and (b), and 7.28(a).

The proposed regulations set forth the requirement that mandatory information must be "separate and apart" from descriptive or explanatory information, referred to in the proposed rule as "additional information," with a few exceptions. First, brand names are exempt from this requirement. Second, this provision does 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 produced and bottled by ABC Winemaking Co. in Napa, CA, 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. Finally, the mandatory statements related to disclosure of certain specified ingredients (FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame) may not include additional information. It should be noted that the aspartame statement, like the health warning statement required by part 16, must be separate and apart from all other information.

The proposed regulations expand on the requirement that mandatory information must appear on a “contrasting background” by adding examples of contrasting backgrounds that would satisfy regulatory requirements. The color of the container and of the alcohol beverage in the container must be taken into account if the label is transparent. The text also clarifies that, with one exception (for the required aspartame statement), mandatory information may appear in lower case letters, capital letters, or both capital and lower-case letters.

The proposed rule makes changes to current provisions pertaining to minimum type size requirements. The current regulations setting forth minimum type size requirements (current §§ 4.38(b), 5.33(b)(5), 5.33(b)(6), and 7.28(b)) prescribe specific heights in millimeters for mandatory information. The height specification is dependent on the size of the container. Among other things, the proposed regulations provide that the minimum type size applies to all capital and lowercase letters.

The proposed rule also makes changes to current provisions pertaining to maximum type size requirements for the alcohol content statement for wine and malt beverages. Current § 4.38(b)(3) provides that the alcohol content statement on containers of 5 liters or less may not appear in script, type, or printing that is more than 3 millimeters in height. This section further provides that the alcohol content statement on containers of wine may not be set off with a border or otherwise accentuated. TTB is retaining the type size requirement, but removing the prohibition against accentuating the alcohol content statement. This is in

keeping with TTB's current policy, which allows alcohol content statements to be bolded.

In general, current § 7.28(b)(3)(ii) provides that all portions of the alcohol content statement for malt beverages must be of the same size and kind of lettering and of equally conspicuous color, and not larger than 3 millimeters for containers of 40 fluid ounces or less, and not larger than 4 millimeters for containers larger than 40 fluid ounces. TTB is retaining the maximum alcohol content type size requirements for wine and malt beverages in §§ 4.53 and 7.53, respectively.

TTB is proposing to add sections to all three parts (proposed §§ 4.54, 5.54, and 7.54) to make it explicit that mandatory information may not be obscured in whole or in part. This requirement reflects current policy. Although it certainly is a long-standing component of "legibility," TTB believes that industry members would benefit from the explicit statement of this policy in the regulatory text of parts 4, 5, and 7.

TTB seeks comments on whether the proposed changes to the placement and legibility requirements for mandatory information, which are intended to provide additional flexibility to industry members, adequately protect the consumer by ensuring that mandatory information on containers is readily apparent to consumers.

In proposed §§ 4.55, 5.55, and 7.55, TTB is proposing to amend the language requirements that are currently found in §§ 4.38(c), 5.33(c), and 7.28(c), to allow all mandatory information to appear in Spanish when products

are bottled for sale in the Commonwealth of Puerto Rico. Consistent with the current regulations, the proposed regulations generally require mandatory information, other than the brand name, to appear in the English language. The proposed regulations also allow for additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, to appear on labels and containers, as long as those statements do not conflict with, or contradict, the requirements of parts 4, 5, and 7. Finally, these sections provide that the country of origin may be in a language other than English when allowed by CBP regulations.

5. 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. TTB is proposing to add regulatory text to all three parts to specify what TTB will consider to be the "label" for purposes of mandatory information. Proposed §§ 4.61(a), 5.61(a), and 7.61(a) address different forms that labels take (for example, paper, plastic or film labels affixed to the container; information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and information branded, stenciled, painted, printed, or otherwise directly applied to the surface of the container). For purposes of the net contents statement and the name and address statement

only, the term “label” includes information blown, embossed, or molded into the container as part of the process of manufacturing the container.

Proposed §§ 4.61(b), 5.61(b), and 7.61(b) clarify that placement of information on certain parts of alcohol beverage containers (such as the bottom of the container, caps, corks, or other closures [unless authorized to bear mandatory information by the appropriate TTB officer], and foil or heat shrink capsules) will not meet the requirements for mandatory information that must appear on labels. This provision is intended to take into account unique types of containers, such as pudding or gelatin-type cups, where the mandatory information is sometimes authorized to appear on the top of the container. Information on these parts of the container are still subject to the restrictions and prohibitions set forth in proposed subparts F, G and H of parts 4, 5, and 7.

Proposed §§ 4.61(c), 5.61(c), and 7.61(c) further clarify longstanding policy that 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 proposed parts 4, 5, and 7. Such materials are instead subject to the advertising regulations in proposed new part 14 of the TTB regulations. This is a clarifying change for parts 4 and 5, consistent with the intent of T.D. ATF–180 (49 FR 31667, August 8, 1984), which explained in its preamble that “[l]abels must be firmly affixed to the container, hang tags are usually tied or slipped over the neck of the bottle. Therefore, when other matter accompanies the container and is not firmly affixed as a label, such matter is advertising material and must bear the mandatory statements.”

b. Packaging (including cartons, coverings, and cases). 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, any brand names or designations must be displayed 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. Yet, the advertising regulations in existing §§ 4.61 and 5.62 define the term "advertisement," in pertinent part, as including any written or verbal statement, illustration, or depiction, whether it appears in "a newspaper, magazine, trade

booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the [container] bottle," but excluding "[a]ny label affixed to any [container] bottle * * * or any individual covering, carton, or other [wrapper of such container] [container of the bottle] which constitutes a part of the labeling" under the labeling regulations.

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. The current advertising regulations in part 7, like the advertising regulations in parts 4 and 5, define the term "advertisement" (in current § 7.51) to include, in pertinent part, any written or verbal statement, illustration, or depiction, whether it appears in "a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic or other matter accompanying the container, representations made on cases * * * or in any other media;" but excluding 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 the labeling regulations.

TTB believes that the existing regulations create some confusion as to when a case or hang tag constitutes labeling and when it constitutes advertising. Accordingly, TTB is proposing identical regulations in proposed §§ 4.62, 5.62, and 7.62 to address packaging. The proposed regulations provide, 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 provide, 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.

Furthermore, the proposed regulations provide 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 seeks comment on whether TTB should require mandatory or dispelling information to appear on open packaging when part of the label is obscured.

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

c. Placement rules. Mandatory information includes the brand name, the class and type designation, alcohol content, net contents, name and address of the responsible party (such as the producer, bottler, or importer), and disclosure of certain ingredients and processes. The current regulations have placement requirements for mandatory information—some mandatory information must appear on the "brand label," and other mandatory information may appear on any label. The regulations in parts 4 and 7 define the brand label as the label carrying, in the usual distinctive design, the brand name. The regulations in part 5 define the brand label, in part, as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the bottle as the principal display panel.

TTB proposes to provide more flexibility in the placement of the mandatory information for wine, distilled spirits, and malt beverages by eliminating the concept of a defined "brand label." The specific proposals for locating mandatory information on labels for each commodity will be included in the commodity-specific discussions later in the preamble. Where placement requirements exist, the proposed rule provides more specific terminology. Instead of requiring

mandatory information to be in "direct conjunction" with other mandatory information, the proposed regulations clarify when such information must be immediately adjacent to other information, and when it may be in the same field of vision as other information.

d. Brand name. Proposed §§ 4.64, 5.64, and 7.64 set forth requirements for brand names of wine, distilled spirits, and malt beverages, respectively. Most of the provisions in these sections are commodity specific and are therefore discussed individually later in this document.

However, one proposed change is made in all three parts: TTB is proposing to remove a provision for the continued use of certain trade names of foreign origin that had been used for at least five years immediately preceding August 29, 1935 (the date the FAA Act was enacted). Although the law still authorizes the use of these names, TTB believes that there is no need to retain this provision in the regulations, given that it refers to names that have been used for more than 85 years.

e. Name and address for domestically bottled products. In the regulations on the name and address of bottlers and producers of wine, distilled spirits, and malt beverages, TTB is making editorial changes to existing requirements.

As previously mentioned, 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). The regulations for distilled spirits and malt beverage labels currently provide more flexibility than the regulations for wine labels. Most importantly,

wine labels must show the name of the bottler and the place where bottled, while bottlers of distilled spirits and malt beverages have the flexibility to 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 an adulteration issue.

TTB is aware 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 wishes 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 a single label for their products rather than having to seek approval of multiple labels. TTB notes 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.

TTB seeks comments from all interested parties, including industry members and consumers, on whether the proposed labeling requirements

provide adequate information to the consumer while avoiding undue burdens on industry members. TTB also seeks comments on whether the standards for wine labels should continue to require specific information about the place where production and/or bottling operations occurred.

f. Name and address for imported alcohol beverages. 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 require the name and address of the importer when the product is imported in containers. The proposed regulations clarify 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, and the ruling will be superseded by the proposed rule.

Proposed §§ 4.67, 5.67, and 7.67 address the labeling of products bottled after importation. If the product is bottled after importation in bulk, by or for the importer thereof, the proposed rules require 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 address 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 provision in the IRC which 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.

Section 1422 of The Taxpayer Relief Act of 1997 amended 26 U.S.C 5364 to allow the importation of wine in bulk to bonded wine premises; the law was amended the following year by Public Law 105–206 to restrict this privilege to natural wine. However, even prior to this amendment, imported taxpaid wine could be brought onto taxpaid wine premises and bottled in the United States. Thus, the regulations in part 4 already provide for the labeling of wine bottled after importation. However, the current regulations do not reflect the fact that wine may be subjected to production activities in the United States after importation in bulk. ATF Procedure 98–3 provided some guidance on this issue.

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 that are imported in bulk and are then blended with wine, distilled spirits, or malt beverages, respectively, 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. ATF Procedure 98–1 would be superseded by the proposed rule, because its provisions on the labeling of malt beverages imported

in bulk will be incorporated, with modifications, into the name and address regulations found in proposed § 7.67.

As further discussed in the next section of this preamble, industry members should note that pursuant to CBP regulations at 19 CFR parts 102 and 134, imported alcohol beverages that are further processed in the United States, or that are blended with domestic alcohol beverages in the United States, may be subject to a country of origin marking requirement, even when the class or type of the product has been altered in the United States. See ATF Ruling 2001–2.

g. Country of origin. Current regulations require a country of origin statement on labels of imported distilled spirits, but include no such requirement for imported wine or malt beverages. Nonetheless, U.S. Customs and Border Protection (CBP) regulations require a country of origin statement to appear on containers of all imported alcohol beverages, including alcohol beverages that are imported in bulk and then subjected to certain production activities or bottling in the United States if, pursuant to CBP regulations, the beverage is the product of a country other than the United States.

The existing distilled spirits regulations in § 5.36(e) provide as follows: “On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of _____", the blank to be filled in with the name of the country of origin.” TTB’s predecessor agency, ATF, was asked to clarify this requirement as applied to products that consist of blends of spirits produced in more than one country, including mixtures of foreign and domestic spirits. ATF determined that when the country of origin regulation in Part 5 was

originally written, the agency did not contemplate that bottlers would blend imported and domestic spirits. When written, the regulations assumed that imported spirits would be bottled using 100 percent imported spirits. Accordingly, ATF issued ATF Ruling 2001–2 to provide that country of origin statements under the regulations in part 5 must comply with applicable CBP requirements.

In ATF Ruling 2001–2, ATF concluded that its country of origin requirements under § 5.36(e) will be interpreted in a manner consistent with CBP's rules of origin, noting that issuance of separate ATF regulations might lead to inconsistencies between CBP and ATF rules and result in confusion for the industries affected by those rules. Accordingly, the ruling held that for an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, "Product of _____." It further held that "substantially the following form" meant that the distilled spirit may, in the alternative, be labeled in conformity with CBP country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, ATF held that the regulation would be satisfied if the country of origin was determined and marked in accordance with CBP regulations. The ruling also noted that an industry member could seek a ruling from Customs for a determination of the country of origin for its product.

TTB is proposing to amend § 5.69, and to add new §§ 4.69 and 7.69, to clarify the relationship between TTB and CBP regulations on this issue. As noted, ATF stated in ATF Ruling 2001–2 that issuance of separate ATF

regulations on the country of origin issue might lead to inconsistencies between CBP and ATF rules and result in confusion for the industries affected by those rules. TTB shares the concerns expressed by its predecessor agency on this issue. Accordingly, the proposed §§ 4.69, 5.69 and 7.69 simply contain a cross-reference to the CBP regulations at 19 CFR parts 102 and 134 regarding country of origin statements, rather than independently requiring a country of origin statement under TTB regulations. The proposed regulations also provide that "[l]abeling statements with regard to the country of origin must be consistent with CBP regulations." Finally, proposed §§ 4.69 and 7.69, as well as proposed § 5.69, provide that the determination of the country (or countries) of origin, for imported wines, malt beverages, and distilled spirits, respectively, as well as for blends of imported products with domestically produced beverages, must comply with CBP regulations.

While this is a new provision in the wine and malt beverage regulations, it will not impose any labeling changes, as it simply references an existing requirement found in CBP regulations. However, TTB believes that the proposed regulation will remind industry members who import alcohol beverages in bulk for processing or bottling in the United States that they must place a country of origin statement on the labels where required to do so by CBP regulations.

As discussed earlier in this preamble, industry members should note that pursuant to CBP regulations at 19 CFR parts 102 and 134, imported alcohol beverages that are further processed in the United States, or that are blended with domestic alcohol beverages in the United States, may nonetheless be

subject to a country of origin marking requirement, even if the class or type of the product has been altered in the United States. See ATF Ruling 2001–2. When TTB issues COLAs for distilled spirits, wine, or malt beverage containers that do (or do not) include a country of origin statement, it is not making a factual or legal determination of whether such a statement is necessary, or whether a labeled country of origin would comply with either TTB or CBP rules. In fact, the application for label approval typically does not include the information that would be necessary to make such a determination. It is the responsibility of the industry member to ensure compliance with the country of origin marking requirement, both when alcohol beverages are imported in containers and when imported alcohol beverages are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

6. 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 also describes certain labeling practices that are regulated in various ways. In order to make regulatory provisions easier to find, and to improve readability, TTB proposes 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, but 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.

7. Subpart F—Restricted Labeling Statements

TTB is proposing a new section (see proposed §§ 4.85, 5.85, and 7.85) on the use of statements relating to environmental and sustainability practices, which reflects current TTB policy. The proposed rule allows 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. 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.

8. Subpart G—Prohibited Labeling Practices

Subpart G sets forth the prohibited labeling practices. The proposed rule provides 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 restates and reorganizes prohibitions currently found in the TTB regulations.

9. Subpart H—Labeling Practices That are Prohibited if They are Misleading.

Proposed subpart H sets 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. It also sets out different ways in which statements may be misleading. 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 (see proposed §§ 4.122, 5.122, and 7.122).

TTB proposes to cancel Rev. Ruling 55–618, which deals with the use of the terms “kosher” and “altar” on wines. TTB believes that it should not restrict the approval of products labeled as “altar wine” to products to be sold only to religious organizations, as the ruling required, and proposes to eliminate that provision of the ruling. Additionally, the use of the terms “altar-type” or “altar-style” wine are not prohibited from appearing on alcohol beverage products because there is no reasonable basis for protecting the terms. However, the terms “kosher style” and “kosher type” will remain restricted to only kosher wines because the use of such terms on non-kosher wines would be misleading. TTB does not propose specific regulations implementing the restriction, but believes it is covered by the general prohibition on misleading statements.

a. Guarantees. Proposed §§ 4.123, 5.123 and 7.123 prohibit the use of guarantees that are likely to mislead the consumer. Money-back guarantees are not prohibited. 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.

b. Disparaging statements. Proposed §§ 4.124, 5.124 and 7.124 specifically prohibit the use of false or misleading statements that explicitly or implicitly disparage a competitor’s product. This proposed revision reflects the 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 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, nonmisleading comparative statements or claims that place the competitor's product in an unfavorable light.

In the proposed regulatory text, TTB also introduces examples of statements that would be prohibited under this provision. A statement of opinion such as “We think our [product] tastes better than any other [product] on the market” is not prohibited. However, a statement such as “We do not add arsenic to our [product]”, although truthful, would be considered to be disparaging because it falsely implies that other producers do add arsenic to their products. Furthermore, 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.

c. 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 such a misleading statement, designed to illustrate the principle that a truthful statement about a test or standard may nonetheless be misleading.

d. Depictions of government symbols. Currently, representations relating to the American flag or the U.S. armed forces are prohibited from appearing on alcohol beverage labels in order to prevent misconceptions that the alcohol beverage is endorsed or otherwise supervised by the U.S. government or the

armed forces. 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) that 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 these regulations are based, it is TTB's current policy to enforce this regulatory prohibition only where such representations might tend to mislead consumers. Thus, TTB is proposing 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. Instead, proposed §§ 4.126, 5.126, and 7.126 retain the prohibition against the use of such symbols or images where they create the impression that there was some sort of endorsement by, or affiliation with, the governmental entity represented. 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 another country of origin.

e. Depictions simulating government stamps or 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 misleading. TTB solicits comments on whether there is still a need for regulations on this issue.

f. Cross-category terms on labels of wine, distilled spirits, and malt beverages. In proposed §§ 4.128, 5.128, and 7.128, TTB proposes to adopt a new prohibition on the misleading use of cross-commodity terms. Terms used to designate the class and type of wine, distilled spirits, and malt beverages are unique to each commodity. More and more frequently, TTB receives applications for approval of a label for one commodity where the label bears a term normally associated with a different commodity.

For malt beverage products, the current TTB regulations at § 7.29(a)(7) prohibit a label from containing 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. (See also 27 CFR 4.39(a)(7), which prohibits misleading statements on wine that create the impression that the wine contains distilled spirits. This prohibition does not apply to truthful statements of composition.) While the current regulations do not prohibit the use of wine terms on malt beverage labels or the use of wine or malt beverage terms on distilled spirits labels, TTB believes that the use of terms normally associated with one commodity may be misleading if used on a product of a different commodity.

For example, if a term that is a class or type designation for wine is used on a malt beverage label as the brand name or as a distinctive or fanciful name, or is placed on the label in an otherwise prominent position, the label may create the misleading impression that the malt beverage is produced with the addition of wine. As a result, TTB has denied approval of labels bearing such terms when it

has determined that the labels were misleading. This denial is authorized under TTB's general authority to prohibit misleading information on labels, which is codified at current §§ 4.39(a), 5.42(a), and 7.29(a). However, in other cases, TTB has determined that references to other commodities on labels do not mislead consumers as to the identity of the product. The determination of whether the reference is misleading depends on the overall label, and how the information is presented.

TTB believes that, in order to deal with this issue consistently, the regulations should set forth specific rules about the use of defined terms for one commodity on labels of another commodity. Accordingly, TTB is proposing to amend the regulations to specifically provide that no label, container, or packaging may contain a statement, design, or device that tends to create the false or misleading impression that the product is, or contains, a different commodity. Furthermore, the proposed regulations prohibit class or type designations (or any homophones or coined words that simulate or imitate a class or type designation) that are set forth in the TTB regulations for one commodity from appearing on a label for a product of a different commodity, if such representation creates a misleading impression about the identity of the product.

Consistent with past practice, the proposed regulation does not prohibit a truthful and accurate statement of alcohol content. Similarly, it does not prohibit the use of a brand name of a different commodity, provided that the overall label or advertisement does not create a misleading impression about the identity of

the product. The proposed rule continues to allow the use of cocktail names as brand names or distinctive or fanciful names, provided that the overall label or advertisement does not create a misleading impression about the identity of the product.

The proposed rule does not prohibit the use of truthful and accurate statements about the production of the product, as part of a statement of composition or otherwise, such as “aged in whisky barrels” for a malt beverage or wine, so long as such statements do not create a misleading impression as to the identity of the product. Consistent with TTB Ruling 2014–4, while statements about aging malt beverages in barrels previously used in the production or storage of distilled spirits or wine are not prohibited, statements that imply that the product contains distilled spirits (such as “bourbon flavored beer”) are prohibited as misleading.

Finally, TTB proposes to continue to allow the use of terms that compare a product or products of one commodity to a product or products of a different commodity (such as, “This wine doesn’t have the hoppy taste of beer”) without creating a misleading impression as to the identity of the product.

TTB solicits comments on whether the proposed prohibition and the proposed exceptions to the prohibition will adequately protect the consumer and whether the proposed regulations will require changes to existing labels. TTB particularly solicits comments on whether the use of coined terms and homophones in brand names and elsewhere on the labels is misleading to

consumers when those terms imply similarity to class and type designations to which a product is not entitled.

g. Appearance of endorsement. The current regulations prohibit 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. TTB proposes, in §§ 4.130, 5.130, and 7.130, to maintain that rule, but to make more clear that actual endorsements are permitted and that TTB may request documentation supporting the claim of endorsement at the time the application for label approval is submitted or at a later time.

10. Subpart I—Classifications

Subpart I in parts 4, 5, and 7 sets forth rules for the classification of wine, distilled spirits, and malt beverages, respectively. As noted earlier in this document, wine, distilled spirits, and malt beverages are organized into general classes and, within the classes, more specific types. These classes and types, in the case of wine and distilled spirits, have specific standards listed in the regulations; these are known as "standards of identity." For malt beverages, the class and type designations are based on designations of products as known to the trade. The specific classification rules and the changes TTB proposes to make to these rules will be discussed below in the part-specific sections of this document.

11. Subpart K for Parts 4 and 5, Standards of Fill

In subpart K of parts 4 and 5, TTB maintains the current requirements for specified standards of fill (see §§ 4.202 and 5.202). (TTB plans to propose changes to the standards of fill in a separate rulemaking document.) Additionally, TTB proposes to codify its existing policies regarding aggregate packaging.

a. TTB's Current Regulations on Standards of Fill. TTB administers regulations setting forth container size and related standards of fill for containers of distilled spirits and wine distributed within the United States. (There are no standard of fill requirements for malt beverages.) The standards of fill appear in the current regulations in § 4.72 for wine, and §§ 5.47 and 5.47a for distilled spirits. Containers conforming to a standard of fill of, for example, 750 mL—which is a standard of fill prescribed by current regulations for both wine and distilled spirits—must have a net contents of 750 mL of that product.

b. Aggregate Packaging to Meet a Standard of Fill. 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 has not yet been codified in the regulations.

In Notice No. 872, published in the **Federal Register** (64 FR 6485) on February 9, 1999, ATF proposed to codify standards on this issue. According to the preamble of this NPRM, the issue of whether standard of fill requirements may be satisfied by aggregate packaging was first raised in 1988, when an importer sought permission to import bags containing 25 individual 15-mL packages of alcohol beverage for a total of 375 mL, an authorized standard of fill. The request was approved, as were subsequent requests for other types of containers, such as distilled spirits products packaged in packs of thirty 25-mL test tubes to meet an authorized standard of fill of 750 mL.

In the NPRM, ATF stated that it was concerned that the wide array of container types and packaging coming onto the market—including, but not limited to, aggregate packaging—would have a number of adverse impacts including: (1) Confusing consumers as to the quantity and nature of the alcohol beverage; (2) contributing to administrative difficulty in determining appropriate excise tax for the products; (3) making aggregate fill products more easily obtainable by underage individuals; and (4) creating problems with State and local alcohol beverage controls, either by conflicting with State standard of fill provisions or with prohibitions against open containers of alcohol beverages. Accordingly, the NPRM proposed regulations prohibiting the use of aggregate packaging to meet standard of fill requirements.

ATF received approximately 100 comments on the NPRM, with 40 percent of the comments against the proposed regulations and 60 percent favoring them. Comments against the proposed regulations came from the alcohol beverage

industry and related industries, such as packaging manufacturers; although one alcohol beverage producer supported the proposed regulations. Comments from industry regarding aggregate packaging mainly contended that the issue could be addressed with labeling requirements and that limiting package sizes was an unnecessary overreach by ATF. Comments on the aggregate packaging aspect of the proposed regulations came mostly from companies that were already using aggregate packaging to meet standard of fill requirements. However, most of the comments against the proposed regulations were not addressed to aggregate packaging, but to another aspect of the NPRM, which proposed regulations relating to packaging that appeared similar to packaging for non-alcohol products. The comments in favor of the proposed regulations came from consumers, parents, substance abuse agencies and consumer advocacy organizations, and were mostly general statements of support for the proposed regulations that did not specify which aspect of the NPRM (aggregate packaging or packaging types) they supported.

The regulations proposed in Notice No. 872 to prohibit aggregate packaging to meet the authorized standards of fill were not finalized, and the practice of aggregate packaging continues today. ATF encouraged the industry to adopt a number of safeguards to protect against consumer deception in the event that aggregate packages were broken apart and the single-serving packages sold individually. These safeguards included labeling the individual containers as "not for individual sale" and "not for children," sealing the outer container with shrink wrap or other secure methods, and encouraging bottlers to

bottle the individual units of the package in authorized standards of fill (for example, in 50-mL units). TTB continues to allow aggregate packaging under the following conditions:

- The applicant submits to TTB, along with the application for label approval, a sample of the actual external container and a sample of one of the smaller internal containers.
- The external container, as well as each of the smaller internal containers, is labeled with all of the mandatory information required by parts 4 and 24 for wine and parts 5 and 19 for distilled spirits, as well as the health warning statement required by part 16.
- The external container is shrink-wrapped, boxed, or sealed in such a manner that the smaller internal containers cannot be easily removed.
- Each of the smaller internal containers is labeled "NOT FOR INDIVIDUAL SALE."
- The external container bears a statement of total net contents that clearly shows how the contents of the individual packages added together are equivalent to one of the authorized standards of fill. (For example, 750 mL = 30 containers of 25 mL each.)

In recent years, TTB's policy regarding aggregate packaging has shifted to allow for non-standard of fill containers to be packaged together even when those containers do not hold the same product. For example, products of differing standards of identity and differing alcohol contents have been permitted to be packaged together as one product. TTB has reevaluated this shift in policy

and has determined that it is inconsistent with the original intent of the aggregate packaging policy, which was to allow one product to be bottled in non-standard of fill containers that would be banded together so that the sum of the identical parts would equal a standard of fill for that product.

c. Proposed Regulatory Amendment. The regulations proposed in this rulemaking document provide for aggregate packaging subject to the conditions set forth above and with the additional requirements that the wine or distilled spirits packaged in the individual non-standard of fill containers within an aggregate package must all be of the same class and type, alcohol content, and tax class. This is a narrowing of the current policy that allows for wines and distilled spirits of differing classes, types, and alcohol contents to be packaged together. TTB believes that this narrowing of the policy is necessary to maintain the original intent of standards of fill requirements, reduce consumer confusion when comparing products, and reduce administrative burden when calculating the tax liability of an aggregately packaged wine or distilled spirits product. The proposed provisions related to aggregate packaging appear in §§ 4.204 and 5.204.

If each internal container already complies with an authorized standard of fill, then the aggregate standard of fill conditions would not apply, and the internal containers would each be subject to label approval. The outer packaging would then be subject to the packaging regulations proposed at §§ 4.62 and 5.62. TTB believes it is appropriate to codify the rules related to aggregate packaging, which apply to labeling and standards of fill, as part of this modernization project.

12. Subpart L—Recordkeeping and Substantiation Requirements

Subpart L of parts 4, 5, and 7 sets forth rules for recordkeeping and substantiation requirements for alcohol beverages. Existing regulations (27 CFR 4.51, 5.55, and 7.42) 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. Current regulations (27 CFR 4.40, 5.51, and 7.31) also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs officer. However, these regulations do not state how long industry members should retain their COLA. Furthermore, since these regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, over 90 percent of new applications for label approval are submitted electronically, and the rest are processed electronically by TTB. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that were processed electronically. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that the 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 are new to the regulations and provide 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.

This requirement may be satisfied 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 five years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB believes that five years is a reasonable period of time for record retention because there is a five-year statute of limitations for criminal violations of the FAA Act. TTB notes that the proposed rule does 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.

While the FAA Act does not contain any specific recordkeeping requirements in this regard, the labeling regulations have for decades required industry members to produce COLAs upon demand. Furthermore, such records are necessary to enforce the requirements of the FAA Act with regard to COLAs

and certificates of exemption. See, e.g., National Confectioners Ass'n v. Califano, 569 F.2d 690, 693–94 (D.C. Cir. 1978), which upheld the FDA's authority to require records in the absence of a specific statutory requirement where records were necessary to help in the efficient enforcement of the Federal Food, Drug and Cosmetic Act.

Similarly, the FAA Act provides TTB with comprehensive authority over the labeling of wine, distilled spirits, and malt beverages, and the COLA provisions of the FAA Act are specifically designed to "prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of [27 U.S.C. 205(e)]." See 27 U.S.C. 205(e). The law specifically requires a certificate holder to have the COLA in its possession at the time of bottling or removal of containers from customs custody. Requiring the holder to be able to show evidence of label approval after removal is simply a clarification of TTB's current requirements. We note that in addition to the rulemaking authority provided by 27 U.S.C. 205, TTB has authority under section 2(d) of the FAA Act, Pub. L. No. 74–401 (1935) "to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties" under the FAA Act.

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 expectations as to the level of evidence that industry members should have to support labeling claims. The proposed regulations provide 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 level of substantiation that is claimed.

Furthermore, the proposed regulations provide 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, will be considered misleading. The regulations in subpart H are similarly amended to include the same requirement. TTB believes that this provision, which is very similar to the Federal Trade Commission's policy on substantiation of advertising claims, will clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation. See "FTC Policy Statement Regarding Advertising Substantiation" (Appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987)).

13. Subpart M—Penalties and Compromise of Liability

In proposed subpart M for parts 4, 5, and 7, TTB proposes simply to include references to various provisions of the FAA Act. Proposed §§ 4.221, 5.221 and 7.221 state that a violation of the labeling provisions of 27 U.S.C. 205(e) 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. Proposed §§ 4.222, 5.222, and 7.222 provide that basic permits are conditioned upon compliance with the provisions of 27 U.S.C. 205, including the labeling provisions of parts 4, 5 and 7, and 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.

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. This payment is to be collected by the appropriate TTB officer and deposited into the Treasury as miscellaneous receipts.

By placing these provisions in the regulations, TTB will make it easier for a person to locate the penalties for violating the FAA Act and the regulations implementing the FAA Act. These proposed regulations will not change the criminal penalty and compromise provisions, which are set forth in the statute.

14. Subpart N—Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns control numbers to TTB's information collection requirements. In current parts 4, 5, and 7, the OMB control numbers, in some instances, are listed at the end of the sections that impose the respective information collection requirements. TTB believes that industry members will have an easier time locating OMB control numbers for information collection requirements if they are listed in one location. Therefore, proposed subpart N for parts 4, 5, and 7 contains a listing of those sections of proposed part 4, 5, or 7, as the case may be, that impose an information collection requirement along with the assigned OMB control number.

C. Proposed Changes Specific to 27 CFR Part 4 (Wine)

In addition to the changes discussed in section II B of this document that apply to more than one commodity, TTB is proposing additional editorial and substantive changes specific to the wine labeling regulations in part 4. This section will not repeat the changes already discussed in section II B of this document. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 4 are described below.

1. WWTG Labeling Protocol

As described below, TTB is proposing to make several liberalizing changes to the wine labeling regulations in part 4 to conform to international commitments. TTB believes that these changes will increase flexibility in labeling for bottlers and importers of wine, while providing consumers with more information about the wine that they are purchasing.

The World Wine Trade Group (WWTG), which was founded in 1998, is an informal grouping of government and industry representatives from Argentina, Australia, Canada, Chile, the Republic of Georgia, New Zealand, South Africa, and the United States. The group shares information and collaborates on a variety of international issues to create new opportunities for wine trade.

The WWTG Agreement on Requirements for Wine Labeling ("Agreement") was initialed on September 20, 2006, and was signed in Canberra, Australia, on January 23, 2007, by the United States and other governments. This is an executive agreement and not a treaty. A full copy of the agreement can be viewed at http://ita.doc.gov/td/ocg/WWTGlabel.pdf. Negotiations of the

Agreement proceeded from the view that common labeling requirements would facilitate trade by providing industry members with the opportunity to use the same label when shipping wine to each of the WWTG member countries.

To conform to Article 6 of the Agreement, which requires the parties to the Agreement to allow information regarding alcohol content and certain other common mandatory information to be placed anywhere on a label in a "single field of vision," TTB engaged in rulemaking to eliminate the requirement in the TTB regulations that alcohol content be stated on the brand label. See T.D. TTB 114 (78 FR 34565, June 10, 2013). After the rulemaking was completed, the United States deposited its instrument of acceptance on October 1, 2013, and became a Party to the Agreement on November 1, 2013.

Under the Agreement, the Parties agreed to continue to discuss labeling requirements concerning tolerances in alcohol content statements, vintage wine, grape variety designations, and wine regions, with a view to concluding an additional agreement on labeling. This additional agreement—the Labeling Protocol—was signed on March 22, 2013, by several Governments other than the United States, and entered into force on November 1, 2013. A full copy of the Labeling Protocol can be found at http://ita.doc.gov/td/ocg/protocol.pdf. Because some of the existing labeling regulations in parts 4, 5 and 7 are inconsistent with the terms of the Labeling Protocol, TTB must engage in rulemaking on some of the issues addressed in the Protocol. We intend to address those issues in this proposed rule.

The Labeling Protocol reflects labeling requirements concerning tolerances in alcohol content statements, vintage wine, grape variety designations, and wine regions that are consistent with U.S. efforts to remove trade barriers. The Labeling Protocol will allow U.S. wine producers to export more easily to parties to the Agreement that have more restrictive labeling standards than the United States.

The proposed changes relating to the Labeling Protocol, as well as the other substantive changes that are unique to part 4 are described below, by subpart.

2. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 4, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and to which products the regulations in part 4 apply, a section that identifies other regulations that relate to part 4, and sections that address administrative items such as forms and delegations of the Administrator.

a. Definitions. Proposed § 4.1, which covers definitions of terms used in part 4, is consistent with the current regulatory text that appears in § 4.10, with some amendments in addition to those discussed in section II B of this preamble.

TTB is proposing to add definitions of the following terms: "brix," "county," "fully finished," and "grape wine." These terms are used throughout part 4.

The proposed rule defines the term "brix" as "[t]he quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution at 68 degrees

Fahrenheit. (20 degrees Celsius) (Percent by weight of sugar)." This definition is derived from and is consistent with 27 CFR 24.10, with the exception of changing a typographical error currently found in section 24.10 of "60 degrees" to the correct temperature of "68 degrees." TTB intends to correct the definition in § 24.10 in a separate rulemaking document.

The current and proposed regulatory texts use the term "county" when providing for authorized appellations of origin. TTB has been asked by many industry members if the term "county" includes other political subdivisions that are equivalent to a county, such as a "parish" in Louisiana. The proposed rule defines the term "county" to include a county or a political subdivision recognized by the State as a county equivalent. This proposed definition will allow the use of names of county equivalents as appellations of origin.

The current and proposed regulatory texts use the term "fully finished" when setting forth requirements for labeling wine with an appellation of origin. For example, one of the conditions in current § 4.25(b)(1)(ii) is that "the wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States." The parenthetical statement after "fully finished" appears all three times that term is used in part 4. Accordingly, TTB is defining the term "fully finished" as "Ready to be bottled, except that it may be further subject to the practices authorized in § 4.154(c) and to blending that does not result in an alteration of class or type under § 4.154(b)."

The proposed regulatory text uses the term “grape wine” to include still grape wine, sparkling grape wine, and carbonated grape wine. The proposed definition reflects the name change of current class one grape wine to still grape wine, but allows for use of an umbrella term when referring to still grape wine, sparkling grape wine, and carbonated grape wine.

The proposed rule also amends the current definitions of the following terms: “bottler,” “pure condensed must,” “total solids,” and “wine.”

The current definition of the term “bottler” reads as “[a]ny person who places wine in containers of four liters or less.” TTB is proposing to remove the size restriction associated with the current definition to denote that a person filling containers of any size is considered a “bottler.” This change will allow industry members to use the term “bottled” rather than “packed” on labels of wine in containers larger than 4 liters. For example, the industry member may use “bottled by ABC winery, Sutton, Massachusetts” rather than “packed by ABC winery, Sutton, Massachusetts” as the mandatory address statement for a five-liter container. TTB is also proposing to replace the word “person” with the phrase “[a]ny producer or blender or wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house” to better define those who are eligible to bottle wine. The proposed rule amends the term “bottler” to read as “[a]ny producer or blender of wine, proprietor of bonded wine premises or proprietor of a taxpaid wine bottling house, who places wine in containers.”

The proposed rule amends the definition of the term “pure condensed must” by removing the word “balling” and replacing it with the word “brix”

because the word “brix” is more commonly used by the industry. The terms “balling” and “brix” are synonymous.

The proposed rule amends the definition of the term “total solids” by adding the words “with water” at the end of this definition to clarify that restoring wine to its original volume must be done with water.

The proposed rule amends the definition of “wine” under the FAA Act by making clarifying changes, consistent with the definition of “wine” in 27 CFR part 1. This is a technical change and does not alter the current meaning of “wine” in part 4.

b. Prohibitions and jurisdictional limits. Proposed § 4.3 sets forth the general requirements and prohibitions under 27 U.S.C. 205(e). This repeats the essential elements of the prohibitions found in current § 4.30, and clarifies that the regulations that prohibit the alteration of labels apply to persons holding wine for sale.

c. Products that are not “wine” under the FAA Act. Proposed §§ 4.5 and 4.6 are new provisions that indicate which wines are covered by part 4 and which wine products are not covered by part 4. TTB receives many inquiries on this issue, and TTB believes that including this information in the regulatory text will be helpful to its readers.

Certain winery products that may be taxed as wine under the IRC do not fall within the definition of “wine” under the FAA Act, as found in 27 U.S.C. 211(a)(6), because of the differences between the two statutes. Thus, proposed § 4.5 clarifies that wine under part 4 contains at least 7 percent and not more

than 24 percent alcohol by volume. Proposed § 4.6(a) clarifies that part 4 does not cover products that would otherwise meet the definition of wine except that they contain less than 7 percent alcohol by volume. The proposed rule states that 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 FDA. Proposed § 4.6(b) clarifies that products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are classified as distilled spirits and must be labeled in accordance with 27 CFR part 5.

Proposed § 4.6 also includes a cross reference to § 4.7, which refers to labeling requirements under the ABLA and the IRC.

3. Subpart E—Mandatory Label Information

a. Brand labels. Currently, the TTB regulations at § 4.32 require that certain information appear on the brand label of a wine container, while other mandatory information, and any additional information, may appear on any label. The brand label is defined in § 4.10 as "[t]he label carrying, in the usual distinctive design, the brand name of the wine" and, under current § 4.32, the brand name, class or type designation, and statement of the percentage of foreign wine in a blend of American and foreign wines (where a reference is made to the presence of foreign wine on the label), must appear on the brand label. Other mandatory information may appear on any label.

In practice, however, a brand label may wrap nearly or entirely around a bottle or other wine container. As a result, mandatory information may appear anywhere on certain bottles and containers. Furthermore, if the label bearing the brand name is on the back of the container, then it is the brand label.

TTB believes that the current regulations requiring that certain mandatory information be placed on the brand label of wine containers are unduly restrictive. TTB believes that consumers are used to looking at the back and neck labels to find mandatory information on containers.

Accordingly, TTB is proposing to amend the regulations in proposed § 4.63 to allow mandatory information to appear on any label on a wine container.

b. Brand names. Proposed § 4.64 consolidates certain existing regulations with regard to brand names and puts them in one section of the regulations. Current § 4.32 requires that a brand name be placed on labels of wine. What may be used as a brand name is specified in § 4.33. The current § 4.39(i) pertains to geographical brand names. The proposed rule moves these provisions to proposed § 4.64(c) without substantive changes.

TTB believes that placing the provisions pertaining to geographical brand names with the other provisions pertaining to brand names will enable industry members to find and understand the regulations pertaining to brand names more easily.

c. Alcohol content and the WWTG Labeling Protocol. Under TTB's current regulations in § 4.36, the required alcohol content statement for wine may

be expressed as a percentage of alcohol by volume, or as a range, subject to certain requirements. However, the percentage of alcohol by volume is not required to be specifically listed on the label if the type designation “table” or “light” wine appears on the label. Subject to certain restrictions, a tolerance of one percentage point is allowed for alcohol content statements of wines containing more than 14 percent alcohol by volume, and a tolerance of 1.5 percentage points is allowed for wines containing 14 percent or less alcohol by volume. One of the current exceptions to the tolerance provision states that the alcohol content statement on a wine label must correctly indicate both the taxable grade of the wine and the class and type of the wine if alcohol content is part of the definition of the class and type.

Pursuant to Article 4.1(b) of the WWTG Labeling Protocol, the United States has agreed to accept alcohol content tolerances of up to one percentage point, provided that the alcohol content statement must correctly indicate the tax category, regardless of tolerance levels. This is consistent with current regulations, except that it allows the use of a tolerance in cases that cross over minimum and maximum alcohol content levels for labeling designations, as long as this would not affect the tax category.

Accordingly, proposed § 4.65 maintains the current tolerance levels for alcohol content statements in wine, and maintains the current exception to the tolerance levels for alcohol content statements related to maximum and minimum alcohol contents for tax classifications under 26 U.S.C. 5041. The proposed rule allows the tolerance levels to apply to alcohol content statements that might

affect the correct class and type designation, w unless the class or type designation reflects a minimum or maximum alcohol content requirement consistent with requirements set forth in a tax class.

An example of a class or type designation that reflects an alcohol content requirement consistent with a requirement set forth in a tax classification is “table wine.” The class and type designation “table wine” for a still grape wine is a designation that reflects a maximum alcohol content of 14 percent alcohol by volume, which is consistent with the maximum alcohol content for a tax classification for still wine under 26 U.S.C. 5041. Under current and proposed regulations, grape wine that is labeled as “table wine” need not bear a numerical alcohol content statement. Thus, the designation “table wine” on a label serves two purposes—it reflects the class and type designation of the wine, and it reflects the alcohol content for tax classification purposes. Accordingly, under the proposed rule, a still grape wine that contains 14.2 percent alcohol by volume would not receive the benefit of the tolerance to the extent that the wine may not be labeled either as a “table wine” or with an alcohol content of 14 percent or less, regardless of the tolerance prescribed in this section.

4. Subpart F—Restricted Labeling Statements

Proposed Subpart F—Restricted Labeling Statements, includes specific rules for the use of certain statements on labels, including statements regarding allergens, the term “organic,” and other specific statements. The following discussion sets out some of the more important provisions in proposed subpart F that relate specifically to wine.

a. Permit numbers. Current § 4.39(e)(2) sets forth specific format rules for stating optional bonded wine cellar and bonded winery numbers (for example, "Bonded Wine Cellar No. ___" or "B.W. No. ___"). TTB believes these format rules are unnecessarily restrictive and proposes to delete them. However, proposed § 4.86 retains the requirement that the permit number appear adjacent to the name and address of the person operating the wine cellar or winery.

b. Use of vineyard, orchard, farm or ranch names. Current § 4.39(m) provides that the use of vineyard, orchard, farm, or ranch names can only be used if 95 percent of the wine is produced from primary winemaking material grown on the named vineyard, orchard, farm, or ranch. This section further provides that if the name has geographical or viticultural significance, it is subject to the rules in §§ 4.39(i) and 4.39(b), which pertain to names having geographical significance.

Consistent with current policy, TTB is proposing to liberalize the current regulations on the use of vineyard, orchard, farm, or ranch names to allow the use of those names as part of trade names that are found on labels. It has been TTB's policy to allow the use of trade names in name and address statements, such as "Bottled by John Doe Vineyards, Seattle, Washington," where the wine has not been made from grapes grown in the referenced vineyard (or even where there is no vineyard with that name). Furthermore, when such a trade name appears on the label as part of the bottling address, it may also be used as a brand name on the label, without meeting the 95 percent requirement. TTB believes that consumers do not see the use of a vineyard, orchard, farm or ranch

name as part of a trade name as making a claim as to the source of the grapes, fruit, or other agricultural products used to make the wine.

Accordingly, the revision to these provisions in proposed § 4.87 clarifies that the 95 percent rule does not apply to trade names or brand names when the vineyard, orchard, farm, or ranch name is shown in the mandatory name and address statement on the label. TTB is retaining the provision that, when used in a brand name, a vineyard, orchard, farm, or ranch name having geographical or viticultural significance is subject to the requirements of proposed § 4.64(b) and (c).

c. Appellations of origin. Proposed §§ 4.88 through 4.91 set out the rules for appellations of origin for grape wines. Proposed §§ 4.96 through 4.98 set out the rules for appellations of origin for fruit wines, agricultural wine, and rice wine. As discussed in more detail below, TTB is proposing to separate out these rules to make it easier to locate all of the rules applicable to grape wine and fruit wine, respectively.

Current § 4.25 sets forth rules governing the minimum percentage of fruit or other agricultural products that must be grown within a specific geographic area in order to qualify for the use of an appellation of origin on a wine label. It also imposes other standards for use of an appellation of origin; for example, the wine must generally conform to the standards of the named appellation governing the composition, method of manufacture, and designation of wines made in such place.

TTB is proposing to include the appellation of origin requirements in several sections and incorporate other changes as discussed below. In addition to stating what constitutes the use of an appellation of origin, proposed § 4.88(d) clarifies that an appellation of origin is required when a grape wine is designated with a varietal (grape type) designation, a type designation of varietal significance, or a semi-generic type designation, or when the wine is labeled with a vintage date. These requirements are currently found in the class and type regulations in § 4.34.

Current § 4.25(d) provides that an appellation of origin comprising two or no more than three States which are all contiguous may be used if: (1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label, with a tolerance of plus or minus 2 percent; (2) the wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and (3) the wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

In ATF Ruling 91–1, TTB's predecessor agency held that a multistate appellation of origin cannot be used if conflicting State requirements preclude conformance with the laws and regulations of all the States listed in the appellation of origin. ATF also held that, where a multistate appellation of origin appears on the brand label and the percentage of the wine derived from grapes

grown in each State is listed on a label other than the brand label, the States in the multistate appellation of origin must be listed in a descending order of predominance, according to the percentage of the wine derived from grapes grown in each State. Where both the multistate appellation of origin and the listing of the percentage of the wine derived from grapes grown in each State appear on the brand label, ATF stated that it would carefully scrutinize the placement and size and type of the label statements, on a case-by-case basis, to ensure that the label does not tend to create a misleading impression as to the origin of the wine.

Current § 4.25(d) also provides for imported wines to be labeled with an appellation of origin that is comprised of the names of two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, which are all contiguous. The appellation may be used if all of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or similar political subdivision of a country equivalent to a state is shown on the label with a tolerance of plus or minus 2 percent. Furthermore, the wine must conform to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

In accordance with the WWTG Labeling Protocol, discussed earlier in this preamble, the proposed rules pertaining to multicounty and multistate

appellations of origin for both domestic and imported wine in proposed § 4.90 would: (1) Remove the requirement that States (or political subdivisions for imported wine) be contiguous in order to claim that the wine is produced from grapes grown in more than one State; (2) reduce the minimum percentage of grapes from 100 percent to 85 percent for wine to be labeled with such an appellation; (3) remove the requirement that the percentage of the wine derived from grapes grown in each State (or political subdivisions for imported wine) must be shown on the label; (4) add the requirement that the amount of wine derived from grapes grown in each State (or political subdivision for imported wine) named in the appellation must be greater than the amount of wine derived from grapes grown in any State not named in the appellation; and (5) add the requirement that States (or political subdivisions for imported wine) be listed in descending order according to the percentage of wine derived from grapes grown in those States (or political subdivisions for imported wine).

These amendments are liberalizing in several regards. First, they would permit the use of such an appellation where at least 85 (rather than 100) percent of the wine is derived from grapes grown within the areas named in the appellation. Second, they would eliminate the requirement to list the percentage of grapes from each State or other region, thus allowing greater flexibility in blending for producers. TTB notes that this approach is more consistent with regard to the rules for single appellations of origin, which may be comprised of not less than 75 percent wine made from grapes grown in the labeled region (in the case of an appellation that is a State, county, or similar political subdivision),

or 85 percent (in the case of an appellation that is a viticultural area), without any requirements for identifying the percentage of grapes coming from outside of the named appellation.

TTB also notes that the proposed requirements with regard to listing States and counties in descending order of predominance are largely consistent with the policy set forth in ATF Ruling 91–1, and supersedes that ruling. Finally, the proposed requirement will not require the listing of each State or county (or foreign equivalent) on the label; however, labels may not, for example, selectively include States that contributed only a small percentage of grapes while leaving out States that contributed a larger percentage of grapes. For example, in a case where grapes used to make a wine were grown in 4 States, with the first 2 States contributing 45 and 40 percent, respectively, the third State contributing 12 percent and the fourth State contributing 3 percent, the proposed rule requires the listing of the first 2 States, in order of predominance, leaving it up to the industry member whether it wanted to include a third State. However, the third State listed on the label would have to be the State contributing 12 percent, and not the State contributing 3 percent, even though in either case, the States listed would contribute more than 85 percent of the grapes used to make the wine. The industry member could, of course, choose to list all 4 States on the label.

Under the proposed rule, a multistate appellation of origin for American wine would continue to be unavailable unless the wine is fully finished in one of the labeled appellation States, and the wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in

all of the States listed in the appellation, which is consistent with the current regulations.

In general, the current regulations provide that wine derived from fruit or agricultural products grown in the county or State indicated on the label may be designated with an appellation of origin. This means that appellations of origin are available to grape wine as well as citrus wine, fruit wine, and agricultural wine.

TTB is proposing to separate the appellation of origin requirements for grape wine from those requirements for fruit and agricultural wine because an appellation of origin becomes mandatory when grape wine is labeled with certain type designations or a vintage date. Furthermore, an appellation of origin for grape wine includes viticultural areas, which have no relevance for fruit or agricultural wine. Otherwise, TTB is proposing the same liberalizing amendments for wines labeled with appellations of origin, regardless of whether the wines are made from grapes, other fruit, or other agricultural products.

d. Estate bottled and estate grown. Proposed §§ 4.92 and 4.93 set out the rules for use of the claims "estate bottled" and "estate grown." While the "estate bottled" rules are unchanged, except for clarifying changes, the proposed "estate grown" regulation is new, and represents a change in policy.

On November 3, 2010, TTB published Notice No. 109, an advance notice of proposed rulemaking (ANPRM), that set forth TTB policy regarding the use of the term "estate grown" on wine labels and requested comments (see 75 FR 67666). Specifically, TTB stated that, for over twenty years, TTB and its

predecessor agency have allowed the term “Estate grown” to be used as a synonym for the term “Estate bottled.” The regulations providing for the use of the term “Estate bottled” are found in current § 4.26 and, in general, allow the use of that term only if the wine is labeled with a viticultural area appellation of origin and the bottling winery: (1) Is located in the labeled viticultural area; (2) grew all of the grapes to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; (3) crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

Notice No. 109 explained that some industry members had requested that TTB permit the use of the words “Estate grown” on labels of wines that do not meet the “Estate bottled” standards in § 4.26. TTB invited comments from industry members, consumers, and other interested parties on whether TTB should propose to amend the regulations to reflect its current policy that “Estate grown” may be used on a label if the wine meets the requirements for products labeled “Estate bottled” under § 4.26. TTB also asked if it should propose a standard for “Estate grown” in the regulations that differs from that specified for “Estate bottled” and, if so, what that standard should be.

TTB received 16 comments in response to its questions pertaining to the use of “Estate grown” on labels. Only four of the comments were in support of TTB’s policy that “Estate grown” may be used on the label only if the wine meets the requirements for products labeled “Estate bottled.” A few of the comments

were in support of TTB codifying its existing policy, and one commenter stated its belief that all aspects of the "Estate bottled" requirements should apply to the term "Estate grown," except for the requirement of the viticultural area. Most of the comments suggested that "Estate bottled" and "Estate grown" are not synonymous.

In this rulemaking document, TTB is proposing to add a section to the regulations that will provide for the use of the term "Estate grown" (see § 4.93) on a label only if all of the following conditions are met:

(1) The wine is labeled with an appellation of origin

(2) The producing winery is located within the appellation of origin;

(3) The producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery within the boundaries of the appellation of origin, and fermented 100 percent of the wine from those grapes; and

(4) If the bottling winery is not the producing winery, the label must state that the wine was "estate grown" by the producing winery, and the name and address of both wineries must appear on the label. An acceptable labeling statement would be "Estate grown and produced by ABC Winery, Seattle, Washington. Bottled by XYZ Winery, Tacoma, Washington."

This is a liberalizing change that will allow the use of the term, "Estate grown," in a way that distinguishes grape growing from bottling operations.

<u>e. Claims on grape wine labels for viticultural practices that result in sweet wine</u>. Proposed § 4.94 codifies in the regulations for the first time the position

that TTB's predecessor agency set out in rulings pertaining to viticultural practices that result in sweet wine. TTB proposes to supersede ATF Rulings 78–4, 82–4, and 2002–7, by incorporating the rulings' holdings in proposed § 4.94.

Initially, proposed § 4.94(a) sets out the rules for using certain terms on grape wine that denote the use of viticultural practices resulting in sweet wine. In all such cases, the wine must also be labeled with the amount of sugar contained in the grapes at the time of harvest and with the amount of residual sugar in the finished wine.

Proposed § 4.94 provides that the term "ice wine" may be used only to describe wines produced exclusively from grapes that have been harvested after they have naturally frozen on the vine. The proposed rule provides that wine produced from grapes that were frozen post-harvest may not be labeled as "ice wine," but may be labeled with a statement indicating the wine was made from grapes that were frozen post-harvest. It provides that wines labeled with the term "ice wine," "late harvest," or "late picked" may not be ameliorated, concentrated, fortified, or produced from concentrate. Finally, proposed § 4.94 provides that wine made from grapes that have been infected with the botrytis cinerea mold may be labeled with a term such as "Botrytis Infected," "Pourriture Noble," or another name for infection by the botrytis cinerea mold.

f. Vintage dates for grape wine. Proposed § 4.95 sets out the rules for the use of vintage dates on wine labels. The current regulations prescribing requirements for labeling grape wine with vintage dates are found in § 4.27. These regulations characterize the vintage date as the year of "harvest." Thus,

wine produced from grapes that were grown in 2012 but harvested early in 2013 must bear the year 2013 as the vintage date.

However, the WWTG Labeling Protocol provides that “vintage” is the year of growth or harvest of the grapes used to make the wine, as defined in each Party’s laws, regulations, or requirements. The current definition in TTB’s regulations is thus more restrictive than the definitions found in the Labeling Protocol.

TTB recognizes that other countries have different rules for vintage dates, based on different growing conditions in different parts of the world. For example, in the Southern Hemisphere, the growing season may start in September and end in April, and thus includes parts of two calendar years. In Australia, the labeling rules provide that grapes harvested between September 1 and December 31 of a particular calendar year are treated as if they were harvested in the following calendar year for purposes of a vintage declaration. This effectively treats the entire growing season as a single year. In the Northern Hemisphere, the issue is less likely to arise, but does come up with regard to grapes that may be harvested in January for an ice wine type of product.

TTB believes that allowing the year of harvest to be determined based on the rules of the country of origin will not be misleading to consumers. Accordingly, we are proposing to amend the regulations to provide that the year of harvest for imported wines will be determined in accordance with the country of origin’s laws and regulations.

TTB proposes to remove the requirement that a person who wishes to label wine with a vintage date must possess appropriate records from the producer substantiating the year of vintage and the appellation of origin, because the substantiation requirements apply to all label claims, not just vintage dates.

TTB proposes to liberalize the requirements for imported wines that are bottled in the United States, by removing the requirement that such wines must have been bottled in containers of 5 liters or less prior to importation, or that they be bottled in the United States from the original container of the product showing a vintage date. This will allow the use of vintage dates on wine imported in bulk containers and bottled in the United States, as long as the bottlers have the appropriate documentation substantiating that the wine is entitled to be labeled with a vintage date.

The current regulations also provide that wine bearing a vintage date must also bear an appellation of origin that is shown in direct conjunction with the type designation as required by § 4.32(a)(2). As discussed in the grape wine appellation of origin section of this preamble, this rule would remove the requirement that the appellation of origin be shown in direct conjunction with the type designation. Instead, the appellation of origin would have to be shown in the same field of vision as the type designation.

The regulations in current § 4.27 also provide that for a wine to be labeled with a "vintage date," it must have been derived from grapes harvested in the labeled calendar year. It has been TTB's longstanding policy that only one vintage date may appear on a label, even if the wine is made from grapes

harvested in different years. We note that in 1980, in response to a petition, ATF aired a proposal to allow multiple vintage dates in an advance notice of proposed rulemaking (see Notice No. 357, November 13, 1980, 45 FR 74942). Comments on that proposal were evenly divided, and subsequently ATF issued a notice of proposed rulemaking setting forth specific proposals (Notice No. 378, August 5, 1981, 46 FR 39850). Because only a few comments (mainly opposed to allowing multiple vintage dates on labels) were received in response to that document, on May 18, 1984, ATF published Notice No. 529, which withdrew the proposal (49 FR 21083). We do not intend to reopen this issue at the present time. Accordingly, TTB proposes to codify this policy in proposed § 4.95.

g. Appellations of origin for fruit wine, agricultural wine, and rice wine. As discussed earlier in this preamble, current § 4.25 prescribes the rules for use of appellations of origin and allows wine produced from "fruit or agricultural products" to bear an appellation of origin. Proposed §§ 4.96 through 4.98 for labeling fruit wine, agricultural wine, or rice wine contain the same appellation of origin labeling requirements as are proposed elsewhere for labeling grape wine. See §§ 4.88 through 4.99.

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

Proposed subpart H sets forth certain labeling practices that are prohibited if they are used in a misleading way. Most of these subpart H provisions restate and reorganize rules currently found in the TTB regulations. Some of the proposed revisions are set forth below.

Proposed § 4.133(a) broadens existing language in current § 4.39(a)(8) to prohibit the use of terms defined in part 4 in a manner that is not consistent with

the part 4 definitions. This would include optional designations as well as mandatory designations. For example, under the proposed rule, a wine that was produced from grapes that were not frozen on the vine may not be labeled with the optional claim "ice wine." Proposed § 4.133(b) prohibits the use of coined words that simulate or imitate any class or type designation set forth in parts 4, 5 and 7 unless the wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

Finally, proposed § 4.133(c) and (d) prohibit certain misleading references to grape varieties and statements of harvest date, respectively, subject to the provisions of proposed §§ 4.136 and 4.134, respectively, as discussed below.

In general, proposed § 4.134 restates the existing rules prohibiting certain statements of age unless they are made on a label that bears a vintage date. It allows certain miscellaneous date statements, such as statements about the date on which a business was founded. It also specifically states that, subject to certain exceptions discussed below, the use of harvest or growth dates is not generally authorized for wines other than those labeled with a vintage date in accordance with proposed § 4.95.

Proposed § 4.134 liberalizes current TTB policy prohibiting statements relating to the years of harvest of grapes or fruit as additional information for wines designated as grape wine or fruit wine. Accordingly, the proposed regulations allow the use of additional truthful, accurate, and specific information about the year of harvest of the grapes or fruit, provided that the label indicates the percentage of wine derived from grapes or fruit, as applicable, harvested in

each year. If applicable, the years of harvest must be presented in descending order based on the percentage of wine derived from grapes or fruit, as applicable, grown in each year. Examples of allowable statements would be as follows: "60% of the grapes used to make this wine were harvested in 2014; the remaining 40% were harvested in 2013," or "This wine is a blend of 50% wine made from apples harvested in 2012 and 50% wine made from apples harvested in 2011."

Proposed § 4.135 is derived from current § 4.39(k) and in general, continues to prohibit misleading references to the origin of the wine. The proposed section liberalizes TTB's current policy by specifically authorizing the use of truthful, accurate, and specific information about the origin of the grapes, fruit, or other agricultural materials that were used to produce the wine when such wine is not labeled with an appellation of origin. The name of the place may not appear on the label in a way that creates the misleading impression that the wine is entitled to an appellation of origin.

Under both current and proposed regulations, a wine is entitled to the name of a State as an appellation of origin if, among other things, at least 75 percent of the wine is derived from fruit or agricultural products grown in that State, and it has been fully finished (except for certain cellar treatment and blending) within the labeled State or an adjacent State. Thus, if a grape wine is made in New York, and 50 percent of the grapes are grown in New York and the other 50 percent are grown in Virginia, the wine would not be entitled to either a New York or a Virginia appellation of origin. Furthermore, the wine would not be

entitled to a multistate appellation of origin, because New York and Virginia are not contiguous.

Under the proposed regulations, the label for such a wine may include additional information about where the grapes were grown, even though the wine is not entitled to either a New York or a Virginia appellation of origin. However, neither state name can stand alone as though the wine is entitled to a single state appellation of origin, nor can the wine be designated as "New York/Virginia wine." The additional information must set forth the origin of 100 percent of the grapes, fruit or other agricultural products used to make the wine, in descending order of predominance, together with the place where the wine was fermented. This will ensure that the consumer is not misled into believing that a statement of the origin of the grapes used to make a grape wine is the same as an appellation of origin for that wine. For example, if the wine in question is designated "red wine," the proposed regulation would allow the label to include a statement such as "This wine was fermented and bottled in New York from 50 percent grapes grown in New York and 50 percent grapes grown in Virginia."

Proposed § 4.136(a) and 4.136(b) restate the prohibition in current § 4.39(n) on the use of varietal names, type designations of varietal significance, semi-generic geographic type designations, or geographically distinctive designations, on wines that are not made in accordance with the standards set forth in the standards of identity for still grape wine, sparkling grape wine, and carbonated grape wine. The proposed language also makes it clear that the use of such names on a grape wine that does not meet the requirements for use of

the designation named is prohibited if it tends to create a false or misleading impression as to the designation, origin, or identity of the wine.

Proposed § 4.136(c) codifies and supersedes ATF Ruling 85–14, which allowed the use of certain information about grape varieties as additional information on the labels of certain wines. The proposed regulation allows the use of truthful, accurate, and specific additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance. The percentage of each grape variety may be, but is not required to be, shown on the label, with a tolerance of two percentage points. When shown, percentages must be shown for all grape varieties listed, and the total must equal 100 percent.

As discussed later in this document, TTB is proposing to liberalize the rules for use of a designation that includes more than one grape variety. Under this proposal, a varietal designation that includes the names of two or more varieties may be used without disclosing the percentage of the wine derived from each variety, as is currently required under § 4.23(d). If this option is available, it is not clear whether industry members will still want to include information about grape varieties as additional information, rather than labeling their wines with a varietal designation that includes two or more grape varieties. However, TTB recognizes that many wine labels currently include information about grape varieties as additional information; thus, we are proposing to continue to allow this practice. TTB seeks comments on this proposal.

TTB is proposing to eliminate the provision in current § 4.39(j) that inappropriately treats "product names" as if they were "brand names," and thus causes confusion. The current text allows for certain "*product* names with specific geographical significance" when qualified with the word "brand," even where the geographical name does not accurately represent the origin of the wine. [Emphasis added.] TTB solicits comments on the proposed revisions with regard to representations as to origin. In particular, TTB requests information on whether this proposed change may affect current labels.

TTB is also proposing to eliminate the provision in current § 4.39(l), which prohibits the use of foreign terms which (1) describe a particular condition of the grapes at the time of harvest; or (2) denote quality under foreign law on labels of domestically produced wine. TTB believes that the misleading use of such foreign terms is covered by the general prohibition of misleading statements or representations as to the age, origin, identity, or other characteristics of the wine (see proposed § 4.122).

6. Subpart I—Standards of Identity for Wine

a. General overview of the classes and types of wine. The regulations governing how wine must be identified on labels and the provisions for optional labeling statements are found in current subpart C, and are referred to as the "standards of identity." Current § 4.21 sets forth the standards of identity for wine and prescribes the several classes and types of wine that an industry member may use to designate wine. The consistent and accurate designation of wine

leads to consumer and trade understanding of the quality and identity of the wine.

Current § 4.32 requires a class, type or other designation to appear on the brand label. The general rules for class and type designations are set forth in current § 4.34. In general, the regulations require the class designation to appear on the label; however, certain type designations are authorized for use in place of a class designation. These other type designations are not specified in the current standards of identity but are found elsewhere in the regulations in part 4. For example, under current § 4.23, the names of one or more grape varieties may be used as a type designation of a grape wine, subject to certain conditions. In addition to these varietal type designations, current § 4.28 sets forth the conditions for use of "type designations of varietal significance." Current § 4.24 sets out the rules for "generic," "semi-generic," and "non-generic" designations of geographic significance. TTB is proposing to reorganize the standards of identity so that proposed § 4.142 includes all of the type designations within the class designation "still grape wine."

In addition to the various designations discussed above, a statement of composition may be required to accompany certain class and type designations. For example, current § 4.21(d), (e), and (f) prescribe the standards of identity for citrus wine, fruit wine, and wine from other agricultural products, respectively. These standards require that an adequate statement of composition be placed on the label, along with the appropriate class designation, when the wine is produced from more than one type of fruit, citrus fruit, or agricultural product,

respectively. TTB is proposing to amend the regulations to allow a designation (such as “apple-pear wine”) rather than a statement of composition.

TTB is amending the standards of identity to incorporate all of the ways in which an industry member may designate wine in accordance with TTB’s regulations. By indicating all of the ways an industry member must or may designate wine within the standards of identity, the proposed regulations provide better guidance on what constitutes a class designation or a type designation, and when a type designation may be used in place of a class designation.

b. Production standards. Current § 4.21 refers to numerous production standards that impact the way in which a wine may be designated. These include amelioration limits, volatile acidity levels, and the addition of brandy and alcohol. However, in many cases, these standards refer to outdated rules under chapter 51 of the Internal Revenue Code.

Wine that is domestically produced must be made in compliance with the production standards set forth in 26 U.S.C. 5381–5387, and designated in accordance with 26 U.S.C. 5388. These rules are also found in TTB’s IRC-based wine regulations in 27 CFR part 24.

In accordance with part 24, wine that is the product of the juice or must of sound, ripe grapes or other sound ripe fruit (including berries), made with any cellar treatment authorized by subparts F and L of part 24 and containing not more than 21 percent by weight of total solids, is deemed to be “natural wine.” Classes 1, 2, and 3 of the existing regulations in current § 4.21 are grape wine, sparkling grape wine, and carbonated grape wine, respectively, and are

produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment. As discussed further below, TTB is proposing to revise the standards of identity for grape wines and for fruit wines to clarify that these wines must be "natural wines" in accordance with 26 U.S.C. 5381–5383.

c. Natural wine certification. Prior to amendment in 2004, section 5382 of the IRC, 26 U.S.C. 5382(a), set forth certain standards for the proper cellar treatment of "natural wine." That section provided that "proper cellar treatment of natural wine constitutes those practices and procedures in the United States and elsewhere, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice." Section 5382(b) then went on to provide certain practices that were specifically recognized, including standards for the amelioration and sweetening of natural wine and standards for the addition of wine spirits to natural wine.

Section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, 118 Stat. 2434 (''the Act''), was signed by the President on December 3, 2004. Section 2002 of the Act revised section 5382(a) of the IRC. The revision of section 5382(a) took effect on January 1, 2005, and involved the following principal substantive changes: (1) The addition of a new

paragraph (1)(B) to provide that, in the case of wine produced and imported subject to an international agreement or treaty, proper cellar treatment of natural wine includes those practices and procedures acceptable to the United States under the agreement or treaty; and (2) the addition of a paragraph (3) setting forth a new certification requirement regarding production practices and procedures for imported natural wine produced after December 31, 2004.

The new certification provision directs the Secretary of the Treasury to accept the practices and procedures used to produce the wine if, at the time of importation, one of the following conditions is met:

(1) The Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary;

(2) The Secretary has on file or is provided with a certification required by an international agreement or treaty covering proper cellar treatment, or the wine is covered by an international agreement or treaty covering proper cellar treatment that does not require a certification; or

(3) In the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary.

The certification provision went into effect on January 1, 2005. Effective May 28, 2008, TTB adopted a final rule implementing the certification requirements regarding production practices and procedures for imported natural wine. The regulations implementing this statutory requirement are found in 27 CFR 27.140, which states that, except as otherwise provided, an importer of natural wine must have an original or copy of a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment in part 24. As provided for in the law, one exception to this requirement is for natural wines that are imported from countries that have an international agreement or treaty (enological practices agreement) with the United States specifying that the practices and procedures used to produce the wine are acceptable to the United States. Currently, 35 countries have enological practices agreements with the United States. These agreements exempt certain natural grape wines from the natural wine certification requirement.

d. Proposed changes and questions pertaining to the standards of identity for wine. It is clear that the existing standards of identity for grape wine (including sparkling grape wine and carbonated grape wine), citrus wine, and fruit wine are intended to incorporate the standards set forth in the IRC for the sweetening and amelioration of natural wine, as well as the standards for the addition of wine spirits. However, as set forth in further detail below, because of amendments over time to the IRC standards, the existing regulations contain a patchwork of inconsistent references to current and prior standards.

TTB is proposing to update these standards to clarify that these classes of wine must comply with the standards for "natural wine" set forth in section 5382 of the IRC. For imported wines, this means that a wine designated as a still grape wine, sparkling grape wine, or carbonated grape wine must be made in accordance with the standards set forth in 26 U.S.C. 5382 and 5383 for natural wine, and a wine designated as a fruit wine must be made in accordance with the standards set forth in 26 U.S.C. 5382 and 5384 for natural wine. It should be noted that imported wines can comply with the standards set forth in 26 U.S.C. 5382 if the practices used to make the wine have been accepted by the United States in an international agreement or treaty. Under the proposed rule, imported wines that are not entitled to a grape wine or fruit wine designation because they are not "natural wine" would have to meet the standards of identity for another designation set forth in part 4 or be designated with a statement of composition.

Proposed § 4.151 restates the requirements currently found in § 4.34(a) with regard to the designation of wines with a truthful and adequate statement of composition where the wine does not conform to any of the standards of identity found in part 4. As announced in the Department of the Treasury's semiannual regulatory agenda (available online at https://www.reginfo.gov), TTB plans to publish a notice of proposed rulemaking titled "Proposals Concerning Labeling of Flavored Wine," in which TTB will propose more specific rules regarding the labeling of flavored wine products. Accordingly, proposed § 4.151(c) simply states that "the appropriate TTB officer may require a statement of composition

to identify the base wine(s), including blends of wine or fermentable materials, as well as other materials added to the wine before, during, and after fermentation, as appropriate, in order to ensure that the label provides adequate information about the identity of the product."

This proposed language would not change current policy with regard to statements of composition on wine labels. Proposed § 4.151(c) also sets forth current policy regarding statements of composition for a blend of two different types of fruit or agricultural wine. In those cases, the statement of composition must include of the names of the types of wine (such as, "blueberry wine and apple wine" or "mead/rhubarb wine").

TTB is proposing substantive changes that affect multiple classes of wine, as well as several substantive changes that affect individual classes of wine. These changes are described below:

i. Amelioration. Pursuant to 26 U.S.C. 5383 and 27 CFR 24.10, amelioration is the addition to wine or juice, of water, sugar, or a combination of both to reduce or balance high acid content in some juice and wines. Amelioration may take place before, during, or after fermentation. Current § 4.21(a) provides three amelioration standards for grape wine, and current § 4.21(d), (e), (f), and (g) provide two amelioration standards each for citrus wine, fruit wine, and wine from other agricultural products.

Current § 4.21(a) allows grape wine to be ameliorated before, during, or after fermentation either: (1) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of

the resulting product more than 35 percent, as long as the product so ameliorated does not have an alcohol content derived by fermentation of more than 13 percent by volume, or a natural acid content, if water has been added, of less than five parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters; (2) by adding, separately or in combination, not more than 20 percent by weight of dry sugar, or not more than 10 percent by weight of water; or (3) in the case of domestic wine, in accordance with 26 U.S.C. 5383.

In general, the first two amelioration methods date back to the late 1930s and could be used for both domestic and imported wines. The methods conformed to the provisions of the 1939 IRC at 26 U.S.C. 3036. When the IRC of 1954 was enacted, new amelioration provisions were added. A specific reference to section 5383 of the 1954 IRC was added to § 4.21 through the publication of T.D. 6319 (23 FR 7698) on October 4, 1958.

The amelioration rule in part 24 (27 CFR 24.178) states that "the fixed acid level of the juice or wine may not be less than 5.0 grams per liter after the addition of ameliorating material." However, this requirement only applies in part 4 if water was used as the ameliorating material. TTB has found that the difference in methods is confusing for industry members, as well as the public at large.

Furthermore, different terminology relating to amelioration is used in current parts 4 and 24. Current part 4 refers to a "natural acid content" in parts per thousand, while current part 24 refers to a "fixed acidity level" in grams per

liter. The difference in terminology and units also is confusing for industry members, as well as the public at large.

Accordingly, this proposed rule removes two of the three amelioration methods listed in the part 4 regulations. This change is made in proposed §§ 4.142, 4.145, and 4.146. The proposed rule will clarify that grape wines, and fruit wines must all conform to the standards for natural wine set forth in the IRC.

ii. Cellar treatment. The current regulations for classes 1, 4, and 5 (grape wine, citrus wine, and fruit wine) prohibit the addition or abstraction (removal) of substances other than those specified in the standard of identity and those provided for as cellar treatment. As indicated above, this proposed rule will clarify that grape wine and fruit wine must be made according to the standards set forth in 26 U.S.C. 5382 and 5384 for natural wine under the IRC. Thus, the proposed standards of identity for grape wine and fruit wine cross reference the statutory cellar treatment provisions for natural wine in sections 5382 and 5384. This change is made in proposed §§ 4.142 and 4.145.

iii. Added brandy or alcohol. The current regulations concerning classes 1, 4, and 5, allow for the addition of grape brandy, citrus brandy, or fruit brandy, respectively, or alcohol. Domestically produced natural wines may only be produced with the addition of brandy or wine spirits that are derived from the same kind of fruit. For example, grape wine can be produced with the addition of grape brandy or grape wine spirits, and strawberry wine can be produced with the addition of strawberry brandy or strawberry wine spirits. With regard to imported wines, however, in some cases, the United States has recognized

fortification practices of the country of origin that allow for the use of spirits that are derived from a different source.

TTB believes that the existing regulation's authorization of the addition of "grape brandy or alcohol" to grape wine, and the addition of "fruit brandy or alcohol" to fruit wine may cause confusion and is therefore proposing to instead authorize the addition of "added spirits of the type authorized for natural wine under 26 U.S.C. 5382" in proposed §§ 4.142 and 4.145. This change will incorporate the standards which specify that wine spirits must be derived from the same type of fruit, which are found in 26 U.S.C. 5382, but it will also provide for the recognition of different standards for certain imported wines pursuant to international agreements.

iv. Dessert wine. Current § 4.21(a), (d), (e), (f), and (g) prescribe the standard for designating grape wine, citrus wine, fruit wine, and wine from other agricultural products as "dessert wine." Dessert wine is defined as wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume. TTB is not proposing to change this standard, but seeks comments on it, as explained below.

TTB has rejected applications for COLAs for labels that carry the term "dessert wine" where the wine did not contain more than 14 percent alcohol by volume. It has been suggested that the trade and consumer understanding of the term "dessert wine" may no longer be consistent with the meaning that the regulations assign to it. TTB has approved labels for wines containing no more than 14 percent alcohol by volume that include the phrase "may be served as

dessert wine." TTB believes that consumers may believe that the term "dessert wine" indicates the level of sweetness that the wine possesses, or may attribute some other meaning to the word. Accordingly, TTB is interested in receiving comments pertaining to the use of "dessert wine" as a designation that denotes alcohol content. TTB is also interested in receiving comments on whether there is a more appropriate term for designating wines that contain more than 14 percent alcohol by volume but less than 24 percent alcohol by volume.

v. Light wine. The current regulations for grape wine allow the term "light" to be used in two instances. The first is as an alternative designation for "table wine," which is defined as "grape wine having an alcoholic content not in excess of 14 percent by volume." The second instance in which "light" may be used for grape wine is as a designation that denotes that a "dessert wine" that has no more than 17 percent alcohol by volume (for sherry) or 18 percent alcohol by volume (for angelica, madeira, muscatel, or port). The current classes for citrus wine, fruit wine, and wine from other agricultural products also allow the designation "light wine" in lieu of the designation "table wine." TTB is not proposing to change the standard for "light" wine but is interested in receiving comments as to whether the proposed use of the designation "light" on wine labels, to indicate alcohol content, is consistent with industry and consumer understanding of that term.

vi. Natural wine. Current classes 1, 4, and 5 provide for wine that does not contain "added brandy" to be designated as "natural." TTB has received numerous applications for COLAs which use the designation "natural." On these

proposed labels, the term "natural" was intended to indicate to the consumer that the wine was produced following a certain set of production guidelines.

TTB believes that the designation "natural" may no longer have the meaning ascribed to it by the regulations. Additionally, the definition in the current part 4 is inconsistent with the IRC definition. Accordingly, the standards of identity no longer provide that grape wine or fruit wine containing no added brandy or alcohol may be designated as "natural." TTB is interested in receiving comments regarding whether trade and consumer understanding of the term "natural," when used on a wine label, is that no brandy has been added to the wine. TTB is also interested in receiving comments that indicate how the industry and consumers interpret the term "natural" in relation to wine. Finally, commenters should let TTB know if the proposed change would impact existing labels.

vii. Changes pertaining to individual classes or types. In addition to the changes affecting multiple classes of wine discussed above, TTB is making the following changes affecting certain individual classes of wine:

- Champagne "style" and "type:" Current § 4.21(b)(2) recognizes "champagne" as a type of sparkling grape wine the effervescence of which results solely from the secondary fermentation of the wine in glass containers of not greater than one gallon capacity. Sparkling wines having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for champagne may, in addition to but not instead of the class designation "sparkling wine," be further designated as "champagne

style" or "champagne type" or as "champagne" (along with an appellation of origin), and a qualifying term such as "bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented." The term "charmat method" or "charmat process" may be used as additional information.

The proposed regulations in § 4.173(d) continue to allow the use of "champagne" with one of the qualifying terms specified above on products designated as "sparkling wine," where their effervescence results from secondary fermentation in containers with a capacity of more than one gallon. The proposed regulations clarify that such wines must comply with the rules applicable to the use of "champagne" as a semi-generic designation, in accordance with proposed § 4.174. Thus, a sparkling wine that undergoes secondary fermentation in a tank may be designated, for example, as "Sparkling wine," with the further designation of "New York champagne—not fermented in the bottle—Charmat process," or "California champagne style—bulk process" as long as the use of the term "champagne" complies with the grandfathering and other rules set forth in proposed § 4.174.

- Fruit wine and citrus wine: The standards of identity currently provide for a class, fruit wine, in § 4.21(d) and a class, citrus wine, in § 4.21(e). The production requirements, such as amelioration and acidity limits, are the same for fruit wine and citrus wine. Furthermore, the ways in which fruit wine and citrus wine may be designated are consistent. Finally, TTB does not receive many applications for COLAs for wines designated as "citrus wine" (as opposed to

applications for COLAs for citrus wines derived wholly from one kind of citrus fruit, such as “orange wine” or “grapefruit wine”). Eliminating the class “citrus wine” would not require a change to labels of citrus wines that are made from a single type of citrus fruit. For these reasons and because citrus is a type of fruit, TTB proposes to eliminate the class of “citrus wine” and to include any wines made from citrus fruits in the fruit wine class. TTB solicits comments on whether this change (in proposed § 4.145) will require changes to existing labels.

- Agricultural wine: Current § 4.21(f) provides that “wines from other agricultural products” constitute class 6. This class includes wines produced from honey, raisins, dandelions, rice, maple syrup, and agave. This class does not include wines produced from fruit that is used in the production of grape wine, fruit wine, or citrus wine. Currently, wine produced from rice in accordance with the commonly accepted method of manufacture of such a wine is designated as Saké, which is a type of “wine from other agricultural products.”

TTB proposes to move Saké from current class 6, and create a new class, “rice wine,” in order to more clearly describe the standards for rice wines, including Saké and Gyeongju Beopju. Pursuant to Article 2.13.2 of the United States–Korea Free Trade Agreement, the United States agreed to recognize Gyeongju Beopju as a distinctive product of the Republic of Korea. Gyeongju Beopju was recognized in TTB Ruling 2012–3 as a non-generic designation of geographic significance, and as a product made in the Republic of Korea in accordance with the laws and regulations of the Republic of Korea governing the manufacture of this product. Proposed § 4.148(c)(2) recognizes Gyeongju

Beopju as a type designation, which means that the words “rice wine” would not have to appear as part of the designation. TTB seeks comments on whether this is appropriate, or whether the product should be designated as “Gyeongju Beopju rice wine.” TTB Ruling 2012–3 also recognizes Andong Soju, which is a distilled spirit, as a distinctive product of the Republic of Korea. As discussed in section II D of the preamble, TTB is proposing to amend the distilled spirits regulations to incorporate this holding of the ruling, and to supersede TTB Ruling 2012–3 in its entirety.

- Varietal (grape type) labeling: Proposed § 4.156 sets out the rules for varietal (grape type) labeling as a type designation for grape wine. The proposed rule is largely consistent with the current regulation, but sets out some liberalizing changes consistent with the WWTG Labeling Protocol, discussed earlier in this preamble.

The regulation providing for the use of one or more grape varieties as the type designation for grape wine is in current § 4.23. In addition to other requirements, current § 4.23 requires that a wine labeled with a varietal designation also be labeled with an appellation of origin.

Subject to certain exceptions, current § 4.23(b) provides that the name of a single grape variety may be used as the type designation of a grape wine if not less than 75 percent of the wine is derived from grapes of that variety, and if all of that 75 percent is grown in the area indicated by the labeled appellation of origin.

Current § 4.23(d) sets forth the current rules for the use of two or more grape varieties as the type designation for a grape wine. All of the grapes used

to make the wine must be of the varieties shown on the label. The percentage of the wine derived from each variety must be shown on the label (with a tolerance of plus or minus 2 percentage points). Finally, if the wine is labeled with a multicounty appellation of origin, the percentage of the wine derived from each variety from each county must be shown on the label; and if the wine is labeled with a multistate appellation of origin, the percentage of the wine derived from each variety from each State must be shown on the label.

TTB is proposing to make changes consistent with the WWTG Labeling Protocol. For wines labeled with more than one grape variety as the type designation, these changes would require that not less than eighty-five percent (instead of 100 percent) of the wine be derived from grapes of the labeled varieties. They would also remove the requirement that the percentage of the wine derived from each variety must be shown on the label. The proposed regulations remove the requirement that, if the wine is labeled with a multicounty or multistate appellation of origin, the percentage of the wine derived from each county or State must be shown on the label. The proposed rule adds a requirement that each grape variety listed must be in greater proportion in the wine than any variety that is not listed, and requires that the varieties be listed in descending order of predominance, based on the percentage of wine that is derived from each grape variety. Thus, if a wine is made from four different varieties of grapes, with the first representing 50 percent of the wine, the second representing 40 percent of the wine, the third representing seven percent of the wine, and the fourth representing three percent of the wine, the bottler would

have three options under the proposed rule if it wishes to use a varietal designation. It could list all four of the varieties, in descending order of predominance, or it could list the first three varieties, in descending order of predominance, or it could list simply the first two varieties, in descending order of predominance. However, the proposed rule would not allow the bottler to include the fourth variety (representing three percent of the wine) without also including the third variety (representing seven percent of the wine).

As previously noted, proposed § 4.23(b) requires that 75 percent of the wine must be derived from grapes of the variety listed on the label. This allows for some blending with wines made from other grapes, which are not required to be listed on the label. TTB believes that the proposed rule would provide consumers with adequate information about the identity of the product, and encourage the use of multiple varietal designations by producers. The proposed regulations would afford greater flexibility in the blending of wines.

Proposed § 4.157 sets forth rules on grape type designations of varietal significance. These are largely consistent with current § 4.28, with the exception of a proposed change relating to the designation "Gamay Beaujolais." In 1997, ATF published a final rule (T.D. ATF–388, 62 FR 16749) that phased out the use of the designation "Gamay Beaujolais" on American wine labels over a period of 10 years. The current regulations at § 4.28(e)(3) set out the rules for the use of the designation "Gamay Beaujolais" for wines bottled prior to April 9, 2007. However, as set forth in current § 4.28(e)(3), the designation "Gamay Beaujolais" may not be used on labels of American wine bottled on or after April 9, 2007.

While wines bottled prior to that date may still bear the designation in accordance with the transitional rule, TTB does not believe that it is necessary or useful to keep the transitional rule in the regulations. However, TTB seeks comments on whether that provision should be kept in the regulations.

e. Generic, semi-generic, and nongeneric designations of geographic significance. The regulations prescribing requirements for labeling wine with terms that have been found to be generic, semi-generic, and nongeneric designations of geographic significance are currently found in § 4.24. As described in more detail below, these regulations have not been updated to reflect amendments to the IRC in 2006 regarding the use of certain "semi-generic" names; thus, we are proposing to amend the regulations to reflect those amendments to the IRC.

The general rule, as stated in current § 4.24(c)(1), is that a name of geographic significance, which is also the designation of a class or type of wine, may be used in the designation of only those wines of the origin indicated by such name. Examples of these "nongeneric" names (such as "Spanish," or "Napa Valley"), are listed in § 4.24(c)(2). The exception to this general rule is where the Administrator has found a name of geographic significance to be either "generic" or "semi-generic."

"Generic" names are those specified in current § 4.24(a)(2) (such as "Vermouth" and "Saké"), which are no longer considered as having geographic significance but are indicative of a class or type of wine. A wine may be labeled with a generic designation regardless of the place of origin. "Semi-generic"

designations (such as “Madeira” and “Sherry”) are those names which retain some geographic significance but which are also known as the designation of a class or type of wine. Current section 4.24(b)(1) provides that semi-generic names may be used to designate wines of an origin other than that indicated by the particular geographic name, provided that the designation is accompanied by an appellation of origin indicating the true origin of the wine.

In addition to the general rule set forth above which restricts the use of nongeneric names used to designate wines, current § 4.24(c)(1) provides that the Administrator may find that certain of these nongeneric names are also the “distinctive” designations of specific wines. A name of geographic significance is deemed to be a distinctive designation if it is known to the U.S. consumer and trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. Current section 4.24(c)(3) states that names such as “Chambertin,” “Liebfraumilch,” and “Lacryma Christi” are examples of distinctive designations. A list of foreign distinctive designations appears in subpart D of part 12. Additional examples of foreign nongeneric names that are not distinctive designations of wine are listed in subpart C of part 12.

This proposed rule would codify these provisions in three separate sections, proposed sections §§ 4.173 through 4.175.

Proposed § 4.173 defines generic designations of geographical significance as “the name of a class or type of wine that once had geographic significance but has been deemed by the Administrator to have lost any geographic significance.” Also, paragraph (b) of proposed § 4.173 makes clear

that “vermouth” and “Saké” comprise the list of generic designations, and are not merely examples of such designations.

As mentioned above, current § 4.24(b) provides that semi-generic designations may be used to designate wines of an origin other than that indicated by the name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the name of the true place of origin of the wine, and if the wine so designated conforms to the standards of identity, if any, for such wine contained in the regulations in part 4, or, if there is no such standard, to the wine trade’s understanding of such class or type. Examples of semi-generic names that are also type designations for grape wines are: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (or Hock), Sauterne, Haut Sauterne, Sherry, and Tokay.

In proposed § 4.174, TTB is proposing substantive changes to the regulations governing the use of semi-generic designations on wine labels. These changes are consistent with changes in the law, which in turn stem from the 2006 Agreement between the United States and the European Union (EU) on Trade in Wine (“the EU Agreement”). The EU Agreement addresses a wide range of issues regarding the production, labeling, and import requirements for wine that help to establish predictable conditions for bilateral wine trade.

Under section 5388(c) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5388(c), a name of geographic significance, which is also the designation of a class or type of wine, is determined to be semi-generic only if so found by

the Secretary of the Treasury. In the EU Agreement, the United States made a commitment to seek to change the legal status of those names to restrict their use solely to wines originating in the applicable EU Member State, with certain exceptions for "grandfathered" names. The grandfathered names are: Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Malaga, Marsala, Port, Retsina, Rhine, Sauterne, Sherry, and Tokay.

Shortly thereafter, section 422 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432) amended section 5388 of the IRC (26 U.S.C. 5388) to implement Article 6 of the EU Agreement. The effect of this change in law is to restrict use of the semi-generic terms pursuant to the EU Agreement.

Article 6.2 of the EU Agreement and 26 U.S.C. 5388 allow a person or his or her successor in interest using one of the grandfathered names in the United States before March 10, 2006, to continue using the name, provided that the name is only used on labels for wine bearing the brand name, or the brand name and distinctive or fanciful name, if any, for which the applicable COLA was issued prior to the date of signature of the EU Agreement.

In accordance with the EU Agreement and the relevant changes in U.S. law, TTB has imposed restrictions on the use of the semi-generic names and the name Retsina. Although Retsina is a class of wine that was not previously recognized in the TTB regulations or in 26 U.S.C. 5388 as a semi-generic name, under the terms of the EU Agreement and 26 U.S.C. 5388, it is treated the same as the semi-generic names.

Under the provisions of the "grandfather" exception, any person or his or her successor in interest may continue to use a semi-generic name or Retsina on a wine label, provided the semi-generic name or Retsina is used only on labels for wine bearing the same brand name, or the same brand name and a distinctive or fanciful name, if any, that appear on a COLA issued prior to March 10, 2006. The grandfather clause is not available to wines originating in the EU. The proposed amendments will implement these provisions in the part 4 labeling regulations for the first time.

Accordingly, proposed § 4.174 defines a semi-generic designation as a geographic term which is also the designation of a class or type of wine and which has been deemed to have become semi-generic by the Administrator. It lists the semi-generic names and the restrictions on their use, in accordance with the provisions of 26 U.S.C. 5388. It should be noted that while the law provides the same protection to "Retsina" as it does to the names that are listed as being "semi-generic," it does not specifically provide that "Retsina" is a semi-generic name. TTB believes that this leads to confusion. Accordingly, TTB is proposing to amend the regulations to recognize "Retsina" as a semi-generic name. It should be further noted that, while "Angelica" is included as a semi-generic name, it is not subject to the grandfather provisions under 26 U.S.C. 5388.

ATF Ruling 73–5 held that Spanish wines bearing labels with semi-generic designations such as "Burgundy," "Chablis," "Sauterne," or "Rhine" do not meet the requirements of § 4.25(a)(3). Because proposed § 4.174(c) requires that imported wine labeled with a semi-generic designation conform to the

requirements of the producing country, and EU regulations would not allow a wine from Spain to be called a “Burgundy,” “Chablis,” “Sauterne” or “Rhine,” the proposed rule would supersede ATF Ruling 73–5.

Proposed § 4.175 defines a nongeneric designation as a name of geographic significance that has not been found by the Administrator to be generic or semi-generic. The proposed regulation also states that, “A nongeneric name of geographic significance may be deemed to be the distinctive designation of a wine if the Administrator finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.” Other than these clarifying provisions, the changes in proposed § 4.175 are editorial in nature.

7. Subpart J—American Grape Variety Names

Proposed subpart J of part 4 includes the list of approved names of American grape varietals, the list of alternate names of American grape varietals, and the approval processes for grape varietal names.

As previously mentioned, proposed § 4.157 provides the rules for using the name of one or more grape varieties as a type designation for a grape wine. Proposed § 4.157(e) provides that the name of a grape variety may be used in a type designation for an American wine only if that name has been approved by the Administrator. A list of approved grape variety names appears in proposed subpart J.

Proposed § 4.191 states how to petition the Administrator for approval of a grape variety name. This is largely consistent with existing § 4.93. However,

TTB is proposing a change in proposed § 4.191(e) to codify TTB's current policy with regard to the administrative approval of grape variety names pending future rulemaking.

Current § 4.93 provides that the TTB Administrator will publish the list of approved grape variety names in the **Federal Register** annually. TTB is proposing to revise this provision in proposed § 4.191 to eliminate the provision for publishing the names in the **Federal Register**. Instead, a complete list of grape variety names (including those listed in regulations and those temporarily approved by the Administrator) may be found on the TTB Web site, at https://www.ttb.gov.

While neither the proposed nor the existing regulations require TTB to engage in rulemaking before approving the use of a grape variety name to designate an American wine, it is TTB's preference to go through rulemaking in order to solicit comments on the use of proposed varietal names. However, rulemaking takes time, and TTB does not wish to delay the use of newly approved grape varietal names on American wine labels. Accordingly, it is TTB's practice to issue an "administrative approval" for new grape variety names that meet the criteria set forth in the regulations. An administrative approval is temporary in nature, and means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of subsequent rulemaking concerning the grape variety name.

Current § 4.92 provides a list of alternative grape variety names that may be used on a temporary basis, in lieu of the prime name of the grape variety that is shown in the list. These alternative grape variety names may be used for wine bottled before a specified date, which varies from 1997 to 2012. The alternative grape variety names in the list for wine bottled prior to 1997 and the names in the list for wine bottled prior to 1999 are not included in proposed § 4.192. Though absent from the list in the regulations, the alternative names authorized for wines bottled prior to 1997 and 1999 will still be authorized. However, TTB no longer believes it is necessary to include this transitional rule in the codified regulations.

D. Proposed Changes Specific to 27 CFR Part 5 (Distilled Spirits)

In addition to the changes discussed in section II B of this document that apply to more than one commodity, TTB is proposing 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 B of this document. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 5 are described below, by subpart.

1. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 5, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and to which products the regulations in part 5 apply, a section that identifies

other regulations that relate to part 5, and sections addressing administrative items such as forms and delegations of the Administrator.

Proposed § 5.1, which provides definitions of terms used in part 5, has some changes from the regulatory text that appears in current § 5.10. In addition to the proposed amendments discussed above in section II B of this document, TTB proposes to modify the definition of "age" to simplify it and to make clear that spirits are only aged when stored in or with oak. The wood contact creates chemical changes in the spirits, which is the aging process. Thus, for example, spirits stored in oak barrels lined with paraffin are not "aged."

Additionally, TTB proposes to add a definition of "American proof," which cross references the definition of "proof." The term "American proof" is used 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 proposes to amend the 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 proposes to add a definition of "grain," which would define the term to include cereal grains as well as the seeds of the pseudocereal grains: amaranth, buckwheat, and quinoa. TTB has received a number of applications for labels for products using pseudocereals, and TTB also notes that the FDA has proposed draft guidance allowing the seeds of pseudocereals to be identified as "whole grains" on labels (see 71 FR 8597, February 17, 2006).

Finally, TTB proposes to define the term “oak barrel,” which is used with regard to the storage of certain bulk spirits. TTB and its predecessor agencies have traditionally considered a “new oak container,” as used in the current regulations, to refer to a standard whisky barrel of approximately 50 gallons capacity. Accordingly, TTB proposes to define an oak barrel as a “cylindrical oak drum of approximately 50 gallons capacity used to age bulk spirits.” However, TTB seeks comment on whether smaller barrels or non-cylindrical shaped barrels should be acceptable for storing distilled spirits where the standard of identity requires storage in oak barrels.

2. Subpart B—Certificates of Label Approval and Certificates of Exemption of Label Approval, Subpart C—Alteration of Labels, Adding Information to Containers, and Relabeling, and Subpart D—Label Standards

Proposed subparts B, C, and D are updated for clarity and contain substantive changes as described in section II B of this preamble. The rules found in proposed §§ 5.42 – 5.44 regarding relabeling incorporate portions of, and would supersede, ATF Ruling 54–592, which deals with relabeling of distilled spirits with labels with different trade names, and ATF Ruling 62–224, which deals with labeling by wholesalers.

3. Subpart E—Mandatory Label Information

Proposed subpart E of part 5 sets forth the information that is required to appear on a label and prescribes how that information must appear on the label. The current regulations governing mandatory label requirements are found in subpart D of part 5. Proposed subpart E is generally structured similarly to the corresponding sections in the current regulations.

TTB is proposing to clarify where mandatory information must appear on a container. The proposed amendments will have the effect of increasing flexibility for placing such information on a distilled spirits container. Current § 5.32(a) requires that the following appear on the "brand label": the brand name, the class and type of the distilled spirits, the alcohol content, and, on containers that do not meet a standard of fill, net contents. The term "brand label" is defined in current § 5.11 generally as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal retail display conditions. Further, the definition states 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 believes that the information that currently must appear together on the brand label (or "principal display panel") is closely related information that, taken together, conveys important facts to consumers about the identity of the product. TTB is proposing, 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 believes 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. This amendment also eliminates the requirement that mandatory information appear parallel to the base of the container.

Paragraph (b) of current § 5.32 specifies that mandatory information other than that listed in paragraph (a) must appear either on the brand label or on a back label, in effect allowing this information to appear anywhere on the container. Paragraph (b) of the proposed § 5.63 in effect makes no change in this requirement by providing that the mandatory information set forth in that paragraph must appear "on a label or labels anywhere on the container" of each distilled spirits container.

Also with respect to the mandatory information, TTB proposes to clarify the existing requirement that, if the alcohol content is listed in terms of using degrees of proof, it must appear in direct conjunction with the mandatory alcohol content statement. The proposed rule provides that the statement of proof must appear immediately adjacent to the mandatory alcohol content statement.

The proposed rule still provides that the mandatory alcohol content statement must be stated on the label as a percentage of alcohol by volume. The proof statement may, but need not, appear on the label. In ATF Ruling 88–1, TTB's predecessor agency clarified that the proof must appear in direct conjunction 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 clarifies that additional statements of proof need not be accompanied by the alcohol by volume statement.

TTB also proposes in § 5.65(c) to provide for an expanded tolerance for labeling of alcohol content. The current regulations in 27 CFR 5.37(b) provide a tolerance for a drop in alcohol content only, of 0.15 percent alcohol by volume for most distilled spirits and of 0.25 percent for spirits with a high solids content or for spirits bottled in small bottle sizes. The tolerance was established to allow for variations in alcohol content that occur due to losses in alcohol content during the bottling process.

Industry members have expressed concern that while improvements in analytical equipment have made measuring alcohol content more precise, the volatility of ethyl alcohol makes it challenging during bottling to control alcohol content within the narrow parameters that are currently authorized. For example, many distilled spirits products have a minimum bottling alcohol content of 40 percent alcohol by volume. In some cases, distillers may target their alcohol content slightly higher than 40 percent, expecting evaporation of alcohol during the bottling process. However, in some instances, the alcohol content does not drop to the desired 40 percent during the bottling process. Current TTB regulations would not allow a product with, for example, an actual alcohol content of 40.15 percent alcohol by volume to be labeled with an alcohol content of 40 percent alcohol by volume.

The proposed rule amends the alcohol content regulations in part 5 to allow for an expanded alcohol content tolerance. TTB proposes to expand the alcohol content tolerance to 0.3 percent alcohol by volume above or below the labeled alcohol content.

TTB also proposes to make a similar amendment to the alcohol content regulations found in 27 CFR 19.356. The regulations in part 19 apply to the operations of distilled spirits plants. Section 19.356 sets forth tolerances for alcohol content and fill for bottling operations, and TTB proposes to expand the alcohol content tolerances in this section to mirror those in the proposed § 5.65(c). Because this alcohol content tolerance is larger than the previously allowed 0.25 percent for high solids content or for small bottles, we also propose to eliminate the stepped tolerance scheme and provide for the same tolerance for all distilled spirits.

TTB believes that this proposal would allow greater flexibility and business efficiencies for bottlers. We note that while taxes on distilled spirits are generally determined on the basis of the labeled alcohol content of the product, we believe that the proposal does not present risks to the revenue because there likely will be both overproof and underproof bottles and there is no economic incentive for intentionally overproofing bottles. We invite comments on this issue.

The current regulations in 27 CFR 27 CFR 5.36 allow for various statements as part of the name and address. The phrase “bottled by” is simple to understand – it may be used by the bottler of the spirits. Similarly, the phrase “distilled by” may be used only by the original distiller of the distilled spirits.

Currently, section 5.36(a)(4) allows a variety of terms, as appropriate, to be used by a rectifier of distilled spirits, including “blended by,” “made by,” “prepared by,” “manufactured by,” or “produced by.” 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. TTB proposes to clarify in proposed § 5.66(b)(2) the meaning of those terms. For example, 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 solicits comments on whether the proposed definitions of these terms are consistent with trade and consumer understanding.

TTB has received several inquiries about its existing regulations on labeling certain whisky products with a State where distillation occurs. Current § 5.36(d) require 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, whether distillation actually occurred in the same State as the bottling location.

Accordingly, proposed § 5.66(f) would provide that 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].”

The TTB regulations set forth certain rules for how age statements may appear on labels. TTB proposes to update the rule, currently found in § 5.40(d), which states that age, maturity, or similar statements may not appear on neutral spirits (except for grain spirits), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties, because such statements are misleading. TTB has seen recent growth in the number of distilled spirits products, such as gin, being stored in oak containers. However, the prohibition in the current regulations means that a producer cannot use age statements to inform the public how long its product has been stored in oak containers, and TTB has approved labels using terms such as “finished” or “rested” for these types of products. TTB believes that consumers should be able to make their own determinations on how the aging would affect the product, and that age statements would provide truthful information to consumers. Accordingly, TTB proposes to allow age statements on all spirits except for neutral spirits (other than grain spirits, which may contain an age statement). The revision appears at proposed § 5.74(e). Proposed § 5.74 incorporates and supersedes ATF Ruling 93–3, which exempts grappa

from the mandatory age statement for brandies aged less than four years. Finally, TTB proposes to supersede Revenue Ruling 69–58, which deals with rules for age statements that have been incorporated in the regulations.

4. Subparts F, G and H—Restricted and Prohibited Labeling Practices, and Labeling Practices that are Prohibited if they are Misleading

As described in section II B of this document, the current regulations set forth the prohibited labeling practices in a single section, § 5.42. In order to make it easier to find the relevant regulation and to improve readability, TTB proposes to separate these practices into three subparts—one for practices for which there are certain rules, one for practices that are prohibited in all instances, and one for practices that are prohibited only if misleading.

In addition to changes in provisions that apply to all three of the commodities, which are discussed in section II B of this preamble, proposed § 5.87 prescribes rules for the use of the terms “barrel proof,” “cask strength,” “original proof,” “original barrel proof,” “original cask strength,” and “entry proof” on distilled spirits labels. The proposed text incorporates 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 update the description of the term

“barrel proof” to take into account changes in the operation of distilled spirits plants because 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 bottling alcohol content (proof) of distilled spirits is not more than two degrees of proof lower than the proof of the spirit when the spirit was dumped from the barrel. TTB notes that it rarely sees such terms on distilled spirits labels and specifically seeks comments on whether they still have relevance and provide meaningful information to the consumer and whether TTB should regulate their use on labels.

Proposed § 5.88 sets forth rules for the use of the terms “bottled in bond,” “bond,” “bonded,” or “aged in bond,” or other phrases containing these or synonymous terms. The use of these terms was originally restricted to certain products under the Bottled in Bond Act of 1897 (29 Stat. 626). The Bottled in Bond Act was intended to provide standards for certain spirits that would inform consumers that the spirits were not adulterated. Treasury Department officers monitored bonded distilled spirits plants. The Bottled in Bond Act was repealed by the Distilled Spirits Tax Revision Act of 1979 (see title VIII, subtitle A, Public Law 96–39, 93 Stat. 273). TTB’s predecessor agency, ATF, decided to maintain the rules concerning “bottled in bond” and similar terms, because consumers continued to place value on these terms on labels. Proposed § 5.88 maintains

the requirements for the use of “bottled in bond” and similar terms and reorganizes them for clarity. Imported spirits may use “bottled in bond” and similar terms on labels when the imported spirits are produced under the same rules that would apply to domestic spirits.

In order to maintain parity between whisky that is aged and vodka and gin, which do not undergo traditional aging, vodka and gin are required to be stored in wooden containers in order to use “bond” or similar terms, but the wood containers must be coated or lined with paraffin or another substance to prevent the vodka or gin from coming into contact with the wood. TTB seeks comment on whether it should eliminate the requirement that bonded vodka or gin be stored in wooden containers. TTB rarely sees “bonded” vodka or gin; “bond” and similar terms are most frequently used on labels of whisky. Commenters may also wish to opine on whether TTB should maintain any special standards for the use of “bonded” or similar terms, since all domestic distilled spirits products are now bottled on bonded premises.

In addition, proposed § 5.89 would set forth new rules for the use of multiple distillation claims, such as “double distilled” or “triple distilled.” Current regulations, at § 5.42(b)(6), provide that such claims are allowable if they are truthful statements of fact and further provide that the terms “double distilled” or “triple distilled” shall not be permitted on labels of distilled spirits if the second or third distillation is “a necessary process for production of the product.” TTB is regularly asked for guidance on the meaning of this regulation and responds on a case-by-case basis depending on the relevant specific facts. Although TTB

policy is clear that the distillation steps necessary to meet a product's standard of identity would be considered the first distillation, TTB has not set forth a policy on how additional distillations may be claimed or counted where an industry member intends to use a multiple distillation claim. TTB is proposing in this rulemaking, at proposed § 5.89, to define a distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still. TTB believes that this definition is consistent with what consumers understand the terms to mean and also believes that this meaning most fully informs consumers as to the identity and quality of the distilled spirits product. TTB specifically seeks comment on this proposed meaning of distillation and proposed method for counting multiple distillations.

Proposed § 5.90 sets forth rules for the use on distilled spirits labels of terms related to Scotland. 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 retains 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, but 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 term "Scotch Whisky" would not be prohibited 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. (However, even though 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) clarifies (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, and supersedes Revenue Ruling 61–15, which applied that rule to specific language on labels of Scotch whisky bottled in the United States. If this proposed provision is included in the final rule, the 1961 ruling would be superseded in its entirety.

Proposed § 5.91 sets forth rules for the use of the term "pure" on distilled spirits labels, containers, and packaging. This rule currently appears in § 5.42(b)(5) and provides that the term "pure" may not be used unless it is a truthful representation about a particular ingredient, it is part of the name of a permittee or retailer for whom the spirits are bottled, or it is part of the name of the permittee who bottled the spirits.

5. Subpart I—Standards of Identity for Distilled Spirits

TTB is proposing amendments to the standards of identity for distilled spirits that are intended to clarify the classes and types of distilled spirits. TTB also is proposing to insert charts into the regulatory text to make the relationship between classes and types, and the standards for each, easier to understand and apply. Throughout the standards of identity, TTB proposes to identify alcohol content in terms of alcohol by volume as opposed to degrees of proof.

TTB proposes to clarify, in § 5.141, that the standards of identity apply to a finished product without regard to whether an intermediate product is used in the manufacturing process. This means that the intermediate product is treated as a mixture for the convenience of the manufacturer, but determinations as to the classification and labeling of the product will be made without regard to the fact that the elements of the intermediate product were first mixed together in the intermediate product. In the case of distilled spirits specialty products, TTB currently treats intermediate products as "natural flavoring materials" when they are blended into a product, for the purpose of disclosure as part of a truthful and adequate statement of composition. TTB has seen changes in the alcohol beverage industry and in various formulas and believes that treating intermediate products as natural flavoring materials does not provide adequate information to consumers, as required by the FAA Act. Accordingly, TTB proposes to clarify that blending components such as distilled spirits and wines together first in an "intermediate product" is the same as adding the ingredients separately for purposes of determining the standard of identity of the finished product. Additionally, TTB proposes to change its policy with regard to statements of composition for specialties to require the disclosure of elements of the intermediate product (including spirits, wines, flavoring materials, or other components) as part of the statement of composition.

Some distilled spirits products may conform to the standards of identity for more than one class. Consistent with longstanding policy, TTB proposes 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 “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 seeks 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.

The following proposed provisions relate to the standards of identity for distilled spirits products:

Proposed § 5.142 sets forth the standards for neutral spirits. Current § 5.22(a) states that neutral spirits are distilled spirits produced from any material at or above 190º proof and, if bottled, bottled at not less than 80º proof. Further, “vodka” is a neutral spirit so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color. Proposed § 5.142 would clarify several factors related to designating a neutral spirits product, factors that typically have been taken into account on a case-by-case basis. First, TTB is proposing 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 also is proposing to codify the holding set forth in Revenue Ruling 55–740, that neutral spirits, other than grain spirits, that are stored in wood barrels become specialty products and must be labeled in accordance with the appropriate rules for such products set forth in proposed § 5.156. Because storage in wood barrels renders the spirits not neutral, TTB's predecessor agency determined that consumers would be misled if spirits, other than grain spirits, were stored in wood barrels and then labeled as neutral spirits or vodka. Finally, the proposed regulations include allowable designations for neutral spirits labels.

TTB also is proposing to amend the standard of identity for vodka, a type of neutral spirit, to codify the holdings in several past rulings: Ruling 55–552, which holds that vodka may not be stored in wood; Ruling 76–3, which explains that vodka treated with charcoal may be labeled as "charcoal filtered"; and Ruling 56–98 and Ruling 97–1, which allow treatment with 2 grams per liter of sugar and trace amounts (1 gram per million) of citric acid and sugar. In addition, TTB is specifically seeking comment on whether the requirement that vodka be without distinctive character, aroma, taste, or color should be retained and, if this requirement is no longer appropriate, what the appropriate standards should be for distinguishing vodka from other neutral spirits.

Proposed § 5.143 sets forth the standards for whiskies. TTB proposes to clarify that the word whisky may be spelled "whisky" or "whiskey." TTB also proposes to require that, where a whisky meets the standard for one of the types of whiskies, it must be designated with that type name, except that Tennessee Whisky may be labeled as Tennessee Whisky even if it meets the standards for one of the type designations. Currently, TTB allows the term "Tennessee Whisky" to appear on labels, even if the product meets a more specific standard of identity, such as for bourbon whisky.

In the current regulations, when a whisky meets the standard for a type of whisky, it is unclear whether the label must use that type designation or may use the general class "whisky" on the label. TTB believes that consumers expect that the type designation will appear on the container when it applies. Additionally, historical documents indicate that TTB's predecessor agencies classified whiskies with the type designation that applied, and required that type to be the label designation. For example, in January of 1937, the Federal Alcohol Administration stated that "Where a product conforms to the standard of identity for 'Straight Bourbon Whiskey' it must be so designated and it may not be designated simply as 'Whiskey.'" See FA–91, "A Digest of Interpretations of Regulations No. 5 Relating to Labeling and Advertising of Distilled Spirits," p. 5.

In order to make the types of whiskies easier to understand, TTB proposes inserting a chart in the regulations that would set forth the types of whisky that are not distinctive products of other countries, the source material from which the whisky may be produced, whether storage is required, the proof

at which the whisky may be stored, and whether neutral spirits and harmless, coloring, flavoring, or blending materials may be used. Among other things, the proposed rule will codify in the regulations for the first time TTB's current policy, as set forth in the Distilled Spirits Beverage Alcohol Manual (TTB P 5110.7), that coloring, flavoring, or blending materials may not be added to products designated as "bourbon whisky."

TTB also proposes 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. In order to provide guidance for these products, TTB proposes that products that are either unaged (so they are colorless) or aged and then filtered to remove color should be designated as "white whisky" or "unaged whisky," respectively. This proposal represents 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 is proposing the new type designation of "white whisky or unaged whisky" and specifically requests comments on this new type and its standards.

In addition, TTB proposes to maintain the definitions for Scotch Whisky, Canadian Whisky, and Irish Whisky without change, but seeks comment on whether these standards should be clarified to indicate that certain standards for these types may differ from U.S. standards for whisky. For example, Scotch Whisky is whisky produced in Scotland in accordance with United Kingdom laws and regulations, which do not require that whisky be aged in new charred oak barrels. TTB policy is to allow whisky labeled as Scotch whisky to be produced under United Kingdom standards, and TTB seeks comment on whether, and what, additional clarifications in the regulations would improve understanding of the TTB labeling regulations.

Proposed § 5.144 generally restates the current standards for gin, but, in order to make the use of other aromatics optional, would change the requirement that gin be made with juniper berries and other aromatics. Also, TTB proposes to remove the designation "Geneva gin (Hollands gin)" from the list of "distilled gin" designations because that designation usually refers to gin that has been stored in wooden containers, which is not necessarily synonymous with the description "distilled gin."

Proposed § 5.145 sets out the standards for brandy, with minor clarifying changes. One of the proposed amendments would allow the use of the terms "Slivovitz" and "Kirschwasser" as optional designations for plum brandy and cherry brandy, respectively. Additionally, TTB proposes to incorporate Armagnac, Brandy de Jerez, and Calvados into the regulations as types of

brandy. These products are distinctive products of France, Spain, and France, respectively, and they are recognized by TTB under current policy.

Proposed § 5.148 is a new section that provides for a class called "agave spirits." Currently, spirits that are distilled from agave are considered distilled spirits specialties, and the labels of the products must contain a statement of composition, such as "Spirits Distilled from Agave." Because TTB's standards of identity are generally distinguished by agricultural commodity, TTB believes it would be useful for consumers and for industry members if TTB created a class of spirits for spirits that are distilled from agave. TTB proposes that the mash for agave spirits be comprised of at least 51 percent agave and that it may contain up to 49 percent sugar (weight before the addition of water). As proposed, Tequila, which currently appears as a class of distilled spirits in the TTB regulations and Mezcal, which does not currently appear in the TTB regulations but which is protected under the North American Free Trade Agreement, would be types of agave spirits produced in Mexico in accordance with the laws and regulations of Mexico. This would not require a change of labels of Tequila or Mezcal because these type designations may appear alone on the label without the class name "agave spirits."

Proposed § 5.149 sets forth a new standard of identity for Absinthe (or Absinth). Absinthe products are distilled spirits products produced with herbs, including wormwood, fennel, and anise. Under Industry Circular 2007–5, certain absinthe-type products are now allowed in the U.S. market, but are generally classified as distilled spirits specialty products or liqueurs (if they meet the

standard of identity for a liqueur). Under current TTB policy, the word “Absinthe” may not stand alone on the label; therefore, labels use multi-word names that include the word “Absinthe” (such as “Absinthe Vert” or “Absinthe Superieure”). TTB believes that consumers understand what absinthe is and that it is appropriate to set out a standard of identity for absinthe. The proposed standard reminds the reader that the products must be thujone-free under FDA regulations. Based on current limits of detection, a product is considered “thujone-free” if it contains less than 10 parts per million of thujone. Finally, TTB proposes to supersede Industry Circular 2007–5 in its entirety, without incorporating the requirement that all wormwood-containing products undergo analysis by TTB’s laboratory before approval. TTB will verify compliance with FDA limitations on thujone through marketplace review and distilled spirits plant investigations, where necessary.

Proposed § 5.150 sets out the standards for cordials and liqueurs. Among other changes, TTB proposes to incorporate into this section the holding in Revenue Ruling 61–71, which prohibits the terms “distilled,” “compound,” or “straight” from appearing on labels for cordials and liqueurs. These terms imply original distillation; thus, they are deemed to be misleading on labels for cordials and liqueurs.

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 proposes to codify this policy by adding these names as type designations under proposed § 5.150.

Proposed § 5.151 would establish "flavored spirits" as a revised and expanded class of distilled spirits consisting of spirits conforming to one of the standards of identity (the "base spirits") to which have been added nonbeverage 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). This is a clarification of current TTB policy, which is that you 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.

The TTB regulations currently list flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as the class designations under Class 9. Other types or classes of distilled spirits that are flavored currently are treated as distilled spirits specialty products and the labels for such products must contain a statement of composition. While TTB allows for any spirit to appear as part of a truthful statement of composition, TTB does 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

believes it should 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 provides a class of flavored spirits that would allow any base spirit to be flavored when made in accordance with the standards of identity set forth in the regulation. TTB proposes 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 2½ percent (or 12½ percent for brandy) must be disclosed on a label.

One new provision that TTB addresses in the proposed text regarding standards of identity is 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 proposes, 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 proposes 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.” Instead it must be designated as “Diluted Vodka”.

Certain geographical designations may be used on distilled spirits as, or as part of, the designation on the label. In proposed § 5.154, TTB proposes to change the rules for geographical designations currently found in § 5.22(k) and (l). Specifically, TTB proposes to provide that geographical names that are not generic may be used on products made outside of the place indicated by the name, if TTB determines that the name represents a type of distilled spirits and if the designation includes a qualifier such as “type” or “style” or a statement indicating the true place of production.

For example, Ojén is a town in Spain, and “Aguardiente de Ojén” is a distilled spirits product associated with Spain. Thus, the current and proposed regulations provide that “Ojen” is an example of a distinctive type of distilled spirits with a geographical name that has not become generic. If Ojen were made in the United States, it could be designated as “Ojen type” or “American Ojen” or with another similar phrase.

TTB also proposes to list specific products that are associated with a particular place that have become generic. These products could be manufactured in any place, and the label would not be required to bear a qualifier such as “type” or “style” or any other dispelling statement. An example of a

name that continues to be considered generic is “Aquavit.” Although this name was traditionally associated with the Scandinavian countries, TTB believes that by usage and common knowledge, this name has lost its geographical significance to the extent that it has become generic. Thus, TTB proposes to list Aquavit, along with Zubrovka, Arrack, Kummel, Amaretto, and Ouzo, as examples in this category.

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, TTB is proposing to add Andong Soju to the list of geographic names that have not become generic and that may not be used on distilled spirits made in any place outside the particular place or region indicated in the name. TTB is proposing to supersede TTB Ruling 2012–3.

In addition, TTB proposes to list Habanero, Sambuca, and Goldwasser as a category of designations that have not become generic, and could only be used on products produced outside of the places indicated by the names if the label contains a phrase clearly indicating the place of production. Examples of this usage include “American Sambuca” and “Sambuca – Product of the United States.” This proposal is not intended to change policy; current regulations in § 5.22(l)(2) provide Habanero as an example of a name for distilled spirits that are a distinctive product of a particular place, and the Distilled Spirits Beverage Alcohol Manual (TTB P 5110.7) recognizes Sambuca and Goldwasser as distinctive designations. TTB solicits comments addressing whether or not these

terms should still be recognized as being distinctive of a particular geographical origin.

Under the current § 5.35(a), products that do not meet the definition of one of the specified classes or types of distilled spirits must be designated in accordance with trade and consumer understanding or, if no such understanding exists, by a distinctive or fanciful name followed by a truthful and adequate statement of composition. Proposed § 5.156 sets forth a new specific designation for a class of spirits called "distilled spirits specialty products." By setting forth this new class, TTB intends to clarify the treatment of distilled spirits specialty products and the labeling requirements that apply to such products. Products within this class are not required to be labeled with the designation "distilled spirits specialty product." Instead, the distinctive or fanciful name together with the statement of composition acts as the product designation on the label.

This classification would not make any substantive change except for labeling requirements for cocktails, highballs, and similar specialty products. The proposal would eliminate the rule allowing for a limited statement of composition consisting of only the spirits used in the manufacture of such products. Over the years, TTB has seen an increase of cocktails recognized in bartenders' recipe books as the industry continued to innovate. Consumers are not fully informed when a label has only a cocktail name and the component spirit(s) because of the vast array of cocktails. Accordingly, TTB proposes to require a full statement of composition on such specialty products, and proposes to clarify that a cocktail

name may be used as the distinctive or fanciful name on a distilled spirits specialty product.

Certain ingredients or processes can change the class and type of a distilled spirit. Proposed § 5.155 sets forth the rule for alteration of class and type as well as exceptions to the general rule regarding alteration. Much of this section is found in the current 27 CFR 5.23, but TTB proposes to add wine, when used in Canadian whisky in accordance with Canadian law, as an exception to the general rule to make it clear that Canadian producers may add more than 2 and one half of one percent wine without altering the class from whisky. TTB has also had a number of requests from industry members for guidance on labeling products that are stored in two different types of barrels. For example, whisky must be stored in oak containers, in accordance with the standard of identity. When a producer stores the whisky in oak containers and then stores it in a different type of container, such as a maple barrel, the spirit becomes a distilled spirits specialty product and must be labeled with a statement of composition, such as "Bourbon Whisky finished in maple barrels." TTB proposes, in § 5.155(c), to add this requirement to the regulations.

Proposed § 5.166 sets forth the rules for the statement of composition as discussed in section II B of this document.

6. Subpart J—Formulas

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.

7. Subpart K—Standards of Fill and Authorized Container Sizes

Distilled spirits containers must be filled with certain specified amounts of the product. Additionally, the current regulations prescribe a maximum headspace for bottles so that consumers are not misled with regard to the quantity of spirits in the bottle. Over the years, alcohol beverage producers have greatly increased the number of brands and packages in the marketplace. TTB believes that if a product is bottled in a container that conforms to a standard of fill and is clearly marked with the net contents, the consumer is provided with sufficient information as to the amount of spirits in the bottle.

Currently, § 5.46(b) imposes a headspace requirement that applies to standard liquor bottles, and § 5.46(c) provides design requirements for standard liquor bottles. Pursuant to § 5.46(d), distinctive liquor bottles may be exempted from these requirements. A bottler or importer who intends to use a distinctive liquor bottle is currently required to apply for and obtain authorization for such use. Proposed § 5.202 incorporates these provision without substantive change.

TTB seeks comments on whether it should eliminate the current headspace and certain design requirements. TTB believes that eliminating the application requirement for distinctive liquor bottles would create efficiencies for

both TTB and industry members by reducing application and review requirements. However, TTB is specifically interested in comments regarding any deleterious effect that eliminating the requirement might have on consumers.

E. Proposed Changes Specific to 27 CFR Part 7 (Malt Beverages)

In addition to the changes discussed above that apply to all commodities, TTB is proposing additional editorial and substantive changes specific to the malt beverage labeling regulations in 27 CFR part 7. This section will not repeat the changes already discussed in section II B of this preamble. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 7 are described below, by subpart.

1. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 7, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and which products the regulations in part 7 apply, a section that identifies other regulations that relate to part 7, and sections addressing administrative items such as forms and delegations of the Administrator.

a. Definitions. Proposed § 7.1, which covers definitions of terms used in part 7, is largely consistent with the current regulatory text that appears in § 7.10, with some amendments in addition to those discussed in section II B of this preamble (relating to parts 4, 5 and 7).

The proposed text adds definitions for the terms “keg collar” and “tap cover” consistent with a proposed amendment, discussed later in this document, to allow mandatory label information to appear on keg collars and tap covers, subject to certain conditions. The proposed text amends the definition of the term “bottler” and removes the definition of “packer,” consistent with proposed amendments that would remove any distinction in name and address statements between “bottling” in containers of a capacity of one gallon or less and “packing” in containers in excess of one gallon.

The proposed text retains the current definition of “malt beverage,” which is based on the statutory definition set forth in the FAA Act at 27 U.S.C. 211(a)(7), and updates the cross reference to standards applying to the use of processing methods and flavors.

Prior to the issuance of TTB Ruling 2008–3, TTB and its predecessor agency had provided guidance on the minimum quantities of malted barley and hops required to be used in the production of malt beverages. In 1994, the Bureau of Alcohol, Tobacco and Firearms (ATF) issued ATF Compliance Matters 94–1, which provided that beers fermented from at least 25 percent malted barley (calculated as the percentage of malt, by weight, compared to the total dry weight of all ingredients contributing fermentable extract to the base product) and made with at least 7½ pounds of hops (or the equivalent thereof in hop extracts or hop oils) per 100 barrels were “malt beverages” under the FAA Act.

In TTB Ruling 2008–3, TTB announced that it was reconsidering this prior guidance, based on the fact that neither the FAA Act nor the implementing

regulations in 27 CFR part 7 prescribed minimum standards for the amount of malted barley used in production of a malt beverage. The ruling also noted that TTB had determined that a beer containing a much lower amount of malted barley (one percent of the total dry weight of all ingredients contributing fermentable extract to the product) conformed to the definition of a "malt beverage." The ruling stated that brewers and importers should contact TTB's Advertising, Labeling, and Formulation Division with questions as to whether a particular product falls within the definition of a "malt beverage" and therefore is subject to the COLA and other requirements of the FAA Act.

In this rulemaking document, TTB is not proposing to set forth any minimum standards for the quantity of malted barley or hops used in the production of malt beverages. TTB solicits comments from all interested parties on whether the regulations in part 7 should address this issue.

b. Prohibitions and jurisdictional limits of the FAA Act. Proposed § 7.3, which sets forth the general requirements and prohibitions under 27 U.S.C. 205(e), repeats the essential elements of the prohibitions found in current § 7.20 and the misbranding provisions found in current § 7.21. Because the term "misbranding" is not used consistently in current part 7, proposed § 7.3 would replace that term with the requirement that malt beverage containers be labeled in accordance with the regulations in part 7.

Proposed § 7.4 sets forth the jurisdictional limits found in 27 U.S.C. 205. As referenced earlier, the first prohibition in 27 U.S.C. 205(e) applies to any persons engaged in business as a brewer, an importer, or a wholesaler of malt

beverages, and it prohibits the sale or shipment or delivery for sale or shipment, or other introduction in interstate or foreign commerce, or receipt therein, or removal from customs custody for consumption, of any malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with regulations issued by the Secretary of the Treasury with respect to the packaging, marking, branding, labeling, and size and fill of container. The penultimate paragraph of 27 U.S.C. 205 further limits this application, by providing that the provisions of section 205(e) "shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof * * * only to the extent that the law of such State imposes similar requirements with respect to the labeling * * * of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof."

Consistent with the language of current § 7.20(a) and (b), proposed § 7.4 sets out these jurisdictional limits. Paragraph (a)(1) essentially restates the provisions of the penultimate paragraph of 27 U.S.C. 205(f). Paragraph (a)(2) sets out the longstanding Bureau interpretation of what is "similar" State law, by stating that if the label in question does not violate the laws of the State or States into which the malt beverages are being shipped, it does not violate part 7. Finally, paragraph (a)(3) clarifies that the regulations in part 7 do not apply to domestically bottled malt beverages that are not and will not be sold or shipped,

or delivered for sale or shipment, or otherwise introduced in interstate or foreign commerce.

c. Ingredients and processes. Proposed § 7.5 is derived from current § 7.11, and no substantive changes have been made. It should be noted that the current regulation authorizes the use of "flavors and other nonbeverage ingredients containing alcohol" in the production of malt beverages, subject to certain limitations. In the proposed regulation, the word "nonbeverage" has been inserted in front of the term "flavors," simply to clarify that the regulation is intended to authorize only the use of nonbeverage flavors containing alcohol.

d. Brewery products that are not malt beverages. For the first time, TTB is proposing to include regulations in part 7 that explicitly refer readers to the regulations in part 4 for saké and similar products that meet the definition of "wine" under the FAA Act, and to the FDA food labeling regulations for alcohol beverage products that do not fall under the definition of malt beverages, wine, or distilled spirits under the FAA Act. TTB receives many inquiries about such products, and TTB believes that including this information in the regulatory text will be helpful.

Consistent with the guidance found in TTB Ruling 2008–3, proposed § 7.6 is a new provision that clarifies that certain brewery products are not subject to the labeling requirements of part 7 because they do not fall under the definition of a "malt beverage" under the FAA Act. As set forth in greater detail in the ruling, certain brewed products that are classified as "beer" under the IRC definition in 26 U.S.C. 5052(a) do not fall within the definition of a "malt beverage" in the FAA

Act, as found in 27 U.S.C. 211(a)(7). The major differences between the terms are set forth as follows in the ruling:

> As indicated above, the definition of a "beer" under the IRC differs from the definition of a "malt beverage" under the FAA Act in several significant respects. First, the IRC does not require beer to be fermented from malted barley; instead, a beer may be brewed or produced from malt or "from any substitute therefor." Second, the IRC does not require the use of hops in the production of beer. Third, the definition of "beer" in the IRC provides that the product must contain one-half of one percent or more of alcohol by volume, whereas there is no minimum alcohol content for a "malt beverage" under the FAA Act.
>
> Accordingly, a fermented beverage that is brewed from a substitute for malt (such as rice or corn) but without any malted barley may constitute a "beer" under the IRC but does not fall within the definition of a " malt beverage" under the FAA Act. Similarly, a fermented beverage that is not brewed with hops may fall within the IRC definition of "beer" but also falls outside of the definition of a "malt beverage" under the FAA Act.
>
> It should be noted that saké and similar products are included within the definition of "beer" under the IRC. See 26 U.S.C. 5052(a). However, saké is also included within the definition of a wine under the FAA Act, which, among other things, covers only wines with an alcohol content of at least seven percent alcohol by volume. See 27 U.S.C. 211(a)(6). Thus, saké and similar products with an alcohol content of at least seven percent alcohol by volume are subject to the labeling and other requirements of the FAA Act.

The ruling thus held that in cases where a brewery product (other than saké and similar products) failed to meet the definition of a "malt beverage" under the FAA Act, the product will be subject to ingredient and other labeling requirements administered by the FDA.

2. Subpart B—Certificates of Label Approval

As mentioned previously, TTB is proposing to consolidate the regulations related to applying for label approval in a revised subpart B. In addition to the

changes already discussed, TTB is proposing to clarify the COLA requirements as they apply to brewers that are selling their domestically bottled malt beverages exclusively in the State in which the malt beverages were bottled. In TTB Ruling 2013–1, TTB issued guidance on this issue. TTB now proposes to make the regulations more clear and specific.

In proposed § 7.21(a), the regulations set forth the general requirement for a COLA. In proposed § 7.21(b), the regulations clarify 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 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 part 7. This is consistent with the language in current § 7.40, with conforming changes to reflect the reorganization of part 7. Proposed § 7.21(b) goes on to explain that this requirement applies where the State has either adopted subparts D through I in their entirety or has adopted requirements identical to those set forth in subparts D through I. This is consistent with the longstanding policy of TTB and its predecessor agencies.

Consistent with longstanding policy, proposed § 7.21(b) also notes 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 subparts D through I, to the extent that the State into which the malt beverages are being shipped has similar State law or regulations. This is because a State may have certain State laws or regulations that are similar to the labeling regulations in part 7, but are not identical. In such a case, while the COLA requirement would not apply to

malt beverages in containers that are shipped into that State, the substantive labeling provisions may apply to the extent that the state in question has similar state law.

As noted earlier, the FAA Act requires any brewer or wholesaler who bottles malt beverages to obtain a COLA prior to bottling. The FAA Act then goes on to state that malt beverages, like wines and distilled spirits, are exempt from the COLA requirements if, upon application to the Secretary, the bottler shows that the malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. TTB's predecessor agencies implemented this exemption for distilled spirits and wines by allowing for the issuance of a certificate of exemption for these products. However, with respect to malt beverages, the regulations did not require a COLA for products that were not to be entered in interstate commerce.

Prior to the issuance of TTB Ruling 2013–1, TTB received several inquiries from brewers who were not sure how the COLA requirements applied to their products. Accordingly, proposed § 7.21(c) specifically clarifies 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 a certificate of exemption from label approval is.

The proposed regulations are thus consistent with current regulations in that they do not require a certificate of exemption for malt beverages that will not

be shipped or otherwise introduced in interstate or foreign commerce. TTB believes that this is consistent with its overall goal of minimizing burdens on industry members. However, TTB recognizes that sometimes intrastate brewers need some type of certificate from TTB in order to satisfy State requirements. We solicit comments on whether the issuance of a certificate of exemption in such circumstances (for products that will not be sold outside of the State of the bottling brewery) would be useful, and whether the regulations should allow a certificate of exemption for such products.

3. Subpart D—Label Standards

Proposed subpart D contains regulations that govern the placement and other requirements applicable to mandatory information and additional information on labels and containers. As previously mentioned, TTB is proposing a new regulation for keg labels. Proposed § 7.51(a) provides, consistent with current regulations, that 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. However, proposed § 7.51(b) provides that a label on a keg with a capacity of 10 gallons or more that is in the form of a keg collar or a tap cover is not required to be firmly affixed, provided that the name of the brewer of the malt beverage 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.

Brewers have asked for such an exception, asserting that the current requirement for firmly affixed labels is unduly burdensome when it comes to

kegs. Because kegs are intended to be reused, brewers have argued that it takes considerable time and effort to scrape off the label each time a keg is to be reused. For this reason, brewers have requested permission to use a keg collar that is not firmly affixed to the keg, or a tap cover, to bear mandatory labeling information.

TTB believes that additional flexibility can be afforded with regard to the labeling of kegs without sacrificing consumer protection. For this reason, the proposed rule requires the name of the brewer to be 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 its IRC-based regulations in current 27 CFR 25.141 already require the name of the brewer to be permanently marked on each barrel or keg. TTB also notes that the proposed regulatory text specifically states that this exemption in no way affects the requirements in 27 CFR part 16 regarding the mandatory health warning statement, which would not be permitted to appear on a tap cover or on a keg collar that was not firmly affixed to the keg. TTB seeks comments from the public on whether the proposed rule would reduce burdens on brewers, and whether it could create any consumer protection issues.

4. Subpart E—Mandatory Label Information

a. Brand labels. Current § 7.22 requires that certain mandatory information appear on the brand label of a malt beverage, while other mandatory information, and any additional information, may appear on a label anywhere on the container. The brand label is defined in current § 7.10 as "[t]he label

carrying, in the usual distinctive design, the brand name of the malt beverage" and, under current § 7.22, the brand name, class, name and address, net contents (except when blown, branded, or burned, on the container), and alcohol content (when required for certain malt beverages produced with flavors or other nonbeverage ingredients containing alcohol) are required to appear on the brand label.

In practice, however, a brand label may be a label that wraps entirely around a can or bottle. As a result, mandatory information may appear anywhere on certain cans or bottles. Such cans and bottles are common containers of malt beverages. Furthermore, if the label bearing the brand name is on the back of the container, then it is the brand label.

TTB believes that the current regulations requiring that certain mandatory information be placed on the brand label of malt beverage containers are unduly restrictive. Furthermore, the prevalence of wraparound labels significantly reduces the consumer protection otherwise provided by this rule. Finally, TTB believes that consumers are used to looking at the back and neck labels to find mandatory information on containers.

Accordingly, TTB is proposing, in proposed § 7.63, to amend the regulations to allow mandatory information to appear on any label on the malt beverage container.

b. Alcohol content. As previously noted, the FAA Act, which was enacted in 1935, prohibited alcohol content statements on malt beverage labels unless required by State law. See 27 U.S.C. 205(e)(2). That prohibition was overturned

in 1995 by the U.S. Supreme Court in Rubin v. Coors Brewing Company, 514 U.S. 476 (1995).

Prior to the Supreme Court's decision in Coors, the malt beverage regulations in § 7.26 reflected the statutory prohibition against alcohol content statements. After a ruling by the United States District Court for the District of Colorado in the Coors litigation, TTB's predecessor agency, ATF, issued an interim rule indefinitely suspending those regulations as of April 19, 1993. See T.D. ATF–339 (58 FR 21232, April 19, 1993). That interim rule also implemented new alcohol content regulations by adding current § 7.71, which allows alcohol content statements unless prohibited by State law. When the alcohol content is stated, and the manner of the statement is not required under State law, the provisions of current § 7.71 prescribe how the alcohol content may be stated. The 1993 regulations were issued as an interim rule and they have not been finalized.

In 2005, in T.D. TTB–21 (70 FR 194, January 3, 2005), TTB issued a final rule requiring alcohol content statements for those malt beverages that contain alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol. TTB is retaining this provision in the proposed regulations, and TTB is proposing to finalize the interim alcohol content regulations in this rulemaking. In this proposed rule, current § 7.26 is removed, and the provisions of current § 7.71 are incorporated in proposed § 7.65 with some editorial changes for clarity, including a list of the acceptable ways to

present an alcohol content statement on a label. Also, several substantive changes are proposed, as set forth below.

Proposed § 7.65(b)(1) specifically provides that statements other than a percentage of alcohol by volume, such as statements of alcohol by weight, may appear on the label if they are truthful, accurate, and specific factual representations of alcohol content, and if they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume. Among other things, this proposal is consistent with the policy adopted in TTB Ruling 2013–2, in which TTB allowed the use of voluntary Serving Facts statements on labels and in advertisements. A Serving Facts statement includes nutrient information and may, on an optional basis, also include alcohol content information. In the ruling, TTB held that if alcohol content is expressed as a percentage of alcohol by volume, the Serving Facts statement may also include a statement of the fluid ounces of pure ethyl alcohol per serving (rounded to the nearest tenth) as part of the alcohol by volume statement.

With regard to statements of alcohol content by weight, some States require alcohol content statements to be expressed in this form. The regulations have always allowed alcohol content statements to be made in accordance with State requirements, and will continue to do so. However, some brewers would like to put alcohol content as both a percentage of alcohol by volume and as a percentage of alcohol by weight on labels of products sold in all States, so that they can use the same label in the States that require alcohol content as a

percentage of alcohol by weight and in other States that neither require nor prohibit alcohol content statements as a percentage of alcohol by weight.

TTB is proposing to allow this, but it solicits comments on whether allowing this information on labels would be confusing to consumers, or whether it would provide consumers with useful additional information. In particular, TTB seeks comments on whether permitting both formats on labels might confuse consumers as to the meaning of the different ways of expressing alcohol content. If so, does requiring the statements to appear together, as part of the same alcohol content statement, negate any potential confusion?

In addition, in proposed § 7.65(c), TTB proposes to expand the tolerance for alcohol content on malt beverage labels. Currently, for most malt beverages, the regulations allow a tolerance of 0.3 percentage points above or below the labeled alcohol content. TTB proposes to expand this tolerance to one percentage point above or below the labeled alcohol content. Some brewers, especially small brewers, have avoided putting an optional alcohol content statement on malt beverage labels because they have difficulty maintaining a precise alcohol content from batch to batch. TTB believes that increasing the tolerance level will encourage more brewers to include this important information on labels. Furthermore, TTB does not believe that a one percentage point variation from the labeled alcohol content will significantly impact consumers. We note that the wine regulations allow, with certain exceptions, tolerances of one percentage point for wines above 14 percent alcohol by volume and 1.5

percentage points for wines with an alcohol content of no more than 14 percent alcohol by volume.

Exceptions to the tolerance are maintained without change. For example, if a malt beverage label states that the beverage has an alcohol content above 0.5 percent, the actual content may not be below 0.5 percent, regardless of any tolerance that would otherwise be allowed.

Finally, this document does not propose to make alcohol content statements on malt beverage labels mandatory. In Notice No. 73 (72 FR 41860, July 31, 2007) TTB proposed requiring alcohol content statements for all malt beverage labels, but no final rule on that issue has been published. TTB is not proposing to address mandatory alcohol content statements for malt beverage containers in this rulemaking; TTB will address that issue in a separate rulemaking procedure.

c. Name and place where bottled on labels of domestically bottled malt beverages. The name and place where bottled informs the consumer as to who bottled the malt beverage, and where the bottling took place or where the bottler's principal place of business is. Proposed § 7.66 is derived from current § 7.25(a) and (c) and prescribes how the name and place where malt beverages are bottled must appear on containers of domestically bottled malt beverages. The proposed regulations differ from the current regulations in a few key ways.

First, the proposed regulations reflect agency policy stated in the Beverage Alcohol Manual for Malt Beverages (TTB P 5130.3), that a listing of all the brewer's locations may be provided on a label under certain conditions. This

language is also consistent with labeling requirements for beer under TTB's IRC-based regulations in 27 CFR 25.142.

Second, the proposed regulations provide more guidance with regard to what is required when malt beverages are brewed and bottled for another person. For example, the proposed regulations provide that, if the same brand of malt beverages is brewed and bottled by two breweries that are not of the same ownership, the label for each brewery may set forth both locations where bottling takes place, as long as the label uses the actual locations (and not the principal place of business) and as long as the nature of the agreement is clearly set forth. Examples are provided in the regulatory text.

Third, the proposed regulations provide that the place of bottling and the address of the principal place of business of a brewer must be consistent with the city and State of the address reflected on the brewers notice. This change reflects TTB's current policy as stated in the Beverage Alcohol Manual.

d. Net contents. The current regulations allow for the use of U.S. standard measures but do not address whether metric contents may also be displayed. However, it is current TTB policy to allow net contents to be expressed in both formats. Proposed § 7.70 allows for the statement of net contents of metric measurements in addition to, but not in lieu of, the U.S. standard measures.

5. Subpart F—Restricted Labeling Statements; Use of the term "Draft"

The proposed regulations also address the use of the term "draft" on malt beverage labels. Longstanding Bureau policy is set forth in Industry Circular 65–

1, which sets out standards for the use of the word “draft” on malt beverage labels. Proposed § 7.87 reflects this policy and provides that any malt beverage in a container of one gallon or more that dispenses through a tap, spigot, faucet, or similar device may be described as “draft.” Malt beverages packaged in customary bottles and cans may also be described as “draft” if they are unpasteurized and require refrigeration for preservation, or if the unpasteurized beverage has been sterile filtered and aseptically filled. Finally, the ruling provides that malt beverages packaged in customary bottles or cans that have been pasteurized may be described as “draft brewed”, “draft beer flavor”, “old time on tap taste” or with another similar phrase, only if the word “pasteurized” appears on the label.

As a matter of internal policy, TTB started to approve certain labels of pasteurized malt beverages using the term “draft” standing alone, if the word “pasteurized” also appears on the label. TTB is soliciting comments on whether this practice is misleading and should be changed. TTB is interested in comments specifically on whether it should continue to allow the use of any such terms on labels of pasteurized malt beverages. Please let TTB know if a change in these policies would impact existing labels.

6. Subpart H—Labeling Practices That are Prohibited if They are Misleading

a. Use of the term “bonded.” One currently prohibited practice is 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 believes that this implication (that such terms imply governmental

supervision) is related to the use of those terms with regard to distilled spirits, and that such terms were historically prohibited because their use on malt beverage labels would mislead consumers by causing them to believe that the malt beverage was actually a distilled spirit. The text, at proposed § 7.131, does not differ from the text currently prohibiting such terms (in § 7.29(c)). However, TTB is requesting comments on whether such terms are likely to mislead consumers into believing a product was made under governmental supervision or into believing a malt beverage is a distilled spirit, and, as a result, whether TTB should continue to prohibit their use on malt beverage labels.

b. Strength claims. As previously mentioned, the FAA Act prohibits both statements of alcohol content and statements likely to be considered as statements of alcohol content from appearing on malt beverage labels, unless required by State law. See 27 U.S.C. 205(e)(2). Current §§ 7.29(f) and 7.29(g) both implement the statutory ban on statements that are likely to be considered statements of alcohol content on malt beverage labels. Current § 7.29(f) prohibits the use of the words "strong," "full strength," "extra strength," "high test," "high proof," "pre-war strength," "full oldtime alcoholic strength," and similar words or statements that are likely to be considered as statements of alcohol content on labels of malt beverages. The proposed rule modernizes the language of these provisions by removing some terms (such as "pre-war strength" and "full oldtime alcoholic strength") that are not likely to be used by today's brewers.

7. Subpart I—Classes and Types of Malt Beverages

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.

Current Section 7.24(d) states that no product containing less than one-half of one percent alcohol by volume shall bear the class designation "beer," "lager beer," "lager," "ale," "porter," or "stout." Further, current § 7.24(e) provides that 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 practices) shall bear any of those class designations.

In 1993, ATF, TTB's predecessor agency, sought comments on standards of identity for malt beverages, in particular malt liquors, in an advance notice of proposed rulemaking. See Notice No. 771 (58 FR. 21126, April 19, 1993). However, the regulations were not amended to include such standards. In Notice No. 771, ATF stated that its predecessor agency, the Federal Alcohol Administration (FAA), issued proposed regulations regarding standards of identity for malt beverages in 1935, but noted that there were differences of opinion in the brewing industry regarding the standards and definitions for certain

designations. The FAA issued regulations in 1936 providing that products containing less than 5 percent alcohol by volume could not be designated as ale, porter, or stout. See Regulations No. 7, section 24 (1 FR 2013, November 21, 1936). The regulations were premised, in part, on the public perception that ale, porter, and stout were higher in alcohol content than beer. After more hearings, the FAA amended the regulations in 1938 to eliminate the list of classes and the minimum alcohol content requirements for ale, porter, and stout.

TTB does 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 with respect to the labeling of malt beverage products fermented or flavored with honey, certain fruits, and certain spices. Prior to the issuance of this ruling, the Brewers Association, a trade association representing small brewers, petitioned TTB to exempt certain malt beverages from the formula requirements under part 25, and to liberalize the labeling rules applicable to these products. The Brewers Association stated that “[W]ell-known and widely-distributed products such as fruit beers and spiced beers” were “well known to the trade and consumers by their flavor designations: *e.g.,* fruit beers, spiced ales, honey porters, and so forth. Required statements of composition such as ‘ale brewed with raspberry juice’ or ‘porter brewed with honey’ simply are unnecessary, clutter labels, and provide no more information to

the consumer than the readily-understood designations of ‘raspberry ale’ or ’honey porter.’”

The petition also suggested that TTB abandon the distinction between fruit beers made with added fruits or juices and those fermented with such substances, but, instead, should allow brewers to make this distinction on their labels if they wish.

In TTB Ruling 2014–4, TTB adopted these changes for certain malt beverages designated in accordance with trade understanding. We are now proposing to codify these standards in the regulations. TTB seeks comments on whether additional ingredients should be recognized as traditional ingredients in the production of a fermented beverage designated as “beer,” “ale,” “porter”, “stout,” “lager,” or “malt liquor.”

The TTB regulations also provide for special rules for certain classes and types; these are currently found in § 7.24(b) through (e). TTB proposes, in §§ 7.143 and 7.144, to incorporate and partially supersede Ruling 94–3, which held that ice beer is not considered concentrated when it is produced by removing less than 0.5 percent of the volume of the beer in the form of ice crystals and retains beer characteristics. TTB also proposes to incorporate and supersede Ruling 76–13, which sets forth standards for cereal beverages, which are malt beverages that contain less than 0.5 percent alcohol by volume, and confirms that such beverages fall under the authority of the FAA Act.

Proposed § 7.146 sets forth the requirements for geographical names currently found in section 27 CFR 7.24(f) through (h) with clarifying changes.

TTB proposes to clarify that distinctive names may be used in addition to, but not in lieu of a class designation. For example, Vienna Beer or Bavarian Stout may appear as designations.

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 are new to the regulations and 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.

F. Proposed 27 CFR Part 14 (Advertising)

Currently the regulatory provisions that address the advertising of wine, distilled spirits, and malt beverages are set forth in parts 4, 5, and 7, respectively. As noted above, TTB proposes to add a new 27 CFR Part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages, to consolidate these provisions into one part. In general, the advertising regulations require that advertisements, like labels, are truthful, accurate, and not misleading. Where possible, TTB seeks to treat advertisements for wine, distilled spirits, and malt beverages consistently. TTB proposes to delete the advertisement regulations for wine, distilled and malt beverages from parts 4, 5, and 7, respectively, and consolidate them into the

new part 14. Additionally, the proposed regulations are updated for clarity and to reflect changes in prohibited practices that mirror those proposed in the labeling regulations, where appropriate.

In the definitions section for part 14, TTB proposes to include several definitions that apply to advertising that currently appear in parts 4, 5, and 7, and to add definitions for “consumer specialty item,” and “responsible advertiser.” TTB also proposes to amend the definition of “advertisement” that is currently found in §§ 4.61, 5.62, and 7.51. Certain statements on container coverings, cartons, cases, carriers, or other packaging have traditionally been treated as advertising materials. As discussed in section II B of this preamble, TTB proposes to amend the labeling regulations, in proposed §§ 4.62, 5.62, and 7.62, to clarify that certain information must appear on packaging materials. These items would not be considered advertisements. However, items such as hang tags that accompany the bottle would continue to be considered advertisements and would be subject to the rules in part 14.

In proposed § 14.4, TTB sets forth the general requirement that advertisements must be in conformity with the TTB regulations found in part 14. TTB proposes to add a substantiation requirement to the regulation that mirrors the substantiation requirement for claims made on labels. Accordingly, industry members will be required to substantiate any claim made on an advertisement and a claim that cannot be adequately substantiated will be considered misleading. TTB also proposes to require that the responsible advertiser provide

substantiation upon request for a period of five years from the time the advertisement was disseminated or published.

Certain information is required to appear on alcohol beverage advertisements. Specifically, the responsible advertiser's name and contact information must appear on the advertisement. Currently, the regulations require the name and address to appear on the advertisement. TTB proposes to liberalize that requirement so that any type of contact information may be used, such as a telephone number, Web site, or email address. Additionally, the class, class and type, or other designation for the product advertised must appear on the advertisement. The mandatory statements are prescribed in the proposed § 14.6.

In the current and proposed regulations, if an advertisement refers to a general alcohol beverage product line, the only information required is the name and address (or contact information, in the proposed rule) of the responsible advertiser. In some cases, TTB finds that a "product line" contains only two types of products, and it also finds administrative difficulty when enforcing the mandatory statements requirements on Internet sites. TTB seeks comments on whether TTB should modify this requirement and, if it does, how the public might be better informed when an Internet site or other advertisement refers to more than one type of product.

The prohibited practices for advertisements contain a number of rules and prohibitions that conform to the rules for labels found in parts 4, 5, and 7. Generally, a statement or representation that is prohibited from appearing on a

label is also prohibited from appearing on an advertisement. TTB proposes to set forth the rules that apply to alcohol beverage advertisements in subpart A. Sections 14.11 through14.14 set forth the rules that apply to all alcohol beverage products. These are organized into sections that include related topics, in a similar organization to rules in parts 4, 5, and 7: restricted practices, prohibited practices, and misleading statements or representations.

TTB proposes, in § 14.14(f) to prohibit statements or representations that create an impression that a product is a different commodity. For example, a malt beverage advertisement could not have a representation that leads the viewer to believe that the product is wine. This prohibition is similar to that proposed in the labeling regulations in parts 4, 5, and 7. As noted above, TTB is not proposing substantive changes to the rules on health-related statements on labels, and TTB similarly does not propose changes for such statements on advertisements at this time.

Sections 14.15, 14.16, and 14.17 set forth the rules specific to advertisements for wine, distilled spirits, and malt beverages, respectively. In § 14.16, TTB proposes to incorporate the modified rules for the use of "double distilled," "triple distilled," and similar terms, to conform to the updated rules for using the terms on labels of distilled spirits, as described above. TTB also proposes, in § 14.17, to update the rules on strength claims on malt beverages, so that strength claims are only prohibited if the claims imply that products should be purchased on the basis of alcohol strength. Consistent with current policy, TTB proposes to remove the existing restrictions on alcohol content statements

in advertisements for wine and malt beverages, in light of the Supreme Court's decision in Coors, which was discussed earlier in this document. Although the Coors decision related to labels, not advertisements, TTB does not believe that the advertising regulations should prohibit truthful, specific and numerical claims about the alcohol content of those products.

In subpart C, TTB proposes to include references to various provisions of the FAA Act. Proposed § 14.21 states that a violation of the advertising provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor and refers readers to 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions. Proposed § 14.22 provides that basic permits are conditioned upon compliance with the provisions of 27 U.S.C. 205, including the advertising provisions of part 14, and 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. Proposed § 14.23 sets 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. This sum is to be collected by the appropriate TTB officer and deposited into the Treasury as miscellaneous receipts.

By proposing to place these provisions in the regulations, TTB is making it easier for a person to locate the penalties for violating the FAA Act and the regulations implementing the FAA Act. These proposed regulations will not change the criminal penalty and compromise provisions, which are set forth in the statute.

The Office of Management and Budget (OMB) assigns control numbers to TTB's information collection requirements. In subpart D, TTB proposes to list those sections that impose an information collection requirement along with the assigned OMB control number. TTB believes that industry members will have an easier time locating OMB control numbers for information collection requirements if they are listed in one location.

G. Impact on Public Guidance Documents

The chart below describes the impact of this proposed 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 Number	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
TTB Guidance 2011–5	Personalized Labels	§§ 4.29, 5.29, and 7.29
TTB Ruling 2012–3	Recognition of Andong Soju and Gyeongju Beopju as Distinctive Products of Korea	§§ 4.148 and 5.154
Wine		
Revenue Ruling 54–250	Vintage Date	§ 4.95
Revenue Ruling 54–418	Aperitif Wine	§ 4.147

Revenue Ruling 55–618	Wine Labels	Not incorporated
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 4.68
ATF Ruling 73–5	Spanish Wines Labeled with Semi-generic Designations	§ 4.174
ATF Ruling 73–6	Spanish Wines Labeled with Grape Type Designations	Not incorporated
ATF Ruling 78–4	Use of Descriptive Terms on Wine Labels	§ 4.94
ATF Ruling 82–4	Use of Descriptive Terms on Wine Labels	§ 4.94
ATF Ruling 85–14	Labeling of Wine Bearing Generic or Semi-generic Designation	Not incorporated
ATF Ruling 91–1	Multistate Appellations of Origin for Contiguous States	§ 4.90
ATF Ruling 2002–7	Wine made from grapes frozen after harvest may not be labeled with the term “ice wine” or any variation thereof, and if the wine is labeled to suggest it was made from frozen grapes, the label must be qualified to show that the grapes were frozen post-harvest.	§ 4.94
TTB Ruling 2008–1	Standards of Identity and the Use of Semi-generic Designations and Retsina on Certain European Wines Imported into the United States.	§ 4.174
Distilled Spirits		
Revenue Ruling 54–592	Relabeling Tax Paid Distilled Spirits	§ 5.42

Revenue Ruling 55–399	Straight Whiskey	Not Incorporated
Revenue Ruling 55–552	Grain Neutral Spirits Stored in Wood may not be Labeled as Vodka	§ 5.142
Revenue Ruling 55–740	Neutral Spirits Subjected to Vodka Process but Stored in Reused Whiskey Barrels may not be Designated or Labeled as Vodka	§ 5.142
Revenue Ruling 56–98	Flavored Vodka	§ 5.142
Revenue Ruling 59–408	Addition of Caramel	§ 5.156
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 69–58	Age statements	Not Incorporated
Revenue Ruling 71–188	Whisky Classification as White	§ 5.113
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 5.68
ATF Ruling 75–32	Labeling of Diluted Spirits	§ 5.153
ATF Ruling 76–3	Labeling of Vodka Treated with Activated Carbon as "Charcoal Filtered."	§ 5.142

ATF Ruling 79–9	Distilled Spirits Labels	§ 5.67
ATF Ruling 88–1	Alcohol Content on Labels and in Advertisements of Distilled Spirits	§ 5.44(b)(5)
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 97–1	Use of a "Trace Amount" of Citric Acid in the Production of Vodka without Changing its Designation as Vodka	§ 5.142
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
Industry Circular 2007–5	Use of the Term Absinthe for Distilled Spirits	§ 5.149
Malt Beverages		
Revenue Ruling 54–513	Labeling and Advertising of Malt Beverages	Not incorporated
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 7.68
ATF Ruling 76–13	Malt Beverages of Less Than 1/2 of 1% Alcohol by Volume Subject to FAA Act	§ 7.145
ATF Ruling 94–3	Ice Beer	§ 7.143

(superseded only with respect to the provisions related to part 7. The part 25 provisions remain in effect.)		
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 2008–3	Classification of Brewed Products	§ 7.6
TTB Ruling 2013–1	Malt Beverages Sold Exclusively in Intrastate Commerce	§§ 7.4 and 7.21
TTB Ruling 2015–1	Ingredients and Processes Used in the Production of Beer Not Subject to Formula Requirements	§§ 7.143 and 7.144
Industry Circular 1965–1	Use of the Term "Draft Beer" on Labels and in Advertising of Beer	§ 7.87

III. Derivation Tables for Proposed Parts 4, 5, 7, and 14

27 CFR Part 4	
Requirements in new section:	**Are derived from current section:**
4.0	4.1
Subpart A—General Provisions	
4.1	4.10
4.2	4.2
4.3	4.30(a) and New
4.4	Reserved
4.5	New
4.6	New
4.7	New
4.8	4.80
4.9	New
4.10	4.5
4.11	4.3
4.12	4.4
Subpart B—Certificates of Label Approval and Certificates of Exemption of Label Approval	
4.21	4.50(a) and (b)
4.22	New
4.23	4.50(b)
4.24	4.40
4.25	New
4.27	4.51
4.28	4.38(h) and New
4.29	New
4.30	4.45
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	
4.41	4.30(b)
4.42	4.30(b)
4.43	4.30(b)
4.44	4.30(b) and New
Subpart D—Label Standards	
4.51	4.38(e)
4.52	4.38(a)
4.53	4.38(b)
4.54	New
4.55	4.38(c)
4.56	4.38(f)
Subpart E—Mandatory Label Information	
4.61	New
4.62	4.38a and New

4.63	4.32
4.64	4.33; 4.39(i) and (j)
4.65	4.36
4.66	4.35(a) and (c); New
4.67	4.35(b) and (c)
4.68	4.35
4.69	New
4.70	4.37
Subpart F—Restricted Labeling Statements	
4.81	New
4.82	4.32a
4.83	4.32b
4.84	4.101
4.85	New
4.86	4.39(e)(2)
4.87	4.39(m)
4.88	4.25(a)
4.89	4.25(b)
4.90	4.25(c) and (d)
4.91	4.25(e)
4.92	4.26
4.93	New
4.94	New
4.95	4.27
4.96	4.25(a)
4.97	4.25(b)
4.98	4.25(c) and (d)
Subpart G—Prohibited Labeling Practices	
4.101	New
4.102	4.39(a)(1)
4.103	4.39(a)(3)
4.104	4.39(a)(7)
Subpart H—Labeling Practices That are Prohibited if They are Misleading	
4.121	New
4.122	4.39(a)(1)
4.123	4.39(a)(5)
4.124	4.39(a)(2)
4.125	4.39(a)(4)
4.126	4.39(g)
4.127	4.39(e)
4.128	4.39(a)(7)
4.129	4.39(h)
4.130	4.39(a)(6)
4.131	4.39(f)
4.132 Reserved	N/A

4.133	4.39(a)(8)
4.134	4.39(b) – (d)
4.135	4.39(k)
4.136	4.39(n)
Subpart I—The Standards of Identity for Wine	
4.141	4.20 and 4.34
4.142	4.21(a)
4.143	4.21(b)
4.144	4.21(c)
4.145	4.21(d) and (e)
4.146	4.21(f)
4.147	4.21(g)
4.148	(New)
4.149	4.21(i)
4.150	4.21(h)
4.151	New
4.152 & 4.153 Reserved	N/A
4.154	4.22
4.155 Reserved	N/A
4.156	4.23
4.157	4.28
4.158 – 4.172 Reserved	N/A
4.173	4.24(a)
4.174	4.24(b)
4.175	4.24(c)(1)–(c)(2)
Subpart J—American Grape Variety Names	
4.191	4.93
4.192	4.91
4.193	4.92
Subpart K—Standards for Wine Containers and Authorized Container Sizes	
4.201	4.70
4.202	4.71
4.203	4.72
4.204	New
Subpart L—Recordkeeping and Substantiation Requirements	
4.211	New
4.212	New
Subpart M—Penalties and Compromise of Liability	
4.221	New
4.222	New
4.224	New
Subpart N—Paperwork Reduction Act	

4.231	New

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	New
5.9	New
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)
5.25	5.51
5.27	5.51 and 5.55
5.28	5.33(g)
5.29	New
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	
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 and New
5.63	5.32
5.64	5.34
5.65	5.37
5.66	5.36
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	New
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	5.42
5.128	New
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	New
5.149	New
5.150	5.22(h)
5.151	5.22(i)
5.152	5.22(j)
5.153	New
5.154	5.22(k) and (l)
5.156	5.23
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	New
5.205	New
Subpart L—Recordkeeping and Substantiation Requirements	
5.211	New
5.212	New
5.213	5.33(g)
Subpart M—Penalties and Compromise of Liability	
5.221	New
5.222	New
5.223	New
Subpart N—Paperwork Reduction Act	
5.231	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	New
7.6	New

7.7	New
7.8	7.60
7.9	New
7.10	7.4
7.11	7.3
7.12	7.5
Subpart B—Certificates of Label Approval	
7.21	7.20(b), 7.40 and 7.41
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	New
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	New
7.63	7.22
7.64	7.23
7.65	7.71
7.66	7.25(a) and (c)
7.67	7.25(b)
7.68	7.25
7.69	7.New
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	New

7.86	Reserved
7.87	New
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)
7.124	7.29(a)(2)
7.125	7.29(a)(4)
7.126	7.29(d)
7.127	7.29(b)
7.129	7.29(e)
7.130	7.29(a)(6)
7.131	7.29(c)
7.132	7.29(f)
Subpart I—Classes and Types of Malt beverages	
7.141	7.24(a)
7.142	7.24(e)
7.143	7.24(b) and New
7.144	New
7.145	7.24(d)
7.146	7.24(g), (f), and (h)
7.147	New
Subpart L—Recordkeeping and Substantiation Requirements	
7.211	New
7.212	New
Subpart M—Penalties and Compromise of Liability	
7.221	New
7.222	New
7.223	New
Subpart N—Paperwork Reduction Act	
7.231	New

27 CFR Part 14	
Requirements of new section:	**Are derived from current section:**
14.0	New and 7.50
Subpart A—General Provisions	
14.1	4.11, 4.61, 5.11, 5.61, 7.11, 7.51
14.2	4.2, 5.1, 7.2
14.3	4.4, 5.4, 7.5
14.4	4.60, 5.61, 7.50

14.5	4.62, 5.63, 7.52
14.6	4.63, 5.64, 7.53
Subpart B—Rules Related to Specific Practices in Advertisements	
14.11	New
14.12	4.64(b), 4.65, 5.65(b), 5.66, 7.54(b), 7.55
14.13	4.64, 5.65, 7.54
14.14	4.64, 5.65, 7.54, and New
14.15	4.64
14.16	5.65
14.17	7.54
Subpart C—Penalties and Compromise of Liability	
14.21	New
14.22	New
14.23	New
Subpart D—Paperwork Reduction Act	
14.31	New

IV. Public Participation

A. Comments Sought

TTB requests comments from the public and all interested parties on the regulatory proposals contained in this document. TTB is 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 proposes substantive changes, TTB seeks comments on the proposals for further appropriate improvements. With respect to the few proposed changes that may require changes in current labeling or advertising practices, TTB seeks comments on the impact that the proposed changes will have on industry members and any suggestions as to how to minimize any negative impact.

TTB also seeks 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.

TTB also solicits 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.

B. Submitting Comments

You may submit comments on the proposals contained in this document by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this document within Docket No. TTB–2018–0007 on "Regulations.gov," the Federal e-rulemaking portal, at https://www.regulations.gov. A direct link to that docket is available under Notice No. 176 on the TTB Web site at https://www.ttb.gov/regulations_laws/all_rulemaking.shtml. Supplemental files

may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the "Help" tab.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.

- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 176 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and are subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online, mailed, or hand-delivered comments received about this proposal within Docket No. TTB–2018–0007 on the Federal e-rulemaking portal, Regulations.gov, at https://www.regulations.gov. A direct link to that docket is available on the TTB Web site at https://www.ttb.gov/regulations_laws/all_rulemaking.shtml under Notice No. 176. You may also reach the relevant docket through the Regulations.gov search page at https://www.regulations.gov. For information on how to use Regulations.gov, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this document, all supporting materials, and any online, mailed, or hand-delivered comments that TTB receives about this

proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's Federal Register liaision officer at the above address or by telephone at 202–453–2135 to schedule an appointment or to request copies of comments or other materials.

V. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following analysis provides the factual basis for TTB's certification under section 605.

1. Small Businesses in the Alcohol Beverage Industry

TTB recognizes that the vast majority of producers, bottlers, and importers of alcohol beverages are small entities. The Small Business Administration (SBA) sets out size standards based on the North American Industry Classification System (NAICS) under which an entity can be considered small for the purposes of Regulatory Flexibility Act analysis.[1] Breweries and wineries are considered small if they have fewer than 500 employees; distillers are considered small if they have fewer than 750 employees.

[1] See http://www.sba.gov/content/small-business-size-standards.

The U.S. Census Bureau's Statistics of U.S. Businesses data include data on employment among establishments within NAICS codes. The most recent data are from 2011. TTB used these data to calculate what proportion of entities classified within each relevant NAICS code could be considered small. TTB also looked at the data from 2005 to try to find changes over time.

Small-entity Size Standards for Potentially Affected Industries and Proportions of Small Entities within Those Industries			
Industry (NAICS code)	*Small-entity size standard*	*Proportion of small entities (2005)*	*Proportion of small entities (2011)*
Breweries (NAICS 312120)	Fewer than 500 employees	92.3 percent (352 small entities of 381 total establishments)	95.6 percent (696 small entities of 728 total establishments)
Wineries (NAICS 312130)	Fewer than 500 employees	95.2 percent (1559 of 1637)	97.0 percent (2613 of 2694)
Distilleries (NAICS 312140)	Fewer than 750 employees	77.0 percent (57 of 74) [1]	91.0 percent (193 of 212)[1]

[1] This is the proportion of entities with under 500 employees; the Statistics of U.S. Businesses data do not include employment at the 750-employee threshold. The true percentage and number of small entities are thus potentially higher than those listed here.

Source: SBA standards, Statistics of U.S. Businesses (see https://www.census.gov/econ/susb/).

2. Effect of the Proposed Rule

The vast majority of businesses subject to the proposed rule are small businesses, but the changes proposed in this document will not have a significant impact on those small entities. The production, bottling, importation,

and distribution of alcohol beverages is an industry subject to extensive Federal, State, and local regulation. As mentioned earlier in this document, the labeling and advertising regulations under the FAA Act have been in place since 1936. The proposed rule thus largely restates existing requirements, but clarifies and updates these regulations to make them easier to understand and to incorporate agency policies. The proposed regulations take into account modern business practices and contemporary consumer understanding in order to modernize the regulations, and TTB is seeking comments from all interested parties on ways in which the regulations may be improved.

The changes in the proposed rule can be divided into three classes with respect to their impact on small entities: (1) Clarifying changes that do not allow or prohibit any new conduct but improve the clarity and organization of TTB's FAA Act requirements; (2) liberalizing changes that will potentially give regulated entities new options to fulfill requirements; and (3) changes that impose new requirements or require changes to current labels.

a. Clarifying changes: Many of the changes in this proposal are clarifying in nature. They are designed to make TTB's requirements for alcohol beverage labeling easier to read and use. These proposed changes would not have any impact on small businesses, other than making it easier for them to understand the existing requirements of the regulation. Examples of clarifying changes include the following:

- 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 4, 5, and 7 to the extent possible;
- Breaking large subparts and large sections into small subparts and small sections to increase readability; and
- Providing more cross references in the regulations to relevant regulations and statutes.

These changes benefit all regulated entities, especially small entities, which typically do not have as many resources for complying with the regulations as larger entities. In addition to these proposed changes, TTB would also add some requirements to the regulations that reflect TTB policy by:

- Making it explicit that mandatory information may not be obscured in whole or in part;
- Codifying various TTB policies regarding statements of composition;
- Codifying TTB policy on using aggregate packaging to satisfy standards of fill for wine and distilled spirits;
- Changing the definition of a certificate of label approval (COLA) to incorporate TTB's current policy of expanding the allowable revisions that may be made to already approved labels through the issuance of guidance documents;

- Codifying TTB's current policy that any wines, distilled spirits, or malt beverages that are adulterated under the Federal Food, Drug, and Cosmetic Act are mislabeled under the FAA Act;
- Codifying TTB's current policy that compliance with the labeling regulations issued under the FAA Act does not relieve industry members of their responsibility to comply with FDA regulations regarding the safety of additives and ingredients, as well as FDA regulations regarding the safe use of materials in containers;
- Codifying 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;
- Codifying in the regulations the current requirement that containers 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 TTB's current policy with respect to the approval of the use of "personalized labels" by bottlers without having to resubmit applications for label approval;

- Amending the regulations on the use of semi-generic designations for consistency with amendments made to the IRC in 2006;
- Codifying current policy with respect to the required name and address statement on labels for wines, distilled spirits, and malt beverages that have been subject to certain production activities after importation in bulk;
- Codifying current policy with respect to the allowed use of certain non-misleading labeling claims about environmental and sustainability practices;
- 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;
- Removing outdated provisions in the tax laws from the labeling regulations;
- Providing that certain alcohol beverage products do not meet the definition of a wine, distilled spirit, or malt beverage under the FAA Act, and must accordingly be labeled in accordance with FDA labeling regulations for food;
- Codifying longstanding policy that products containing less than 0.5 percent alcohol by volume are not distilled spirits under the FAA Act;
- Specifying how the FAA Act applies to the labeling of malt beverages under the penultimate paragraph of 27 U.S.C. 205(f); and

- For purposes of aging distilled spirits, defining an oak barrel as a cylindrical oak drum of approximately 50 gallons used to age bulk spirits.

These provisions reflect current TTB policy, and thus no existing labels should need to be changed to come into compliance with these requirements.

b. Liberalizing changes: Liberalizing changes will not require entities that are currently in compliance with the regulations to make any changes, but may provide regulated entities with additional options they can choose to use. Any effect on small entities from these changes is likely to be positive. Key examples include:

- Allowing greater flexibility in the placement of mandatory information on labels by eliminating the requirement that mandatory information appear on the "brand label";
- Liberalizing the requirements for the use of a type designation consisting of multiple grape varieties, thus allowing greater flexibility in the blending of wines;
- Allowing the use of truthful, accurate, specific, and non-misleading. additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance;
- Liberalizing the requirements for the use of multicounty or multistate appellations on wine labels, thus allowing more producers and importers to claim an appellation of origin for these wines;

- Allowing the use of vintage dates on wines bottled in the United States that had been imported in bulk containers under certain conditions;
- Allowing the use of “estate grown” on labels of grape wines that do not meet all of the requirements for an “estate bottled” claim, but where the producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery, and met certain other conditions;
- Allowing certain statements of alcohol content, other than alcohol as a percentage of alcohol by volume, as additional information on labels already containing a mandatory alcohol content statement;
- Superseding the Industry Circular that required pre-approval laboratory testing for products containing wormwood;
- Modifying the standard of identity for whisky to provide for “white whisky” and “unaged whisky,” in response to market demand for these types of products;
- Adding “agave spirits” as a class of distilled spirits and recognizing “Mezcal” as a type within that class;
- Expanding the allowable alcohol content tolerance for distilled spirits;
- Allowing wholesalers and retailers to relabel distilled spirits when necessary and when approved by TTB;
- Incorporating Ruling 2015–1 by allowing the use of designations in accordance with trade understanding, rather than statements of composition, in the labeling of malt beverage specialty products 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”;

- Allowing certain mandatory information to appear on the keg collar or tap cover of malt beverage kegs with a capacity of 10 gallons or more, subject to certain requirements; and
- Allowing the use of alternate contact information (such as the telephone number, Web site, or email address) together with the name of the responsible advertiser in advertisements.

c. Potentially restrictive changes: Potentially restrictive proposed changes may require some industry members to either change the labeling of their products or to change the formulation of the product to avoid labeling changes. TTB believes that most of these proposed changes will not impact many products, but solicits comments on the impact that the proposed changes will have. These changes include:

- Adopting consistent language with regard to what type of products intended for exportation are exempt from the labeling requirements of parts 4, 5, and 7.
- Cross-referencing CBP regulations that require a country of origin statement on labels of imported wines and malt beverages. Such a statement is required for distilled spirits under current TTB regulations. TTB does not believe this will impact many labels, as such a statement is already required for imported wines and malt beverages under CBP regulations, and TTB’s proposed regulation is simply a cross-reference to existing CBP requirements.

- Specifying that statements of composition and standards of identity for distilled spirits products must be determined based on the finished product itself, without regard to whether components are added to the product directly or through intermediates. This may require the relabeling of certain specialty products to disclose the use of wine and spirits that were used in the formulation of intermediate products, but will ensure that consumers have truthful and adequate information about the identity of the product.
- Prohibiting the use of labeling and advertising statements and representations that create a misleading impression that the product is a different commodity. This may require the relabeling of certain products that are marketed using terms associated with different commodities, if such terms create a misleading impression as to the identity of the product. TTB believes that this will protect consumers from misleading representations as to the identity of the product.
- Eliminating the “citrus wine” designation, which TTB believes is rarely used on wine labels.
- Codifying in the regulations that grape wine and fruit wine must meet the standards for “natural wine” under the IRC.
- Defining a distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still. Although this change is clarifying in nature, it may impact labels that currently claim that the spirits have been distilled for a certain number of times, but use a different definition of “distillation.”

- Revising the current requirement 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;
- Requiring that statements of composition for distilled spirits list the spirits or wine used in the manufacture of the distilled spirits in order of predominance. This may require changes to some labels, but will provide consumers with more clear information about the composition of distilled spirits specialty products.
- Requiring distilled spirits cocktails to bear a full statement of composition instead of an abbreviated one that just lists the types of spirits used in the manufacture of the cocktail. This may require changes to some labels, but will provide consumers with better information about the identity of the product.
- Requiring whisky (other than Tennessee Whisky) that meets the standard for a type of whisky to be designated with that type name, rather than as "whisky." TTB does not believe that this will impact many products, but some labels may have to be changed.

3. Delayed Compliance Date

As mentioned earlier in this document, TTB is proposing to give all regulated entities three years to come into compliance with the proposed regulations, should they be finalized.

The label redesign, printing, and administrative costs associated with making a labeling change are on a "stock-keeping unit" (or "SKU") basis rather

than a formulation basis. To examine costs associated with label redesign, TTB referred to the FDA's Labeling Cost Model,[2] which incorporates assumptions about the proportion of SKUs that would be changed together with a scheduled label change.

Under the FDA's Labeling Cost Model, the longer the implementation period, the more likely it is that affected industry members can coordinate new labeling requirements with scheduled labeling changes. This leads to cost estimates that fall significantly as the time allowed for the new labeling requirements increases. In other words, the longer the period of time industry is given to comply with the new labeling requirements, the lower the costs.

As previously mentioned, TTB does not believe that the changes proposed by this notice would have a significant impact on many industry members. To the extent that some labels may have to be revised to comply with the proposed changes, TTB believes that the vast majority of industry members that would be affected by these changes would be able to coordinate labeling changes as a result of the proposed regulatory requirements with their scheduled labeling changes.

The FDA model assumes that for a three-year delayed compliance date, required modifications to 100 percent of brand name product labels and 67 percent of private product labels can be coordinated with regularly scheduled label changes. Thus, according to this model, there would be no additional costs for branded products; however there may be incremental relabeling, printing, and

[2] http://www.fda.gov/ohrms/dockets/dockets/04n0382/04n-0382-bkg0001-Tab-05-01-vol1.pdf.

administrative costs for 33 percent of the private label SKUs because their producers may not be able to coordinate the required changes with their regularly scheduled labeling changes.

TTB does not know how many entities, large or small, would be affected by the proposed changes to labeling requirements. However, the Bureau estimates that these changes will affect only a small percentage of current labels. Thus, TTB expects that the proposed changes would not affect many labels, and also that the three-year delayed compliance date would allow most affected entities to come into compliance with the changes in conjunction with regularly scheduled label changes.

4. Other Changes

TTB is also proposing to clarify and somewhat expand existing requirements with regard to "packaging" of wine, distilled spirits, and malt beverage containers. This includes coverings, cartons, cases, carriers, and other packaging used for sale at retail, but does not include shipping cartons or cases not intended to accompany the container to the consumer.

Existing regulations already prohibit certain false or misleading representations on packaging, and the existing wine and distilled spirits regulations already require certain mandatory information on closed "opaque" individual coverings or containers. For the reasons set forth in the preamble, the proposed rule expands this requirement to include malt beverages and to require that "closed packaging" of wine, distilled spirits, and malt beverages bear all the mandatory information required on the label. The term "closed packaging" would

include sealed opaque coverings and cases. Packaging is not considered closed if the consumer could view all the mandatory information on the label by merely lifting the container up, or if the packaging is transparent or designed in a way that the mandatory information on the label can be easily read by the consumer without having to open, rip, untie, unzip or otherwise manipulate the package. This requirement would also be subject to the three-year delayed compliance date.

TTB believes that alcohol beverage producers who use outer packaging update their packaging more than once every three years, similar to labels. The three-year delayed compliance date will give producers the opportunity to use up existing stocks of packaging. In addition, outer packaging is typically large enough to accommodate the mandatory information. TTB solicits comments on the impact that this proposed change would have on existing packaging materials.

5. Recordkeeping

TTB is proposing to provide further details in the proposed labeling and advertising regulations regarding recordkeeping and substantiation requirements under the FAA Act for bottlers and importers. Current regulations (27 CFR 4.51, 5.55, and 7.42) require bottlers holding an original or duplicate original of a COLA or a certificate of exemption to exhibit such certificates, upon demand, to a duly authorized representative of the United States Government. Current regulations (27 CFR 4.40, 5.51, and 7.31) also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs

officer. However, these regulations do not state how long industry members should retain their COLAs. Furthermore, since these regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, over 90 percent of new applications for label approval are submitted electronically, and the rest are processed electronically by TTB. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that were processed electronically. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that the industry members keep track of which label approval they are using when they make such revisions.

Accordingly, the proposed regulations provide that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label used on an alcohol beverage container that is subject to the COLA requirements of the applicable part. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records identifying the TTB identification number assigned to the COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized 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 five years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB believes that five years is a reasonable period of time for record retention because there is a five-year statute of limitations for criminal violations of the FAA Act. TTB notes that the proposed rule does not require industry members to retain paper copies of each COLA; they should simply be able to track a particular removal to a particular COLA, and they may rely on electronic copies of COLAs, including copies contained in the TTB Public COLA Registry. TTB believes that industry members already retain records in this manner in the ordinary course of their business, but seeks comments on the impact of this proposal.

The proposed regulations also set forth specific substantiation requirements, which are new to the regulations, but which reflect TTB's current expectations as to the level of evidence industry members should have to support labeling claims. The proposed regulations provide 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 level of substantiation that is claimed.

Furthermore, the proposed regulations provide 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, will be considered misleading. The regulations in subpart H are similarly amended to include the same requirement. TTB believes that this provision, which is very similar to the Federal Trade Commission's policy on substantiation of advertising

claims, will clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation. See "FTC Policy Statement Regarding Advertising Substantiation" (Appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987)). TTB also believes that the records necessary to substantiate label and advertising claims are already retained by industry members in the ordinary course of business.

TTB also proposes to require the use of TTB Form 5100.51 for the submission of formulas under parts 4, 5, and 7, rather than allowing other forms or letterhead statements. Because of the growing use of online formula submissions and because industry members may find that use of this form is easier than submitting letterhead applications, TTB believes that this will assist in the standardization of formula information.

Finally, TTB is also asking for comments on several issues that are discussed in the proposal but that are not the subject of any specific proposed regulatory changes. TTB especially welcomes comments from small entities on these issues. Small entities may have found market niches making products that could be affected by these changes. They may also have fewer resources to change existing products, labels, or advertisements in response to changes to the regulations. TTB will carefully consider all comments on these issues before proceeding with any changes.

In conclusion, while the industries affected by the proposed rule include a substantial number of small entities, the effects of the changes in this proposed

rule are likely to be small and positive. Making the regulations easier to understand and comply with will promote compliance, and liberalizing changes will give all regulated parties additional options for complying with the regulations or undertaking new lines of business. Most of the restrictive changes TTB is proposing apply to labels, and TTB expects that small entities will be able to comply with them in the course of their normal business cycle. Producers of alcohol beverages must already keep records in the ordinary course of business; the proposed rule would clarify what recordkeeping TTB expects from regulated entities, and the proposed recordkeeping requirements do not go beyond what could reasonably be expected based on the statute of limitations for criminal enforcement of the FAA Act.

6. Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), TTB certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

B. Executive Order 12866

It has been determined that this notice 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

This proposed rule contains ten information collections, old and new. Nine of the collections of information contained in the regulatory sections affected by this proposed rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507) and assigned control numbers 1513–0020, 1513–0046, 1513--0064, 1513–0084, 1513–0085, 1513–0087, 1513–0111, 1513–0121 and 1513–0122. The specific regulatory sections in this proposed rule that contain approved collections of information are §§ 4.21–4.28, 4.30, 4.62, 4.63, 4.81–4.98, 4.121–4.136, 5.21--5.27, 5.28, 5.30, 5.62, 5.63, 5.81–5.90, 5.121–5.130, 5.192--5.194, 7.21, 7.22, 7.24 - 7.27, 7.28, 7.63, 7.66, 7.67, 7.81 - 7.85, 7.87, 7.121–7.132, 14.6, 14.12, 14.14, 14.15, 14.16, and 14.17. In this proposed rule, TTB is not proposing any changes to eight of the nine current information collection or recordkeeping requirements of, or burdens associated with, these existing information collections.

TTB is amending OMB control number 1513-0087 to include proposed regulations in §§ 4.62, 5.62, and 7.62, which provide 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. This proposed requirement is consistent with existing regulations in §§ 4.38a and 5.41 for wine and distilled spirits, respectively, but is new in part 7 for malt beverages. TTB believes this requirement is necessary to protect the consumer. TTB does not believe that this proposal will increase the estimated burden of this information collection because the required information is already collected and disclosed for the purposes of labeling under OMB control number 1513–0087. TTB also believes that most malt beverage industry members currently place all mandatory information that is required to appear on the label on closed packages. Thus, TTB believes that the current burden hours for OMB control number 1513–0087, which are set forth below, will not change.

Estimated number of respondents: 9,552.

Estimated average total annual burden hours: 9,552.

In this proposed rule, TTB also is proposing new recordkeeping requirements, and TTB is seeking OMB approval of these requirements under one OMB control number. 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 OMB control number. The proposed new recordkeeping requirements are contained in proposed §§ 4.211, 4.212, 5.211, 5.212, 7.211, 7.212, and 14.4.

The new recordkeeping requirement in proposed §§ 4.211, 5.211, and 7.211 provides that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label used on an alcohol beverage container that is subject to the COLA requirements of the applicable part. This requirement may be satisfied by providing original COLAs,

photocopies or electronic copies of COLAs, or records identifying the TTB identification number assigned to the COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product. Bottlers and importers are required to keep records identifying each COLA for a period of five years from the date the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

The new recordkeeping requirement in proposed §§ 4.212, 5.212, 7.212, and 14.4 sets forth specific substantiation requirements that apply to any claim made on any label or container subject to the requirements of part 4, 5, or 7, or any claim made in an advertisement subject to part 14. These substantiation requirements are new to the regulations, but they reflect TTB's current expectations as to the level of evidence that industry members should have to support labeling claims. Proposed §§ 4.212, 5.212, and 7.212 provide that the appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within five years from the time the alcohol beverage was removed from the bottling premises or from customs custody, as applicable. Proposed § 14.4(c) provides that the appropriate TTB officer may request that the responsible advertiser provide evidence that advertising claims are adequately substantiated at any time within

a period of five years from the time the advertisement was last disseminated or published.

TTB believes that these COLA use and label and advertising claim substantiation records are necessary to ensure that:

- Importers using a COLA that was not issued to them have received authorization to use the COLA from the person to whom the COLA was issued (certificate holder);
- Labels applied to alcohol beverage containers are covered by a COLA; and
- Claims made on the labels of alcohol beverage containers and claims made in advertisements for alcohol beverages are truthful, accurate, and not misleading and do not contain any prohibited practices.

The retention requirement for records the certificate holder must maintain of other importers authorized to use its COLA is five years from the date of the authorization. The retention requirement for records identifying each COLA is five years after the COLA is last used to remove a product from the bottler's premises or from customs custody, as applicable. The retention requirement for records substantiating claims made in advertisements is five years from the time the advertisement was last disseminated or published. TTB believes that all these records are currently maintained during the usual and customary course of business.

Estimated number of respondents: 10,982.

Estimated average total annual burden hours: 1 (one).

The new and revised recordkeeping requirements have been submitted to the OMB for review. Comments on these new and revised recordkeeping requirements should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to OIRA_submissions@omb.eop.gov. A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

TTB specifically requests comments concerning:

- Whether the proposed recordkeeping collections are necessary for the proper performance of the functions of TTB, including whether the information will have practical utility;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the collections of information; and

Estimates of capital and start-up costs and costs of operation, maintenance, and purchase of services to maintain records.

VI. Drafting Information

Christopher M. Thiemann and Kara T. Fontaine of the Regulations and Rulings Division drafted this document, along with several other employees of the Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

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

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.

27 CFR Part 14

Advertising, Alcohol and alcoholic beverages, Beer, Consumer protection, Liquors, Packaging and containers, Trade practices, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers,

Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Authority and Issuance

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I as follows:

1. Revise part 4 to read as follows:

PART 4—LABELING OF WINE

Sec.

4.0 Scope.

Subpart A—General Provisions

4.1 Definitions.
4.2 Territorial extent.
4.3 General requirements and prohibitions under the FAA Act.
4.4 [Reserved]
4.5 Wines covered by this part.
4.6 Products produced as wine that are not covered by this part.
4.7 Other TTB labeling regulations that apply to wine.
4.8 Wine for export.
4.9 Compliance with Federal and State requirements.
4.10 Other related regulations.
4.11 Forms.
4.12 Delegations of the Administrator.

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

REQUIREMENTS FOR WINE BOTTLED IN THE UNITED STATES

4.21 Requirement for certificate of label approval (COLAs) for wine bottled in the United States.
4.22 Rules regarding certificates of label approval (COLAs) for wine bottled in the United States.
4.23 Application for exemption from label approval for wines bottled in the United States.

REQUIREMENTS FOR WINE IMPORTED IN CONTAINERS

4.24 Certificates of label approval (COLAs) for wine imported in containers.
4.25 Rules regarding certificates of label approval (COLAs) for wine imported in containers.

ADMINISTRATIVE RULES

4.27 Presenting Certificates of Label Approval (COLAs) to Government officials.
4.28 Formulas, samples, and documentation.
4.29 Personalized labels.
4.30 Certificates of origin, identity, and proper cellar treatment of wine.

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

4.41 Alteration of labels.
4.42 Authorized relabeling activities by proprietors of bonded wine premises and importers.
4.43 Relabeling activities that require separate written authorization from TTB.
4.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Subpart D—Label Standards

4.51 Firmly affixed requirements.
4.52 Legibility and other requirements for mandatory information on labels.
4.53 Type size of mandatory information.
4.54 Visibility of mandatory information.
4.55 Language requirements.
4.56 Additional information.

Subpart E—Mandatory Label Information

4.61 What constitutes a label for purposes of mandatory information.

4.62 Packaging (cartons, coverings, and cases).

4.63 Mandatory label information.
4.64 Brand name.
4.65 Alcohol content.
4.66 Name and address for domestically bottled wine that was wholly fermented in the United States.
4.67 Name and address for domestically bottled wine that was bottled after importation.
4.68 Name and address for wine that was imported in a container.
4.69 Country of origin.
4.70 Net contents.

Subpart F—Restricted Labeling Statements

4.81 General.

FOOD ALLERGEN LABELING

4.82 Voluntary disclosure of major food allergens.
4.83 Petitions for exemption from major food allergen labeling.

PRODUCTION CLAIMS

4.84 Use of the term “organic.”
4.85 Environmental, sustainability, and similar statements.
4.86 Use of TTB permit numbers on labels.
4.87 Use of vineyard, orchard, farm, or ranch name as additional information.

APPELLATIONS OF ORIGIN FOR GRAPE WINE

4.88 Appellations of origin for grape wine in general.
4.89 Eligibility for the use of an appellation of origin for grape wine.
4.90 Multicounty and multistate appellations of origin for grape wine.
4.91 Viticultural areas.

CLAIMS ABOUT GRAPE WINE

4.92 Estate bottled.
4.93 Estate grown.
4.94 Claims on grape wine labels for viticultural practices that result in sweet wine.
4.95 Vintage date.

APPELLATIONS OF ORIGIN FOR FRUIT WINE, AGRICULTURAL WINE, AND RICE WINE

4.96 Appellations of origin for fruit wine, agricultural wine, and rice wine in general.
4.97 Eligibility requirements for use of an appellation of origin for fruit wine, agricultural wine, and rice wine.
4.98 Multicounty and multistate appellations of origin for fruit wine, agricultural wine, and rice wine.

Subpart G—Prohibited Labeling Practices

4.101 General.
4.102 False or untrue statements.
4.103 Obscene or indecent depictions.

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

4.121 General.
4.122 Misleading statements or representations.
4.123 Guarantees.
4.124 Disparaging statements.
4.125 Tests or analyses.
4.126 Depictions of government symbols.

4.127 Depictions simulating government stamps or relating to supervision.
4.128 Claims related to distilled spirits or malt beverages.
4.129 Health-related statements.
4.130 Appearance of endorsement.
4.131 Use of the word “importer” or similar words.
4.132 [Reserved]
4.133 Claims regarding terms defined or authorized by this part.
4.134 Statements related to dates or ages.
4.135 Indications of origin.
4.136 Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.
4.137 Terms relating to intoxicating qualities.

Subpart I—The Standards of Identity for Wine

4.141 The standards of identity in general.
4.142 Still grape wine – class and type designation.
4.143 Sparkling grape wine – class and type designation.
4.144 Carbonated grape wine – class and type designation.
4.145 Fruit wine – class and type designation.
4.146 Agricultural wine – class and type designation.
4.147 Aperitif – class and type designation.
4.148 Rice wine – class and type designation.
4.149 Retsina wine – designation.
4.150 Imitation and substandard or other than standard wine—designation.
4.151 Statements of composition.
4.152-4.153 [Reserved]

CELLAR TREATMENT AND ALTERATION OF CLASS AND TYPE

4.154 Cellar treatment and alteration of class or type.
4.155 [Reserved]

GRAPE TYPE LABELING

4.156 Varietal (grape type) labeling as type designations.
4.157 Type designations of varietal significance for American wines.
4.158 [Reserved]

GENERIC, SEMI-GENERIC, AND NON-GENERIC DESIGNATIONS OF GEOGRAPHIC SIGNIFICANCE

4.173 Generic designations of geographic significance.
4.174 Semi-generic designations of geographic significance.
4.175 Nongeneric designation of geographic significance and nongeneric designations that are distinctive designations of specific grape wines.
4.176–4.177 [Reserved]

Subpart J—American Grape Variety Names

4.191 Approval of grape variety names.

4.192 List of approved names.
4.193 Alternative names permitted for temporary use.

Subpart K—Standards of Fill and Authorized Container Sizes

4.201 General.
4.202 Standard wine containers.
4.203 Standards of fill (container sizes).
4.204 Aggregate packaging to meet standard of fill requirements.

Subpart L—Recordkeeping and Substantiation Requirements

4.211 Recordkeeping requirements—certificates.
4.212 Substantiation requirements.

Subpart M—Penalties and Compromise of Liability

4.221 Criminal penalties.
4.222 Conditions of basic permit.
4.223 Compromise.

Subpart N—Paperwork Reduction Act

4.231 OMB control numbers assigned under the Paperwork Reduction Act.

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.0 Scope.

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

Subpart A—General Provisions

§ 4.1 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.

American. A descriptive term referring to the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

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 1135.4, Delegation of the Administrator's Authorities, in 27 CFR Part 4, Labeling of Wine.

Bottler. Any producer or blender of wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house, who places wine in containers.

Brand name. The name under which a wine or line of wine is sold.

Brix. The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution (percent by weight of sugar) at 68 degrees Fahrenheit (20 degrees Celsius).

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, and malt beverages, or the removal of bottled wine, distilled spirits, and 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.

Container. 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 at retail. See subpart K of this part for rules regarding authorized standards of fill for containers.

County. Includes a county or a political subdivision recognized by the State as a county equivalent.

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 wine 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.

Fully finished. Ready to be bottled, except that it may be further subject to the practices authorized in § 4.154(c) and blending that does not result in an alteration of class or type under § 4.154(b).

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

Grape wine. When used without further modification, the term “grape wine” includes still grape wine, sparkling grape wine, and carbonated grape wine. As set forth in § 4.142, however, the term “grape wine” by itself may be used to designate only still grape wine.

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 wine at 20 degrees Celsius (68 degrees Fahrenheit), and equivalent to 33.814 U.S. fluid ounces.

Net contents. The amount, by volume, of wine 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.

Pure condensed must. The dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° brix, the composition thereof remaining unaltered except for removal of water.

Restored pure condensed must. Pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process.

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

Total solids. The degrees Brix of the dealcoholized wine restored to its original volume with water.

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.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines “wine” as any of the following products for nonindustrial use that contain not less than 7 percent and not more than 24 percent alcohol by volume:

(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392); and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound,

ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and saké.

§ 4.2 Territorial extent.

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

§ 4.3 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 wine, and any person who removes wine 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 wine containers. This prohibition applies to any person, including retailers, holding wine for sale in interstate or foreign commerce or any person holding wine for sale after shipment in interstate or foreign commerce.

(c) Labeling requirements for wine. It is unlawful for any person engaged in business as a producer, blender, importer, or wholesaler of wine, 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 wine in containers, unless the wine is bottled in containers,

and the containers are marked, branded, and labeled, 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 wine 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 a container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label(s), container, or packaging (as defined in § 4.81) must comply with the rules for regulated label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any wine label, container, or packaging (as defined in §§ 4.101 and 4.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of wine;

(5) The class and type designation on the label(s), 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; and

(6) The wine in the container must not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

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

§ 4.4 [Reserved]

§ 4.5 Wines covered by this part.

The regulations in this part apply to wine containing not less than 7 percent and not more than 24 percent alcohol by volume.

§ 4.6 Products produced as wine that are not covered by this part.

Certain wine products do not fall within the definition of a "wine" under the FAA Act and are thus not subject to this part. See § 4.7 for related TTB regulations that may apply to these products. See §§ 24.10 and 27.11 of this chapter for the definition of "wine" under the Internal Revenue Code.

(a) Products containing less than 7 percent alcohol by volume. The regulations in this part do not cover products that would otherwise meet the definition of wine except that they contain less than 7 percent alcohol by volume. 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.

(b) Products containing more than 24 percent alcohol by volume. Products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are classified as distilled spirits and must be labeled in accordance with part 5 of this chapter.

§ 4.7 Other TTB labeling regulations that apply to wine.

In addition to the regulations in this part, wine must also comply with the TTB labeling regulations in paragraphs (a) and (b) of this section:

(a) Health warning statement. Alcoholic beverages, including wine, that contain at least one-half of one 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 wine under the Internal Revenue Code are found in 27 CFR part 24, subpart L (for domestic wine premises) and 27 CFR part 27, subpart E (for imports).

§ 4.8 Wine for export.

Wine that is exported in bond without payment of tax directly from a bonded wine premises or from customs custody is not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after wine has been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 4.9 Compliance with Federal and State requirements.

(a) General. Compliance with the requirements of this part relating to the labeling and bottling of wine does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) Ingredient safety. While it remains the responsibility of the industry member to ensure that any ingredient used in production of wine complies fully

with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance. As set forth in § 4.3(d), wines that are adulterated under the Federal Food, Drug, and Cosmetic Act are not labeled in accordance with this part.

(c) Containers. While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 4.10 Other related regulations.

(a) TTB regulations. Other TTB regulations that relate to wine are listed in paragraphs (a)(1) through (11) 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 9—American Viticultural Areas;

(3) 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines;

(4) 27 CFR Part 13—Labeling Proceedings;

(5) 27 CFR Part 14—Advertising of Alcohol Beverage Products;

(6) 27 CFR Part 16—Alcoholic Beverage Health Warning Statement;

(7) 27 CFR Part 24—Wine;

(8) 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands;

(9) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(10) 27 CFR Part 28—Exportation of Alcohol; and

(11) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) Other Federal regulations. The regulations listed in paragraphs (b)(1) through (9) 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 101—Food Labeling;

(8) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing Packing, or Holding Human Food; and

(9) 21 CFR Parts 170–189, which pertain to food additives and secondary direct food additives.

§ 4.11 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 Web site at https://www.ttb.gov.

(c) Obtaining paper forms. Forms required by this part are available for printing through the TTB Web site (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.

§ 4.12 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 1135.4, Delegation of the Administrator's Authorities in 27 CFR part 4, Labeling of Wine. Copies of this order can be obtained by accessing the TTB Web site (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 WINE BOTTLED IN THE UNITED STATES

§ 4.21 Requirement for certificates of label approval (COLAs) for wine bottled in the United States.

(a) This section applies to wine bottled in the United States, outside of customs custody.

(b) No person may bottle wine without first applying for and obtaining a certificate of label approval issued by the appropriate TTB officer. This requirement applies to wine produced and bottled in the United States and to wine imported in bulk and bottled in the United States. Bottlers may obtain an exemption from this requirement only if they satisfy the conditions set forth in § 4.23.

§ 4.22 Rules regarding certificates of label approval (COLAs) for wine bottled in the United States.

(a) What a COLA authorizes. An approved TTB Form 5100.31 authorizes the bottling of a wine 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. The list of allowable changes can be found at https://www.ttb.gov.

(b) What a COLA does not do. Among other things, the issuance of 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 the wine comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A wine may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the wine is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) <u>When to obtain a COLA.</u> The COLA must be obtained prior to bottling. No producer or blender of wine, proprietor of bonded wine premises or proprietor of a taxpaid wine bottling house may bottle wine, or remove wine from the premises where bottled, unless a COLA has been obtained.

(d) <u>Application for a COLA.</u> 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 TTB's Web site

(https://www.ttb.gov) or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 4.23 Application for exemption from label approval for wines bottled in the United States.

(a) Exemption. A producer or blender of wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house may apply for exemption from the labeling requirements of this part, if the bottler shows, to the satisfaction of the appropriate TTB officer, that the wine to be bottled will be offered for sale only within the State in which it is bottled and will not 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 wine. 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 wines 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 § 24.257 of this chapter for additional labeling rules that apply to wines covered by a certificate of exemption.

REQUIREMENTS FOR WINE IMPORTED IN CONTAINERS

§ 4.24 Certificates of label approval (COLAs) for wine imported in containers.

(a) Application requirement. Any person removing wine in containers from customs custody for consumption must first apply for and obtain a COLA covering the wine from the appropriate TTB officer.

(b) Release of wine from customs custody. Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless the person removing the wine has obtained and is in possession of a COLA covering the wine.

(c) Filling 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 brand or lot of wine 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 certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) Scope of this section. The COLA requirement imposed by this section applies only to wine that is removed for sale or any other commercial purpose. Wine that is imported in containers is 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 wine.

(e) Relabeling in customs custody. Containers of wine 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.

§ 4.25 Rules regarding certificates of label approval (COLAs) for wine imported in containers.

(a) What a COLA authorizes. An approved TTB Form 5100.31 authorizes the use of the labels covered by the COLA on containers of wine, 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.

(b) What a COLA does not do. Among other things, the issuance of 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 the wine comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling

representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A wine may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the wine is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) When to obtain a COLA. The COLA must be obtained prior to the removal of wine in containers from customs custody for consumption.

(d) Application for a COLA. The person responsible for the importation of wine 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 TTB's Web site (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

§ 4.27 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 COLA upon the request of any duly authorized representative of the United States Government.

§ 4.28 Formulas, samples, and documentation.

(a) Prior to or in conjunction with the review of an application for a 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 wine, or a sample of any wine or ingredients used in producing a wine. The appropriate TTB officer also may request such information or samples after the issuance of such COLA, or in connection with any wine that is required to be covered by a COLA. A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on Form 5100.51. See § 4.11 for more information on forms and Formulas Online.

(b) 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 is labeled in accordance with this part.

§ 4.29 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. 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 winery 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 with the application for label approval, 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.

§ 4.30 Certificates of origin, identity, and proper cellar treatment of wine.

(a) Certificate of origin and identity. Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine 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 that country requires the issuance of such a certificate for wine exported from that country. The certificate must certify as to the identity of the wine and that the wine has been produced in compliance with the laws of the foreign country regulating the production of the wine for home consumption.

(b) Certification of proper cellar treatment of natural wine—(1) General. An importer of wine may be required to have in its possession at the time of release of the wine from customs custody a certification, or may have to comply with other conditions prescribed in § 27.140 of this chapter, regarding proper cellar treatment. If certification is required for imported wine under § 27.140 of this chapter, the importer must provide a copy of that certification to TTB as follows:

(i) The importer must include a copy of the certification with the application for a certificate of label approval (COLA) for the wine that is submitted under § 13.21 of this chapter; or

(ii) If a certification for the wine in question was not available when the importer submitted the application for label approval, the importer must submit a copy of the certification to the appropriate TTB officer before the first shipment of the wine is released from customs custody.

(2) Validity of certification. A certification submitted under paragraph (b)(1) of this section is valid for multiple shipments of imported wine as long as the wine is of the same brand and class or type; was made by the same producer; was subjected to the same cellar treatment; and conforms to the statements made on the certification. Accordingly, if the cellar treatment applied to the wine changes and a new certification under § 27.140 of this chapter is required, the importer must submit a new certification to TTB even if a new COLA is not required.

(3) Use of certification. TTB may use the information from a certification for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of this part. TTB will make certifications submitted under paragraph (b)(1) of this section available to the public on the TTB Web site at https://www.ttb.gov.

(c) Retention of certificates – wine imported in containers. The importer of wine imported in containers must retain for five years following the date of the removal of the bottled wine from customs custody copies of the certificates (and accompanying invoices, if required) required by paragraphs (a) and (b) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(d) Wine imported in bulk for bottling in the United States. Wine that would be required under paragraphs (a) and (b) of this section to be covered by a certificate of origin and identity and/or a certification of proper cellar treatment and that is 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 origin and identity and/or a certification of proper cellar treatment of natural wine applicable to the wine, issued by the appropriate entity as set forth in paragraphs (a) and (b) of this section and § 27.140 of this chapter respectively, applicable to the wine that provides the same information as a certificate required under paragraphs (a) and (b) of this section and § 27.140 of this chapter, would provide for like wine imported in bottles.

(e) Retention of wine certificates – wine in bulk. The bottler of wine imported in bulk must retain, for five years following the removal of such wine from the premises where bottled, copies of the certificates required by paragraphs (a) and (b) 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

§ 4.41 Alteration of labels.

(a) Prohibition. It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on wine 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 § 4.42, § 4.43, or § 4.44, 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 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 the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

§ 4.42 Authorized relabeling activities by proprietors of bonded wine premises and importers.

(a) Relabeling at bonded wine premises. Proprietors of bonded wine premises may relabel domestically bottled wine prior to removal from, and after return to bond at, the bonded wine premises, with labels covered by a certificate of label approval (COLA) without obtaining separate permission from TTB for the relabeling activity.

(b) Relabeling after removal from bonded wine premises. Proprietors of bonded wine premises may relabel domestically bottled wine after removal from bonded wine premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(c) Relabeling in customs custody. Under the supervision of customs officers, imported wine 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 § 4.24(b).

(d) Relabeling after removal from customs custody. Imported wine in containers may be relabeled by the importer thereof 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.

§ 4.43 Relabeling activities that require separate written authorization from TTB.

Any persons holding wine for sale who need to relabel the containers but are not eligible to obtain a certificate of label approval to cover the labels that they wish to affix to the containers may apply for written permission for the relabeling of wine containers. The appropriate TTB officer may permit relabeling of wine in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law. 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.

§ 4.44 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 wine 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 bonded wine 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

§ 4.51 Firmly affixed requirements.

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.

§ 4.52 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. Mandatory information on labels, except brand names, must be separate and apart from any additional information. This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as, “premium wine”), the name and address statement (such as, “Proudly produced and bottled by ABC Winemaking Co. in Napa, CA, for over 30 years”) or other information required by § 4.63(a) and (b), as long as the additional information does not detract from the prominence of the mandatory information. The statements required by § 4.63(c) may not include additional 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 wine 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 § 4.63(b)(4), 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.

§ 4.53 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) Minimum type size—(1) Containers of more than 187 milliliters. All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least two millimeters in height.

(2) Containers of 187 milliliters or less. All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least one millimeter in height.

(b) Maximum type size for alcohol content statement. The alcohol content statement on containers of five liters or less may not appear in script, type, or printing that is more than three millimeters in height.

§ 4.54 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 § 4.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See part 14 of this chapter for regulations pertaining to advertising materials.

§ 4.55 Language requirements.

(a) General. Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraphs (c) and (d) 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) Wine for consumption in the Commonwealth of Puerto Rico. Mandatory information may be stated solely in the Spanish language on labels of wine bottled for consumption within the Commonwealth of Puerto Rico.

(d) Exception for country of origin. The country or countries of origin may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 4.56 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

§ 4.61 What constitutes a label for purposes of mandatory information.

(a) Label. Certain information as outlined in § 4.63, 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 film, 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; and

(4) Information branded, stenciled, painted, printed, or otherwise directly applied onto 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 for mandatory information that must appear on labels in this part:

(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 part 14 of this chapter.

§ 4.62 Packaging (cartons, coverings, and cases).

(a) General. The term "packaging" includes any covering, carton, case, carrier, or other packaging of wine 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 wine containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that violates the provisions of subpart F, G, or H of this part.

(c) Requirements for closed packaging. If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 4.63.

(1) 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.

(2) 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 be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) Packaging that is not closed. The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside 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, 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. 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.

(e) 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.

§ 4.63 Mandatory label information.

(a) Mandatory information. Wine containers must bear a label or labels (as defined in § 4.61(a)) containing the following information:

(1) Brand name in accordance with § 4.64;

(2) Class, type, or other designation, in accordance with subpart I of this part;

(3) Alcohol content, in accordance with § 4.65;

(4) A statement of the origin and percentage by volume of imported wine on blends of American and imported wine, if any reference is made to the presence of imported wine on the container;

(5) Name and address of the bottler or importer, in accordance with § 4.66, § 4.67, or § 4.68 as applicable; and

(6) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container) in accordance with § 4.70.

(b) Appellations of origin. An appellation of origin in accordance with §§ 4.88 through 4.91 of this part must be stated on the label of each container in the same field of vision as the class, type, or other designation prescribed by paragraph (a)(2) of this section if:

(1) A grape wine is labeled with a class, type or other designation pursuant to § 4.62(a)(2) that is:

(i) A varietal (grape type), as provided for in § 4.156;

(ii) A type designation of varietal significance, as provided in § 4.157;

(iii) A semi-generic type designation, as provided in § 4.184; or

(2) The wine is labeled with a vintage date, pursuant to § 4.95.

(c) 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 wine 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 wine 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 wine that is removed from bottling premises or from customs custody on or after April 16, 2013.

(3) Sulfites. If a wine 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.

(4) Aspartame. If the wine contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: "PHENYLKETONURICS: CONTAINS PHENYLALANINE."

§ 4.64 Brand name.

(a) Requirement. The wine label must include a brand name. If the wine is not sold under a brand name, 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 wine. A brand name may be found to be misleading by itself or in association with other printed or graphic matter. With the exception of geographic brand names discussed in paragraph (c) of this section, a brand name that would otherwise be misleading may be qualified with the word "brand" or with some other qualification that adequately dispels any misleading impression that might otherwise be created.

(c) Geographic brand names. (1) Except as otherwise provided in paragraph (c)(2) of this section, a wine container may not bear a brand name of viticultural significance unless the wine meets the appellation of origin requirements for the geographic area named. (See §§ 4.88 – 4.91 and §§ 4.96 – 4.98 for the appellation of origin requirements.)

(2) For brand names of viticultural significance used in COLAs issued prior to July 7, 1986, such a brand name may appear on a wine container if:

(i) The wine meets the appellation of origin requirements for the geographic area named;

(ii) The wine is labeled with an appellation of origin, in accordance with §§ 4.88 – 4.91 and §§ 4.96 – 4.98, that is:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a State; or

(B) A State, county, or a viticultural area, if the brand name bears a State name; or

(iii) The wine is labeled with some other statement that the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a State or county (or of the foreign equivalent of a State or county), when it is approved as the name of a viticultural area under part 9 of this chapter, when it is approved by a foreign government, or when it is found to have viticultural significance by the appropriate TTB officer. Unless determined otherwise by the appropriate TTB officer, a name that is a county name will be considered to have viticultural significance only when the word “county” follows the name. For example, while “Clark County” has viticultural significance, the word “Clark” does not.

§ 4.65 Alcohol content.

(a) General. In the case of wine containing 14 percent or less of alcohol by volume, the percentage of alcohol by volume must be stated unless the type designation “table” wine (or “light” wine) appears on the label. In the case of wines containing more than 14 percent of alcohol by volume, the percentage of alcohol by volume must be stated. Mandatory and optional statements of alcohol content as a percentage of alcohol by volume must be made as prescribed in paragraph (b) or (c) of this section. 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.

(b) Format of the alcohol content statement—(1) General. Except as provided in paragraph (c) of this section, the alcohol by volume statement must be expressed in one of the following formats:

(i) “Alcohol ___ percent by volume”;

(ii) “____ percent alcohol by volume”; or

(iii) “Alcohol by volume: ___ percent”.

(2) Formatting rules. 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) Optional abbreviations. The statements listed in paragraph (b) 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) Examples. The following are examples of alcohol content statements that comply with the requirements of this part:

(i) “13.2% alc/vol”;

(ii) “Alc. 13.0 percent by vol.”;

(iii) “Alc 13% by vol”; and

(iv) “15.0% Alcohol by Volume.”

(c) Use of a range as the alcohol content statement—(1) General. The alcohol content statement may be expressed as a range in accordance with the provisions of paragraph (c)(2) of this section. For wine containing 14 percent alcohol by volume or less, the alcohol content may be stated as a range of three percentage points. For wine containing more than 14 percent alcohol by volume the alcohol content may be stated as a range of two percentage points.

(2) Format of the alcohol content statement using a range. If the alcohol content statement is expressed as a range, it must be made in one of the following formats:

(i) Alcohol ___ percent to ___ percent by volume,

(ii) ___ to ___ percent alcohol by volume, or

(iii) Alcohol by volume: ___ to ___ percent.

(3) Optional marks. Any of the words or symbols may be enclosed in parentheses, and authorized abbreviations may be used with or without a period.

(4) Optional abbreviations. 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”; the two alcohol content numbers may be separated by a dash “-” instead of the word “to”; and volume may be abbreviated by “vol”.

(5) Examples. The following are examples of alcohol content statements that comply with the requirements of this part: “10 to 12 percent alcohol by volume,” “10 – 12% (alc) by volume,” and “10 to 12 percent alc./vol.”

(d) Tolerances for wine containing no more than 14 percent alcohol by volume. For specific statements of alcohol content for wines containing no more than 14 percent alcohol by volume, except as provided for in paragraph (f) of this section, the alcohol by volume statement on the label must be within 1.5 percentage points above or below the actual alcohol content. For example, an alcohol beverage with an actual alcohol content of 10 percent alcohol by volume would comply with this tolerance if it were labeled with an alcohol content statement between 8.5 and 11.5 percent alcohol by volume.

(e) Alcohol content statement tolerances for wine containing more than 14 percent alcohol by volume. For specific numeric statements of alcohol content for wines containing more than 14 percent alcohol by volume, except as provided for in paragraph (f) of this section, the alcohol by volume statement on the label must be within one percentage point above or below the actual alcohol content. For example, an alcohol beverage with an actual alcohol content of 16 percent

alcohol by volume would comply with this tolerance if it were labeled with an alcohol content statement between 15 and 17 percent alcohol by volume.

(f) Tolerances must not cut across tax classes—(1) General. Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements, and ranges normally permitted in maximum and minimum statements, alcohol content statements must correctly indicate the tax class of the wine so labeled. Nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement in terms of maximum and minimum percentages that overlaps a prescribed limitation on the alcohol content of any tax class.

(2) Tax classes and certain class and type designations. The tolerances set forth in this section shall not apply where a minimum or maximum alcohol content requirement is set forth in either a tax classification of the product (found in 26 U.S.C. 5041) or a class or type designation in this part that reflects a minimum or maximum alcohol content requirement consistent with limits set forth in a tax class. For example, the class designation for “table wine” in this part includes a maximum alcohol content of 14 percent alcohol by volume, which is consistent with the maximum alcohol content for a class of still wines under 26 U.S.C. 5041(b)(1). Thus, a still grape wine that contains 14.2 percent alcohol by volume may not be labeled as either a “table wine” or with an alcohol content of 14 percent or less, regardless of the tolerance prescribed in this section.

§ 4.66 Name and address for domestically bottled wine that was wholly fermented in the United States.

(a) General. Domestically bottled wine that was wholly fermented in the United States and contains no imported wine must be labeled in accordance with this section. (See §§ 4.67 and 4.68 for name and address requirements applicable to wine that is not wholly fermented in the United States.)

(b) Mandatory statement. The label on containers must state the name of the bottler and the city and State where bottled, preceded by the phrases “bottled by,” “canned by,” “packed by,” or “filled by,” followed by the name of the bottler and the place where bottled.

(c) Optional statements. In addition to the statement required by paragraph (b) of this section, the label may also:

(1) State the name and address of any other person for whom the wine was bottled, immediately preceded by the words “bottled for” “canned for,” “packed for,” or “filled for” or “distributed by”;

(2) Contain additional words, as specified and defined in paragraphs (d) through (f) of this section. The use of two or more of these words with the conjunction “and” and the use of any of these words with the words “bottled by” “canned by,” “packed by,” or “filled by” is permissible only if the same person performed the defined operation at the same address. More than one name statement must appear if the defined operation was performed by a person other than the bottler, and more than one address statement must appear if the defined operation was performed at a different address.

(d) Produced or Made. The terms “Produced” or “Made” mean that the named winery:

(1) Fermented not less than 75 percent of the wine at the stated address, or

(2) Changed the class or type of the wine by addition of wine spirits, brandy, flavors, colors, or artificial carbonation at the stated address, or

(3) Produced sparkling wine by secondary fermentation at the stated address,

(e) Blended. The term “Blended” means that the named winery mixed the wine with other wines of the same class and type at the stated address,

(f) Cellared, Vinted, and Prepared. The terms “Cellared,” “Vinted” and “Prepared” mean that the named winery, at the stated address, subjected the wine to cellar treatment in accordance with § 4.154(c) of this part.

(g) Use of trade name. (1) A trade name that appears on the basic permit or other qualifying documentation may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, when a bottler authorizes the use of its trade name by another bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

(2) If the same brand of wine is bottled by two bottlers that are not under the same ownership, and each has adopted the same trade name on its basic permit pursuant to a contractual arrangement, the name and address statement must be worded in such a way that the label does not create a misleading

impression as to the identity or location of the bottling winery or taxpaid wine bottling house.

(h) Form of address. (1) The address consists of the city and State where the referenced activity occurred, and must be consistent with the address reflected on the basic permit or other qualifying documentation of the premises where the activity occurred. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and Web site addresses.

(2) The address for each activity that is designated on the label must also be shown. An example for a wine produced in the United States would be "Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery."

(3) 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 immediately adjacent to the address appropriate descriptive material indicating the function occurring at each additional place or address in connection with the particular product.

(4) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 4.67 Name and address for domestically bottled wine that was bottled after importation.

(a) General. This section applies to domestically bottled wine that was bottled after importation. See § 4.68 for name and address requirements applicable to imported wine that is imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) Domestically bottled wine that was produced, made, or blended in the United States. Domestically bottled wine that was produced, made, or blended (in accordance with the definitions set forth in § 4.66) in the United States after the wine (or a wine in a blend of wines) was imported must be labeled in accordance with the rules set forth in § 4.66 regarding mandatory and optional labeling statements.

(c) Wine bottled after importation without blending or production activities. The label on wine that is bottled in the United States after importation without being produced, made or blended (in accordance with the definitions set forth in § 4.66) in the United States after the wine was imported must state 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 wine was 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; or

(2) If the wine was bottled by the person responsible for the importation, the words “imported and bottled by” 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 name. (1) A trade name that appears on the basic permit or other qualifying documentation may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, when a bottler authorizes the use of its trade name by another bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

(2) If the same brand of wine is bottled by two bottlers that are not under the same ownership, and each has adopted the same trade name on its basic permit pursuant to a contractual arrangement, the name and address statement must be worded in such a way that the label does not create a misleading impression as to the identity or location of the bottling winery or taxpaid wine bottling house.

(e) Form of address. (1) The address consists of the city and State where the referenced activity occurred, and must be consistent with the address reflected on the basic permit or other qualifying documentation of the premises where the activity occurred. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and Web site addresses.

(2) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 4.68 Name and address for wine that was imported in a container.

(a) General. This section applies to wine that is imported in a container, as defined in § 4.1 of this part. See § 4.67 for rules regarding name and address requirements applicable to wine that is 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 labels on wines imported in containers, as defined in § 4.1, must state the words “imported by” or a similar appropriate phrase and, immediately thereafter, 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 which 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 Web site addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(c) Wine bottled in a foreign country other than the country of origin. If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label must state "blended by," "bottled by," or other appropriate statement, followed by the name of the blender or bottler and the place where the wine was blended, bottled or packed.

(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. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin for home consumption.

(e) 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.

(2) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(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 and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product.

§ 4.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the container of wine imported in containers or bottled in the United States after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported wines, as well as for blends of imported wine with domestically fermented wine, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when wine is imported in containers and when imported wines are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 4.70 Net contents.

The requirements of this section apply to the net contents statement required by § 4.63.

(a) Standard containers. The net contents for wine for which a standard of fill is prescribed in § 4.203 must be stated in the same manner and form as specified in the standard of fill.

(b) Aggregately packaged containers—(1) External containers. The net contents of the external container for wine packaged in an aggregate package under the provisions of § 4.214 must be stated in accordance with that section.

(2) Internal containers. The net contents for the internal containers of an aggregate package must be stated in milliliters.

(c) Wine not subject to standards of fill. The net contents of wine that is not subject to standards of fill prescribed in § 4.203, under the rules set forth in § 4.201(b), must be stated as follows:

(1) If the container has a capacity of more than one liter, the net contents must be stated in liters and in decimal portions of a liter accurate to the nearest one-hundredth of a liter; and

(2) If the container has a capacity of less than one liter, the net contents shall be stated in milliliters.

(d) Optional statement of U.S. equivalent net contents. Net contents in U.S. equivalents may appear on a label along with the required metric net contents statement. If used, the U.S. equivalent volume must be shown as follows:

(1) For the metric standards of fill:

(i) 3 liters (101 fl. oz.);

(ii) 1.5 liters (50.7 fl. oz.);

(iii) 1 liter (33.8 fl. oz.);

(iv) 750 mL (25.4 fl. oz.);

(v) 500 mL (16.9 fl. oz.);

(vi) 375 mL (12.7 fl. oz.);

(vii) 187 mL (6.3 fl. oz.);

(viii) 100 mL (3.4 fl. oz.); and

(ix) 50 mL (1.7 fl. oz.).

(2) If the container is exempt from a standard of fill as described in paragraph (c) of this section:

(i) Equivalent volumes of less than 100 fluid ounces must be stated in fluid ounces, accurate to the nearest one-tenth of a fluid ounce, for example: 600 mL (20.3 fl. oz.); and

(ii) Equivalent volumes of 100 fluid ounces or more must be stated in fluid ounces only, accurate to the nearest whole fluid ounce, for example: 6 liters (203 fl. oz.).

(e) Tolerances. A statement of net contents must indicate the exact volume of wine in the container, except that the following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring that occur in filling conducted in compliance with good commercial practice;

(2) 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 bottle design that prevents the manufacture of bottles of an approximately uniform capacity; and

(3) Discrepancies in measure due to differences in atmospheric conditions in various places, including discrepancies resulting from the ordinary and customary exposure of alcohol beverages in containers to evaporation, provided that the discrepancy is determined to be reasonable on a case-by-case basis.

Subpart F—Restricted Labeling Statements

§ 4.81 General.

(a) Application. The labeling practices, statements, and representations in this subpart may be used on wine 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 wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container.

(2) The term “container” includes all parts of the wine container, including any part of a wine 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 § 4.61(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

§ 4.82 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 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. "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 wine product may, on a voluntary basis, be declared on a label or container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the wine 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 § 4.83. 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 wine products containing FD&C Yellow No. 5, sulfites, aspartame, and cochineal extract or carmine, see § 4.63(b).

§ 4.83 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 § 4.82. 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 § 4.82(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 Web site, 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 Web site 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 CLAIMS

§ 4.84 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.

§ 4.85 Environmental, sustainability, and similar statements.

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") may appear as long as the statements

are truthful, specific, and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, "Biodyvin," "Salmon-Safe," or "Fair Trade Certified") may appear on wines that are actually certified by the appropriate organization.

§ 4.86 Use of TTB permit numbers on labels.

Wine labels, containers, and packaging may bear TTB issued permit numbers as long as those permit numbers are located immediately adjacent to the name and address of the person operating the bonded wine cellar or winery. No additional reference may be made that may convey the impression that the wine was made or matured under government supervision or in accordance with government standards.

§ 4.87 Use of vineyard, orchard, farm, or ranch name as a claim or as additional information.

(a) General. Except as provided in paragraph (b) of this section, the name of a vineyard, orchard, farm, or ranch may not appear on a wine label, container, or packaging unless 95 percent of the wine in the container is produced from primary winemaking material grown on the named vineyard, orchard, farm, or ranch.

(b) Exception. (1) A vineyard, orchard, farm, or ranch name may be used without complying with the requirements of paragraph (a) of this section if the vineyard, orchard, farm, or ranch name is part of an operating name or trade name that appears in the mandatory name and address statement. In such a case, the vineyard, orchard, farm, or ranch name that appears in the name and

address statement may also appear in the brand name, as long as use of the name does not make a claim as to the origin of the winemaking materials.

(2) Vineyard, orchard, farm, or ranch name having geographic significance. When used in a brand name, a vineyard, orchard, farm, or ranch name having geographical or viticultural significance is subject to the requirements of § 4.64(b) and (c).

APPELLATIONS OF ORIGIN FOR GRAPE WINE

§ 4.88 Appellations of origin for grape wine in general.

(a) General. An appellation of origin for grape wine is the name of a place where grapes used to produce a specified minimum percentage of wine for still grape wine, sparkling grape wine, and carbonated grape wine were grown. The requirements in this section and §§ 4.89 through 4.91 apply to the use of appellations of origin. All parts of the appellation must be in the same type size and immediately adjacent to each other.

(b) Definition of "appellation of origin" for American wine. An American appellation of origin is the name (or names) of:

(1) (The) United States or America (American);

(2) A State;

(3) Two or three States;

(4) A county (which must be identified with the word "county" or other appropriate term for a county equivalent, where applicable, printed in the same font and type size as the name of the county);

(5) Two or three counties in the same State; or

(6) A viticultural area (as defined in § 4.91).

(c) Definition of appellation of origin for imported wine. An appellation of origin for imported wine is the name (or names) of:

(1) A country;

(2) A state, province, territory, or similar political subdivision of a country equivalent to a state or county;

(3) Two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state;

(4) Two or three counties; or

(5) A viticultural area (as defined in § 4.91).

(d) When an appellation of origin must be used. An appellation of origin in accordance with §§ 4.88 through 4.91, disclosing the true place of origin of the wine, must appear if:

(1) A varietal (grape type) designation is used as provided in § 4.156;

(2) A type designation of varietal significance is used as provided in § 4.157;

(3) A semi-generic type designation is used as the class and type designation of the wine, as provided in § 4.174;

(6) The wine is labeled with a vintage date, and otherwise conforms with the provisions of § 4.95.

§ 4.89 Eligibility for the use of an appellation of origin for grape wine.

(a) Appellations of origin for American wine. An American wine is entitled to use the name of a single county, State, or country (the United States or America[n]) as an appellation of origin if:

(1) At least 75 percent of the volume of wine is derived from grapes grown in the named county, State or country;

(2) The wine has been fully finished (as defined in § 4.1):

(i) In the United States, if labeled “[the] United States” or “America[n]”;

(ii) Within the labeled State or an adjacent State if labeled with a State appellation; or

(iii) Within the State in which the labeled county is located, if labeled with a county appellation; and

(3) The wine conforms to the laws and regulations of the named appellation area that govern the composition, method of production, and designation of wines made in such area.

(b) Appellations of origin for imported wine. An imported wine is entitled to use the name of a single country or a single State, province, territory, or similar political subdivision of a country equivalent to a state or county as an appellation of origin if:

(1) At least 75 percent of the volume of the wine is derived from grapes grown in the area indicated by the appellation of origin; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.90 Multicounty and multistate appellations of origin for grape wine.

(a) Multicounty appellations of origin for American wine. An appellation of origin comprising the names of two or three counties in the same State may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the counties included in the appellation;

(2) The wine derived from grapes grown in each county included in the appellation is in greater proportion than wine derived from grapes grown in any county that is not listed; and

(3) The counties must be listed in descending order of predominance, based on the percentage of wine derived from grapes grown in each county.

(b) Multicounty appellations of origin for imported wine. An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a county, all of which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the counties included in the appellation;

(2) The wine derived from grapes grown in each county included in the appellation is in greater proportion than wine derived from grapes grown in any county that is not listed;

(3) The counties must be listed in descending order of predominance, based on the percentage of wine derived from grapes grown in each county; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

(c) Multistate appellations of origin for American wine. An appellation of origin comprising the names of two or three States may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the States included in the appellation;

(2) The wine derived from grapes grown in each State included in the appellation is in greater proportion than wine derived from grapes grown in any State that is not listed;

(3) The States are listed in a descending order of predominance, based on the percentage of wine derived from grapes grown in each State;

(4) The wine has been fully finished (as defined in § 4.1) in one of the labeled States; and

(5) The wine conforms to the laws and regulations that govern the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(d) Multistate appellations of origin for imported wine. An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, all of which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state that are included in the appellation;

(2) The wine derived from grapes grown in each state, province, territory, or similar political subdivision included in the appellation is in greater proportion than wine derived from grapes grown in any such area not listed on the label;

(3) The states, provinces, territories, or similar political subdivisions are listed in a descending order of predominance, based on the percentage of wine derived from grapes grown in each; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.91 Viticultural areas.

(a) Definition of viticultural area for American wine. An American viticultural area is a delimited grape-growing region having a name, distinguishing features, and a delineated boundary as established in part 9 of this chapter.

(b) Definition of viticultural area for imported wine. A viticultural area for imported wine is a delimited place or region (other than a place or region (such as a county or state) defined in § 4.88(c)(1), (2), or (3)) the boundaries of which have been recognized and defined by the country of origin for use on labels of wine available for consumption within the country of origin.

(c) Establishment of American viticultural areas. A petition for the establishment of an American viticultural area may be submitted by any interested party, pursuant to part 9 and § 70.701(c) of this chapter. The petition must be made in written form and must contain the information specified in § 9.12 of this chapter.

(d) Requirements for use. A wine may be labeled with the name of a viticultural area if:

(1) The appellation has been approved under part 9 of this chapter in the case of domestic wine or by the appropriate foreign government in the case of imported wine;

(2) Not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticultural area;

(3) In the case of foreign wine, it conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin; and

(4) In the case of American wine, it has been fully finished (as defined in § 4.1) within the State, or one of the States, within which the labeled viticultural area is located.

(e) More than one viticultural area. A wine may be labeled with more than one viticultural area if:

(1) The indicated viticultural areas overlap; and

(2) Not less than 85 percent of the volume of the wine is derived from grapes grown in the overlapping area.

CLAIMS ABOUT GRAPE WINE

§ 4.92 Estate bottled.

(a) Conditions for use. The term "Estate bottled" may appear on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

(1) Is located within the labeled viticultural area;

(2) Grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; and

(3) Crushed the grapes, fermented the resulting must, and fully finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

(b) Special rule for cooperatives. Grapes grown by the members of a single cooperative bottling winery are considered to be grown by the bottling winery.

(c) Use of other terms. No term other than "Estate bottled" may appear on a label to indicate combined growing and bottling conditions.

(d) Definitions. For purposes of this section, land controlled by the winery refers to property on which the producing winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least three years duration.

§ 4.93 Estate grown.

(a) Conditions for use. The term “Estate(s) grown” may appear on a wine label only if all of the following conditions are met:

(1) The wine is labeled with an appellation of origin;

(2) The producing winery is located within the appellation of origin;

(3) The producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery within the boundaries of the appellation of origin, and fermented 100 percent of the wine from those grapes; and

(4) If the bottling winery is not the producing winery, the label must clarify that the wine was “estate grown” by the producing winery, and the name and address of both wineries must appear on the label. An acceptable labeling statement would be “Estate grown and produced by ABC Winery, Seattle, Washington. Bottled by XYZ Winery, Tacoma, Washington.”

(b) Special rule for cooperatives. Grapes grown by the members of a single cooperative bottling winery are considered to be grown by the bottling winery.

(c) Definition. For purposes of this section, land controlled by the winery refers to property on which the producing winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least 3 years duration.

§ 4.94 Claims on grape wine labels for viticultural practices that result in sweet wine.

(a) General. The claims set forth in paragraphs (b) through (d) of this section about viticultural practices that result in sweet wine may be used on

labels of grape wine subject to the rules set forth in this section. In all such cases, the wine must also be labeled with the amount of sugar contained in the grapes at the time of harvest and the amount of residual sugar in the finished wine. The amount of sugar may be stated in degrees Brix, percent by weight, grams per 100 mL or grams per liter. Harvest or picking dates may not be stated on the label unless the wine is labeled with a vintage date in accordance with § 4.95.

(b) Ice wine. The term “ice wine” (or “icewine,” or “ice-wine”) may be used only to describe wines produced exclusively from grapes that have been harvested after they have naturally frozen on the vine. Wine that is ameliorated, concentrated, fortified, or produced from concentrate may not be labeled as “ice wine.” Wine produced from grapes that were frozen post-harvest may not be labeled as “ice wine” but may be labeled with a statement such as "made from grapes frozen post-harvest."

(c) Late harvest or late picked. The term “late harvest” or “late picked” may not be used on the label of a wine that is ameliorated, concentrated, fortified, or produced from concentrate.

(d) Botrytis Infected or Pourriture Noble. Grape wine produced from grapes that have been infected with the botrytis cinerea mold may be labeled with a term such as "Botrytis Infected," "Pourriture Noble," or another name for infection by the botrytis cinerea mold.

§ 4.95 Vintage date.

(a) General. Grape wine may be labeled with the vintage date (which is the calendar year in which the grapes used to make the wine were harvested) only if the wine is also labeled with an appellation of origin as defined in § 4.88. The requirements in paragraphs (a)(1) through (3) of this section apply to the use of vintage dates on American and imported wines:

(1) If wine is labeled with a viticultural area as defined in § 4.91, at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

(2) If a wine is labeled with an appellation of origin other than a viticultural area, at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

(3) A wine may be labeled with only one vintage date.

(b) Imported wine. Imported wine may bear a vintage date if all of the following conditions are met:

(1) The wine is made in compliance with the production standards referenced in paragraph (a) of this section, except that the year of harvest for an imported wine will be determined in accordance with the laws and regulations governing vintage date labeling of wines available for consumption within the country of origin.

(2) The wine is of the vintage shown, the laws of the country of origin regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, the wine has been produced in conformity with those laws, and the wine would be entitled to bear the vintage

date if it had been sold within the country of origin. The importer of the wine imported in bottles or the domestic bottler of wine imported in bulk and bottled in the United States must be able to demonstrate, upon request by the appropriate TTB officer or a customs officer, that the wine is entitled to be labeled with the vintage date.

APPELLATIONS OF ORIGIN FOR FRUIT WINE, AGRICULTURAL WINE, AND RICE WINE

§ 4.96 Appellations of origin for fruit wine, agricultural wine, and rice wine in general.

(a) General. An appellation of origin for fruit wine, agricultural wine, or rice wine is the name of a place where the fruit (other than grapes), agricultural products, or rice, respectively, used to produce a specified minimum percentage of the fruit wine, agricultural wine, or rice wine, as prescribed in subpart I of this part, are grown. In the case of honey wine, eligibility for use of an appellation of origin is based on the place where the source plants for the honey were grown. The requirements in this section and §§ 4.97 and 4.98, apply to the use of appellations of origin. All parts of the appellation must be in the same type size and immediately adjacent to each other.

(b) Definition of "appellation of origin" for American wine. An American appellation of origin is the name (or names) of:

(1) (The) United States or America (American);

(2) A State (including the District of Columbia and the Commonwealth of Puerto Rico);

(3) Two or no more than three States;

(4) A county (which must be identified with the word "county" or other appropriate term for a county equivalent, where applicable, printed in the same font and type size as the name of the county); or

(5) Two or no more than three counties in the same State.

(c) Definition of appellation of origin for imported wine. An appellation of origin for imported wine is the name (or names) of:

(1) A country;

(2) A state, province, territory, or similar political subdivision of a country equivalent to a state or county; or

(3) Two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state.

§ 4.97 Eligibility for use of an appellation of origin for fruit wine, agricultural wine, and rice wine.

(a) Appellations of origin for American wine. An American fruit, agricultural, or rice wine is entitled to use the name of a single county, State, or country (the United States or America[n]) as an appellation of origin if:

(1) At least 75 percent of the volume of wine is derived from fruit or agricultural products grown in the stated appellation of origin;

(2) The wine has been fully finished (as defined in § 4.1):

(i) In the United States, if labeled "[the] United States" or "America[n]";

(ii) Within the labeled State or an adjacent State if labeled with a State appellation; or

(iii) Within the State in which the labeled county is located, if labeled with a county appellation; and

(3) The wine conforms to the laws and regulations of the named appellation area that govern the composition, method of production, and designation of wines made in such place.

(b) Appellations of origin for imported wine. An imported wine is entitled to use the name of a single country or a single State, province, territory, or similar political subdivision of a country equivalent to a state or county as an appellation of origin if:

(1) At least 75 percent of the volume of the wine is derived from fruit or other agricultural products grown in the area indicated by the appellation of origin; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.98 Multicounty and multistate appellations of origin for fruit wine, agricultural wine, and rice wine.

(a) Multicounty appellations of origin. An appellation of origin comprising the names of two or three counties in the same State may be used if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown in the counties included in the appellation;

(2) The wine derived from fruit or other agricultural products grown in each county included in the appellation is in greater proportion than wine derived from fruit or other agricultural products grown in any county that is not listed; and

(3) The counties are listed in descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each county.

(b) Multistate appellations for American wine. An appellation of origin comprising the names of two or three States may be used, if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown in the States indicated;

(2) The wine derived from fruit or other agricultural products grown or harvested in each State listed on the label is in greater proportion than wine derived from fruit or other agricultural products grown in any State that is not listed;

(3) The States must be listed in a descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each State;

(4) The wine has been fully finished (as defined in § 4.1) in one of the labeled States; and

(5) The wine conforms to the laws and regulations that govern the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(c) Multistate appellations of origin for imported wine. An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, all of which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown or harvested in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state that are included in the appellation;

(2) The wine derived from fruit or agricultural products grown or harvested in each named state, province, territory, or similar political subdivisions must be listed in a descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each;

(3) The wine derived from fruit or other agricultural products grown or harvested in each state, province, territory, or similar political subdivision must be in greater proportion than wine derived from fruit or other agricultural products grown or harvested in any such area not listed on the label; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

Subpart G—Prohibited Labeling Practices

§ 4.101 General.

(a) Application. The prohibitions set forth in this subpart apply to any wine label, container, or packaging. For purposes of this subpart:

(1) The term “label” includes all labels on wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container;

(2) The term “container” includes all parts of the wine container, including any part of a wine 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 § 4.61(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 prohibited 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.

§ 4.102 False or untrue statements.

Wine labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 4.103 Obscene or indecent depictions.

Wine 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

§ 4.121 General.

(a) Application. The labeling practices that are prohibited if misleading set forth in this subpart apply to any wine label, container, or packaging. For purposes of this subpart:

(1) The term “label” includes all labels on wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container;

(2) The term “container” includes all parts of the wine container, including any part of a wine 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 § 4.61(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.

§ 4.122 Misleading statements or representations.

(a) General prohibition. Wine 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 wine, or with regard to any other material factor.

(b) Ways in which statements or representations may 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) As set forth in § 4.212(b), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on wine 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.

§ 4.123 Guarantees.

Wine 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.

§ 4.124 Disparaging statements.

(a) General. Wine labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) Examples. (1) An example of an explicit statement that falsely disparages a competitor's product is, "Brand X is not aged in oak barrels," when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is, "We do not add arsenic to our wine," where such a claim is true but it may lead consumers to falsely believe that other winemakers do add arsenic to their wine.

(c) Truthful and accurate comparisons. This section does not prevent truthful and accurate comparisons between products (such as, “Our wine contains more grapes than Brand X”) or statements of opinion (such as, “We think our wine tastes better than any other wine on the market”).

§ 4.125 Tests or analyses.

Wine 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.

§ 4.126 Depictions of government symbols.

(a) Representations of the armed forces and flags. Wine 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 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.

(b) Government seals. Wine labels, containers, or packaging may not contain any government seal or other insignia that is likely create a false or misleading impression that the product has been endorsed by, made by, used by, or produced for, or under the supervision of, or in accordance with the

specification of, that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 4.127 Depictions simulating government stamps or relating to supervision.

(a) Wine labels, containers, or packaging may not contain any statements or representations that mislead consumers to believe that the wine is manufactured or processed under government authority. Wine labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, and may not contain statements or indications that the wine is produced, blended, bottled, packed or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by applicable law or regulations. If a municipal, State, or Federal Government permit number is stated on a label, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number with the exception of the name and address of the person associated with that permit number.

(b) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by an official duly authorized by the appropriate foreign government, the container, except where prohibited by the foreign government, may refer to that certificate or to the fact of that certification, but the container must not contain any additional statements relating to the certificate or

certification. Any reference to such a certificate or certification must be in substantially the following form:

This product was accompanied at the time of the importation by a certificate issued by the

_____
(Name of government)

government indicating that the product is

_____
(Class and type as stated on the container)

and (if container bears a statement of vintage date) that the wine is of the vintage of

_____
(Year of vintage stated on the container).

§ 4.128 Claims related to distilled spirits or malt beverages.

(a) General. Except as provided in paragraph (b) of this section, no label, carton, case, or any other packaging material may contain a statement, design, or representation that tends to create a false or misleading impression that the wine is a distilled spirits or malt beverage product, or that it contains distilled spirits or malt beverages. For example, the use of the name of a class or type designation of a distilled spirits or malt beverage product, as set forth in part 5 or 7 of this chapter, is prohibited, if the use of that name creates a misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) Exceptions. This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a distilled spirits or malt beverage product as a wine 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 distilled spirits or malt beverage cocktail name as a brand name or a distinctive or fanciful name of a wine product, provided that a statement of composition, in accordance with § 4.151, appears in the same field of vision as the brand name or a distinctive or fanciful name and the overall label does not create a misleading impression about the identity of the product;

(4) The use of a statement of composition that includes a reference to the type of distilled spirits contained therein;

(5) The use of truthful and accurate statements about the production of the wine, as part of a statement of composition or otherwise, such as "aged in whisky barrels," so long as such statements do not create a misleading impression as to the identity of the product; or

(6) The use of terms that simply compare wine to distilled spirits or malt beverage products without creating a misleading impression as to the identity of the product.

§ 4.129 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, wine, or any substance found within the wine, 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, wine, or any substance found within the wine, 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 wine, 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 alcohol, wine, or any substance found within the wine, 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 wine, alcohol, or any substance found within the wine, 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 wine or alcohol consumption.

(b) Rules for labeling—(1) Health-related statements. In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol

consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(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 wine. 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 wine.

(ii) TTB will approve the use of a specific health claim on a wine 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 alcohol or alcohol beverage product 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.

§ 4.130 Appearance of endorsement.

(a) General. Wine 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) Documentation. The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) 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.

§ 4.131 Use of the word "importer" or similar words.

(a) Except as provided in paragraph (b) of this section, labels, containers, or packaging for wine that is not required to bear an "imported by" statement under § 4.67 or § 4.68 may not include the word "importer" or any other word that creates the misleading impression that the product was imported.

(b) If the word "importer" or a similar word is part of the bona fide name of a permittee by or for whom the wine was bottled, or a retailer for whom the wine was bottled or distributed, it may appear as part of the name and address statement, as long as the words "Product of the United States" or similar dispelling language appears immediately adjacent to the name and address statement, in the same size and type of the name and address statement.

§ 4.132 [Reserved]

§ 4.133 Claims regarding terms defined or authorized by this part.

(a) Wine labels, containers, or packaging may not include any use of a term defined in this part in a manner that is not consistent with the definitions set forth in this part.

(b) Wine labels, containers, or packaging materials may not contain any coined word or name that simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or authorized designation recognized by the regulations in this part or in part 5 or

part 7 of this chapter unless the wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(c) Except as provided by § 4.136, statements or representations on wine labels, containers, or packaging may not make claims about the grape varieties used in production of a wine that does not bear a varietal designation under § 4.156 or § 4.157.

(d) Except as provided by § 4.134, statements or representations on wine labels, containers, or packaging may not make claims about the year that grapes were grown or harvested unless the wine label bears a vintage date in accordance with § 4.95, and the claims are consistent with that date.

§ 4.134 Statements related to dates or ages.

(a) Statement of age. Except as provided in paragraphs (b) and (c) of this section, a wine label, container, or packaging may not bear any statement or other representation of age, including representations in the brand name, except for:

(1) Vintage wine, in accordance with § 4.95;

(2) References relating to methods of wine production involving storage or aging, in accordance with § 4.56. Any such age statement must indicate how long the wine has been aged and the type of aging that occurred, for example, "Barrel aged for ___ months;" or

(3) Use of the word "old" as part of the brand name; or

(4) Additional truthful, accurate, and specific information about the year of harvest of the grapes or fruit used to make still, sparkling, or carbonated grape

wine, or still, sparkling, or carbonated fruit wine, respectively. The information must indicate the percentage of wine derived from grapes or fruit, respectively, grown in each of the labeled harvest years, such as “60% of the grapes used to make this wine were harvested in 2014; the remaining 40% were harvested in 2013,” or “this wine is a blend of 50% wine made from apples harvested in 2012 and 50% wine made from apples harvested in 2011.” When applicable, the years of harvest must be presented in descending order based on the percentage of wine derived from grapes or fruit grown in each year.

(b) Statement of bottling date. For purposes of paragraph (a) of this section, a statement of the bottling date of a wine will not be deemed to be a representation relative to age, provided that the statement appears in the following form: “Bottled in ___” (inserting the year in which the wine was bottled).

(c) Miscellaneous date statements. Except in the case of vintage dates and bottling, storage, or aging dates as provided in paragraphs (a) and (b) of this section, a wine label must not bear any date unless, in addition to the date and immediately adjacent to the date and in the same size and kind of printing, a statement of the significance or relevance of the date is provided, such as “established” or “founded in”. If the date refers to the date of establishment of any business or brand name, the date and its accompanying statement must appear immediately adjacent to the name of the person, company, or brand name to which it relates if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date applies. This paragraph does not authorize the use of

dates referring to the date of growth or harvest of the grapes on wines that are not labeled with vintage dates in accordance with § 4.95.

§ 4.135 Indications of origin.

(a) General rule. Except as otherwise provided in §§ 4.64 and 4.174, which address brand names of geographic significance and semi-generic designations, respectively, any statement, design, device or representation on a wine label, container, or packaging that indicates or implies an origin other than the true place of origin of the wine is prohibited. This section does not prohibit name and address statements in accordance with this part.

(b) Wine that is labeled with an appellation of origin. Except as otherwise provided in §§ 4.64 and 4.174, which address brand names of geographic significance and semi-generic designations, respectively, any statement or representation regarding the origin of the grapes, fruit, or agricultural materials used to make wine that is labeled with an appellation of origin must be consistent with the appellation of origin that appears on the label.

(c) Wine that is not labeled with an appellation of origin. Wine that is not labeled with an appellation of origin may be labeled with additional information that provides truthful information about the origin of the grapes, fruit, or other agricultural materials that were used to produce the wine provided that:

(1) The name of the place of origin of the grapes, fruit, or other agricultural products does not appear on the label in a way that creates the misleading impression that the wine is entitled to an appellation of origin under §§ 4.88 – 4.90 or §§ 4.96 – 4.97; and

(2) Any additional information about the origin of the grapes, fruit, or other agricultural products of the wine sets forth the origin of 100 percent of the grapes, fruit, or other agricultural products used to make the wine, in descending order of predominance, together with the place where the wine was produced.

(d) Examples of permissible statements of origin as additional information. A wine that is produced in New York and designated as "red wine," may be labeled with a statement that indicates the origin and percentage of the gapes that were used to produce the wine. If 50 percent of the grapes used to make the wine were grown in New York, and 50 percent of the grapes used to make the wine were grown in Virginia, the wine may bear a statement on the label to the effect of "this wine was produced and bottled in New York from 50 percent New York grapes and 50 percent Virginia grapes."

§ 4.136 Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.

(a) The use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation is presumed to be misleading and is thus prohibited on the label, container, or packaging of any wine that is not made in accordance with the standards prescribed for still grape wine, sparkling grape wine, or carbonated grape wine of §§ 4.142, 4.143, and 4.144.

(b) The use of such a term on the label of a wine, container, or packaging of any wine that is made in accordance with the standards prescribed for still grape wine, sparkling grape wine, or carbonated grape wine but does not meet the requirements for use of the designation named, including its use in a brand

name, product name, or a distinctive or fanciful name, is prohibited where the use of such name may tend to create a false or misleading impression as to the designation, origin, or identity of the wine.

(c) This paragraph does not prohibit the use of truthful, accurate, and specific additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance. The percentage of each grape variety may be, but is not required to be, shown on the label, along with a tolerance of two percentage points. When shown, percentages must be shown for all grape varieties listed, and the total must equal 100 percent.

§ 4.137 Terms relating to intoxicating qualities.

Wine labels, containers, or packaging may not contain any statement or representation that tends to create the impression that the wine should be purchased or consumed based on intoxicating qualities.

Subpart I—The Standards of Identity for Wine

§ 4.141 The standards of identity in general.

(a) Standards of identity (class and type designations) and other designations (statements of composition). Sections 4.142 through 4.150 provide for the standards of identity for wine. These standards are broken into nine classes and several types within each class. In general, the class and/or type designation is used to meet the mandatory requirement found in § 4.63(a)(2). In certain circumstances, a statement of composition as prescribed in § 4.151 may

be required. In those circumstances, the statement of composition meets the mandatory label information requirement in § 4.63(a)(2). All parts of the designation of wine, whether mandatory or optional, must appear together and in lettering substantially of the same size and kind. Whenever any term for which a standard of identity has been established in this subpart is used in this part, the term has the meaning assigned to it by that standard of identity.

(b) Cellar treatment of wine. See § 4.154 for cellar treatments that change the class and type designation of wine and for those cellar treatments that are authorized for use without changing the class and type of wine.

§ 4.142 Still grape wine—class and type designation.

(a) Still grape wine. (1) Still grape wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must and with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Still grape wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5383 for natural grape wine, provided that grape wine designated as “specially sweetened grape wine” under paragraph (c)(11) of this section may be sweetened in accordance with the standards set forth in 26 U.S.C. 5385.

(3) Still grape wine must contain less than 0.392 grams of carbon dioxide per 100 milliliters. The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 degrees Celsius) for red wine and 0.12 gram per 100 mL (20 degrees Celsius) for other grape wine, provided that the maximum volatile acidity for wine produced from unameliorated juice of 28 or more degrees Brix is 0.17 gram per 100 mL for red wine and 0.15 gram per 100 mL for white wine.

(b) Class designation of grape wine. Still grape wine must be designated as “still grape wine” or “grape wine” unless paragraph (c) of this section applies. Still grape wine that is designated with an authorized type designation may use the class designation “grape wine” in addition to the type designation.

(c) Type designation of still grape wine. Still grape wine may be designated with one or more of the following type designation(s) that apply in place of or in addition to the class designation.

(1) Red, white, blush, pink, rosé, and amber wine. Still grape wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as “red wine,” “white wine,” “blush wine,” “pink wine,” “rosé wine,” or “amber wine,” as the case may be.

(2) Grape variety. The names of one or more grape varieties (for example, “chardonnay” or “cabernet franc and merlot”) may be used as the type designation in accordance with § 4.156.

(3) Grape type designation of varietal significance. A grape type designation of varietal significance (for example, “moscato” or “scuppernong”) may be used as the type designation in accordance with § 4.157.

(4) Semi generic designation of geographic significance. A semi-generic designation of geographic significance (for example, “Angelica”) may be used as the type designation in accordance with § 4.174.

(5) Non-generic designation that is a distinctive designations of specific grape wines. A non-generic designation that is a distinctive designation of specific grape wine (for example, “Bordeaux Blanc”) may be used as the type designation in accordance with § 4.175.

(6) Table wine and light wine. Still grape wine having an alcoholic content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as “table wine” or “light wine.”

(7) Dessert wine. Still grape wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as “dessert wine.”

(8) Angelica. Angelica is grape wine having the taste, aroma, and characteristics generally attributed to angelica. Angelica has an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. Angelica has been recognized as a semi-generic designation of geographic significance and is subject to the requirements of § 4.174.

(9) Madeira, port, and sherry. Madeira, port, and sherry are grape wines having the taste, aroma, and characteristics generally attributed to such wines. Madeira, port, and sherry have an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. These grape wine types have been recognized as semi-generic designation of geographic significance and are subject to the requirements of § 4.174.

(10) Muscatel. Muscatel is grape wine having the taste, aroma, and characteristics generally attributed to Muscatel. Muscatel has an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. Muscatel is a grape type designation.

(11) "Specially sweetened grape wine." Grape wine sweetened in accordance with the standards set forth in 26 U.S.C. 5385 must include the words "extra sweet," "specially sweetened," "specially sweet," or "sweetened with excess sugar" as part of the class and type designation.

§ 4.143 Sparkling grape wine—class and type designation.

(a) Sparkling grape wine. Sparkling grape wine is still grape wine made effervescent with carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle. Sparkling grape wine must contain at least 0.392 grams of carbon dioxide per 100 milliliters of wine.

(b) Class designation of sparkling wine. Sparkling grape wine must be designated as "sparkling wine" or "sparkling grape wine."

(c) Type designations of sparkling wine. In addition to the class designation, sparkling grape wine may be designated with one or more of the following type designation(s) that apply.

(1) Red, white, amber, pink, rosé, and blush. Sparkling wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as “sparkling red (or white, blush, pink, rosé, or amber, as the case may be) wine.”

(2) Grape variety. The names of one or more grape varieties following the word “sparkling” (for example, “sparkling chardonnay” or “sparkling cabernet franc and merlot”) may be used as a type designation for sparkling grape wine in accordance with § 4.156.

(3) Grape type designation of varietal significance. A grape type designation (for example, “sparkling moscato” or “sparkling scuppernong”) may be used as a type designation for sparkling wine in accordance with § 4.157.

(4) Semi-generic designation of geographic significance. A semi-generic designation of geographic significance (for example, “champagne”) may be used as the type designation for sparkling grape wine in accordance with § 4.174.

(5) Nongeneric designation that is a distinctive designation. A nongeneric designation that is a distinctive designation of a specific grape wine (for example, “sparkling asti spumante”) may be used as the type designation in accordance with § 4.176.

(6) Champagne. Champagne is a type of sparkling grape wine with an alcohol content of less than 14 percent alcohol by volume. Champagne derives

its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne district of France. Champagne has been recognized as a semi-generic designation of geographic significance and must be labeled in accordance with § 4.174.

(7) Champagne style and champagne type. A sparkling wine having less than 14 percent alcohol by volume, and having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" as prescribed by paragraph (c)(6) of this section may, in addition to but not in lieu of the class designation "sparkling wine," be further designated as "champagne style" or "champagne type," along with one of the required terms denoting use of bulk process set forth in paragraph (d) of this section. The designation "champagne" has been recognized as a semi-generic designation of geographic significance and thus wines labeled with a designation of "champagne style" or "champagne type" must be labeled in accordance with § 4.174.

(8) Crackling wine, petillant wine, frizzante wine, cremant, perlant, reciotto, and other similar wine. Crackling, petillant, frizzante, cremant, perlant, and reciotto wines are types of sparkling grape wines that are normally less effervescent than champagne or other similar sparkling wine, but containing sufficient carbon dioxide in solution to produce, upon pouring under normal conditions, after the disappearance of air bubbles, a slow and steady

effervescence evidenced by the formation of gas bubbles flowing through the wine. Such wines may be designated as: “crackling,” “petillant,” “frizzante,” “cremant,” “perlant,” and “reciotto” wines.

(d) Bulk process. In addition to the product designation, any sparkling grape wine that derives its effervescence from secondary fermentation in containers greater than 1-gallon capacity must be labeled with one or more of the following statements: “Bulk process,” “fermented outside the bottle,” “secondary fermentation outside the bottle,” “secondary fermentation before bottling,” “not fermented in the bottle,” or “not bottle fermented.” The statement “charmat method” or “charmat process” may be used as additional information in addition to but not in lieu of one of the required statements. This information must be stated on the same label as the product designation and must appear in at least half the type size as the product designation.

§ 4.144 Carbonated grape wine—class and type designation.

(a) Carbonated grape wine. Carbonated grape wine is still grape wine made effervescent by the injection of carbon dioxide. Carbonated grape wine must contain at least 0.392 grams of carbon dioxide per 100 milliliters of wine.

(b) Class designation of carbonated wine. Carbonated grape wine must be designated as “carbonated wine” or “carbonated grape wine.”

(c) Type designation. In addition to the class designation, carbonated grape wine may be designated with one or more of the following type designation(s) that apply.

(1) Red, white, amber, pink, rosé, and blush. Carbonated wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as “carbonated red (or white, blush, pink, rosé, or amber, as the case may be) wine.”

(2) Grape variety. The names of one or more grape varieties may be used as a type designation for carbonated grape wine (for example, “carbonated chardonnay” or “carbonated merlot and cabernet franc”) in accordance with § 4.156.

(3) Grape type designation of varietal significance. A grape type designation may be used as a type designation for carbonated grape wine (for example, “carbonated moscato” or “carbonated scuppernong”) in accordance with § 4.157.

(4) Semi-generic designation of geographic significance. A semi-generic designation of geographic significance may be used as a type designation of carbonated grape wine (for example, “carbonated Burgundy”) in accordance with § 4.174.

§ 4.145 Fruit wine—class and type designation.

(a) Fruit wine. (1) Fruit wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must) other than grapes, with or without the addition, after fermentation, of pure condensed fruit must and, with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other

addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Fruit wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5384 for natural fruit wine, provided that fruit wine designated as "specially sweetened fruit wine" (or with a similar term) under paragraph (c)(8) of this section may be sweetened in accordance with the standards set forth in 26 U.S.C. 5385.

(3) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for fruit wine that does not contain brandy or wine spirits, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 milliliters (20 degrees Celsius).

(b) Class designation for fruit wine—(1) Fruit wine derived wholly from one kind of fruit. Fruit wine derived wholly from one kind of fruit must be designated with the name of that fruit followed by the word "wine." For example, wine that is derived wholly from strawberries, oranges, or peaches must be designated as "strawberry wine," "orange wine," "peach wine," respectively.

(2) Fruit wine derived from more than one kind of fruit. Fruit wine derived from the fermentation of more than one kind of fruit must be designated with the name of each fruit, followed by the word "wine" (for example, "blueberry/banana wine," or "orange-lime wine"). (For the rules regarding statements of composition when two types of fruit wine are blended together, see § 4.151(c)).

(c) Type designation of fruit wine. Fruit wine may be designated with one or more of the following applicable type designation(s) in place of the class designation.

(1) Cider. Fruit wine that is derived wholly from apples may be designated as “cider.”

(2) Perry. Fruit wine that is derived wholly from pears may be designated as “perry.”

(3) Sparkling fruit wine. Fruit wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle may be designated as such provided that the name of the fruit follows the word “sparkling.” For example, a fruit wine that is derived wholly from peaches and rendered effervescent as indicated in this paragraph, must be designated as “sparkling peach wine.” If a fruit wine is authorized to carry the designation of “sparkling” and is derived from more than one type of fruit, it must be designated as “sparkling fruit wine” and carry a statement that indicates the types of fruit that the wine is made from, or as “sparkling (name all fruits) wine.”

(4) Carbonated fruit wine. Fruit wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide may be designated as such provided that the name of the fruit follows the word “carbonated.” For example, a fruit wine that is wholly derived from peaches and rendered effervescent as indicated in this paragraph must be designated as

"carbonated peach wine." If a fruit wine is authorized to carry the designation of "carbonated" and is derived from more than one type of fruit, it must be designated as "carbonated fruit wine" and carry a statement indicating the types of fruit the wine is made from, or as "carbonated (name all fruits) wine."

(5) Fruit table wine and fruit light wine. Fruit wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as "(name of fruit(s)) table wine" or "(name of fruit(s)) light wine."

(6) Fruit dessert wine. Fruit wine that has an alcohol content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as "(name of fruit(s)) dessert wine."

(7) Specially sweetened fruit wine. Fruit wine sweetened in accordance with the standards set forth in 26 U.S.C. 5385 must include the words "extra sweet," "specially sweetened," "specially sweet," or "sweetened with excess sugar" as part of the class and type designation.

§ 4.146 Agricultural wine—class and type designation.

(a) Agricultural wine. (1) Agricultural wine is made from suitable agricultural products other than the juice of grapes, berries, or other fruits and is produced by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, and without added distilled spirits.

(2) Agricultural wine may not be flavored or colored; however, hops may be used in the production of honey wine in accordance with the standards set forth in part 24 of this chapter.

(3) Agricultural wine may be ameliorated in accordance with the standards set forth in part 24 of this chapter. The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for wine of this class, more than 0.14 grams per 100 milliliters (20 degrees Celsius).

(b) Class designation of agricultural wine—(1) Agricultural wine derived wholly from one kind of agricultural product. Agricultural wine derived wholly from one kind of agricultural product must be designated by the word "wine" qualified by the name of the agricultural product. For example, agricultural wine that is derived wholly from dandelions, raisins, or agave must be designated as "dandelion wine," "raisin wine," or "agave wine," respectively. Agricultural wine derived wholly from honey may be designated as either "honey wine" or "mead."

(2) Agricultural wine derived from more than one kind of agricultural product. Agricultural wine derived from the fermentation of more than one kind of agricultural product must be designated with the name of each agricultural material, followed by the word "wine" (for example, "dandelion honey wine. (For the rules regarding statements of composition when two types of agricultural wine are blended together, see § 4.151(c)).

(c) Type designations. One or more of the following type designations may be used in place of the class designation for agricultural wine:

(1) Sparkling agricultural wine. Agricultural wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle may be designated as “sparkling (name of agricultural product) wine.” For example, agricultural wine that is derived wholly from dandelions and rendered effervescent as stated in this paragraph must be designated as “sparkling dandelion wine.”

(2) Carbonated agricultural wine. Agricultural wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide may be designated as “carbonated (name of agricultural product) wine.” For example, agricultural wine that is derived wholly from dandelions and rendered effervescent as stated in this paragraph must be designated as “carbonated dandelion wine.”

(3) Agricultural table wine and light wine. Agricultural wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as “(name of agricultural product(s)) table wine” or “(name of agricultural product(s)) light wine.”

(4) Agricultural dessert wine. Agricultural wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as “(name of agricultural product(s)) dessert wine.”

§ 4.147 Aperitif—class and type designation.

(a) Aperitif wine. Aperitif wine is compounded from grape wine containing added brandy or alcohol may be flavored with herbs and other natural aromatic

flavoring materials, with or without the addition of caramel for coloring purposes; and possess the taste, aroma, and characteristics generally attributed to aperitif wine; and must have an alcoholic content of not less than 15 percent by volume.

(b) Class designation of aperitif wine. Aperitif wine must be designated as aperitif wine unless paragraph (c) of this section applies.

(c) Type designation of aperitif wine. The following type designation may be used for aperitif wine in place of the class designation as applicable.

(1) Vermouth. Vermouth is a type of aperitif wine made from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth. Vermouth has been recognized as a generic designation of geographical significance and may be designated as "vermouth."

(2) [Reserved].

§ 4.148 Rice wine—class and type designation.

(a) Rice wine. Rice wine is produced from the alcoholic fermentation of rice, with or without the addition of distilled spirits.

(b) Class designation of rice wine. Wine of this class must be designated as rice wine unless it meets one of the type designations in paragraph (c) of this section.

(c) Type designation of rice wine. One or more of the following type designations may be used for rice wine as applicable.

(1) Saké. Saké is produced from rice in accordance with the commonly accepted method of manufacture of such product. Saké has been designated as a generic designation of geographic significance under § 4.183.

(2) Gyeongju Beopju. Gyeongju Beopju is a rice wine produced in the Republic of Korea in accordance with the laws and regulations of the Republic of Korea governing the manufacture of such product.

(3) Rice table wine and light wine. Rice wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as “rice table wine” or “rice light wine.”

(4) Rice dessert wine. Rice wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as “rice dessert wine.”

§ 4.149 Retsina wine—designation.

“Retsina wine” is still grape table wine fermented or flavored with resin. Retsina has been recognized as a semi-generic designation of geographic significance and is subject to the rules found in § 4.174 with regard to semi-generic designations.

§ 4.150 Imitation and substandard or other than standard wine—designation.

(a) “Imitation wine” shall bear as a part of its designation the word “imitation,” and shall include:

(1) Any wine containing synthetic materials.

(2) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(3) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired, in whole or in part, by treatment with methods or materials of any kind (except as permitted in § 4.154(c)(5)), if the

taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(4) Any wine made from must concentrated at any time to more than 80° brix.

(b) “Substandard wine” or “other than standard wine” shall bear as a part of its designation the words “substandard” or “other than standard,” and shall include:

(1) Any wine having a volatile acidity in excess of the maximum prescribed therefor in subpart I of this part.

(2) Any wine for which no maximum volatile acidity is prescribed in subpart I of this part, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.14 gram per 100 milliliters (20 degrees Celsius).

(3) Any wine for which a standard of identity is prescribed in this subpart I of this part, inclusive, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

(4) Any “grape wine,” “fruit wine,” or “wine from other agricultural products” to which sugar, water, or a sugar-water solution has been added in excess of the production standards for such wine as prescribed in part 24 of this chapter and in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of “fruit wine” and “wine from other agricultural products” the normal acidity of the material from which such wine is

produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 percent by such addition.

§ 4.151 Statements of composition.

(a) General. If the class of the wine is not defined in one of the standards of identity specified in subpart I of this part, or the wine has been altered, treated, or blended beyond the standards permitted by § 4.154, a truthful and adequate statement of composition must appear on the label as the class designation. A distinctive or fanciful name, or a designation in accordance with trade understanding may appear in addition to the statement of composition.

(b) The statement of composition may not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation.

(c) The appropriate TTB officer may require a statement of composition to identify the base wine(s), including blends of wine or fermentable materials, as well as other materials added to the wine before, during, and after fermentation, as appropriate, in order to ensure that the label provides adequate information about the identity of the product. Where a product consists entirely of a blend of two different types of fruit or agricultural wine, the statement of composition must include of the names of the types of wine (such as, “blueberry wine and apple wine” or “mead/rhubarb wine”).

§§ 4.152—4.153 [Reserved]

CELLAR TREATMENT AND ALTERATION OF CLASS AND TYPE

§ 4.154 Cellar treatment and alteration of class or type.

(a) Statement of composition. If the class or type of any wine is altered, and the product as altered does not fall within any other class or type designations specified in §§ 4.142 through 4.150, then such wine must be labeled with a statement of composition in accordance with § 4.151.

(b) Alteration of class or type. Any of the following, occurring before, during, or after fermentation, will result in an alteration of class or type of wine:

(1) Treatment of any class or type of wine with a substance that is not a natural component of the wine and that remains in the wine, provided, that the presence in finished wine of not more than 350 parts per million of total sulfur dioxide, or sulfites expressed as sulfur dioxide, is not prohibited under this paragraph;

(2) Treatment of any class or type of wine with a substance that is not foreign to the wine but that remains in the wine in larger quantities than is naturally and normally present in other wines of the same class or type that are not so treated;

(3) Treatment of any class or type of wine with a method or material of any kind to such an extent or in such a manner as to affect the basic composition of the wine by altering any of its characteristic elements;

(4) Blending wine of one class with wine of another class or blending of wines of different types within the same class; and

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this part with sugar, water, or a sugar-water solution in excess of the quantities specifically authorized in that standard of identity, except that the class or type of such wine is not deemed to be altered:

(i) If fruit wine, agricultural wine, aperitif wine, rice wine, and imitation wine have a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters and the content of natural acid is not less than 7.69 grams per liter; or

(ii) If grape wine, fruit wine, agricultural wine, aperitif wine, rice wine, retsina, and imitation wine have the normal acidity of 20 grams per liter, the volume of the resulting product has been increased not more than 60 percent by the addition of sugar, water, or a sugar-water solution for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) the phrase "Made with over 35 percent sugar-water solution" is included as part of the class and type statement.

(c) Authorized cellar treatments: The following treatments are authorized for use provided that they do not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section:

(1) Treatment with filtering equipment, or with fining or sterilizing agents;

(2) Treatment with pasteurization or refrigeration as necessary to bring the wine to commercial standards in accordance with acceptable cellar practice but

only in such a manner and to such an extent as not to change the basic composition of the wine or eliminate any of its characteristic elements;

(3) Treatment with methods and materials authorized for use under part 24 of this chapter (such as correcting cloudiness, precipitation, or abnormal color) to the minimum extent necessary to correct the wine;

(4) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated;

(5) Treatment of any class or type of wine involving the use of volatile fruit-flavor concentrates in the manner provided in section 5382 of the Internal Revenue Code; and

(6) In accordance with the provisions of §§ 4.143 through 4.157, carbon dioxide may be used to maintain counterpressure during the transfer of finished sparkling wines from bulk processing tanks to bottles, or from bottle to bottle, provided that the carbon dioxide content of the wine shall not be increased by more than 0.009 gram. per 100 mL during the transfer operation.

§ 4.155 [Reserved]

GRAPE TYPE LABELING

§ 4.156 Varietal (grape type) labeling as type designations.

(a) General. The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin, as defined in § 4.88.

(b) Use of one variety name. Except as otherwise provided in paragraph (c)(1) or (2) of this section, the name of a single grape variety may appear as a type designation on a wine label only if:

(1) Not less than 75 percent of the wine is derived from grapes of that variety, and

(2) The entire qualifying percentage of the named variety was grown in the area described by the labeled appellation of origin.

(c) Exceptions. (1) Wine made from any *Vitis labrusca* variety (exclusive of hybrids with *Vitis labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of the named variety;

(ii) The following statement is shown on any label: "contains not less than 51 percent (name of variety)." This statement does not have to appear if 75 percent or more of the wine is derived from grapes of the named variety; and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the appropriate TTB officer upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement “contains not less than 51 percent (name of variety)” is shown on the label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin.

(d) Two or more varieties. The names of two or more grape varieties may be used as the type designation if:

(1) Not less than 85 percent of the wine is derived from grapes of the labeled varieties;

(2) The wine derived each grape variety listed on the label is in greater proportion than wine derived from grapes of any variety that is not listed; and

(3) The varieties must be listed in descending order of predominance, based on the percentage of wine derived from each variety of grape.

(e) List of approved variety names for American wine. The name of a grape variety may be used in a type designation for an American wine only if that name has been approved by the Administrator. A list of approved grape variety names appears in subpart J of this part.

(f) List of administratively approved grape variety names. TTB administratively approves grape variety names pending future rulemaking. An administrative approval is temporary in nature, and it means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of

subsequent rulemaking on the grape variety name. See the TTB Web site, at https://www.ttb.gov for a list of administratively approved grape variety names.

§ 4.157 Type designations of varietal significance for American wines.

This section specifies type designations of varietal significance that are used for American wines. A name specified in this section may appear on a label as a type designation for American wine only if the wine is also labeled with an appellation of origin as defined in § 4.157.

(a) Muscadine. Muscadine is the name of an American wine that derives at least 75 percent of its volume from *Muscadinia rotundifolia* grapes.

(b) Muscatel. Muscatel is the name of a American wine that derives its predominant taste, aroma, and characteristics, and at least 75 percent of its volume from any Muscat grape source, and that conforms to the standards specified in § 4.142(c)(11).

(c) Muscat or moscato. Muscat or moscato is the name of an American wine that derives at least 75 percent of its volume from any Muscat grape source.

(d) Scuppernong. Scuppernong is the name of an American wine that derives at least 75 percent of its volume from bronze *Muscadinia rotundifolia* grapes.

§ 4.158 [Reserved]

GENERIC, SEMI-GENERIC, AND NON-GENERIC DESIGNATIONS OF GEOGRAPHIC SIGNIFICANCE

§ 4.173 Generic designations of geographic significance.

(a) Definition. A generic designation is the name of a class or type of wine that once had geographic significance but has been deemed by the Administrator to have lost any geographic significance.

(b) List of generic designations. Vermouth and Saké are generic designations that may be used as a class or type designation, in accordance with subpart I of this part.

§ 4.174 Semi-generic designations of geographic significance.

(a) Definition. A semi-generic designation of geographic significance is a geographic term which is also the designation of a class or type of wine and which has been deemed to have become semi-generic by the Administrator. A semi-generic designation may be used to designate wine of an origin other than that indicated by such name only when used in accordance with the rules set forth in paragraph (c) of this section.

(b) List of semi-generic designations of geographic significance. Each of the following names has been found to be semi-generic:

(1) Angelica (associated with wine from the United States);

(2) Burgundy (associated with wine from France);

(3) Chablis (associated with wine from France);

(4) Champagne (associated with wine from France);

(5) Chianti (associated with wine from Italy);

(6) Claret (associated with wine from France);

(7) Haut Sauterne (associated with wine from France);

(8) Madeira (associated with wine from Portugal);

(9) Hock (associated with wine from Germany);

(10) Malaga (associated with wine from Spain),

(11) Marsala (associated with wine from Italy);

(12) Moselle (associated with wine from France);

(13) Port (associated with wine from Portugal);

(14) Retsina (associated with wine from Greece);

(15) Rhine wine (associated with wine from Germany);

(16) Sauterne (associated with wine from France);

(17) Sherry (associated with wine from Spain); and

(18) Tokay (associated with wine from Hungary).

(c) Use of authorized semi-generic designations of geographic significance. A semi-generic designation of geographic significance may be used to designate wines of an origin other than that indicated by such name only if:

(1) There appears an appropriate appellation of origin disclosing the true place of origin of the wine in the same field of vision as the semi-generic designation;

(2) The person, or the successor in interest of a person, using a semi-generic designation name listed in paragraphs (b)(2) through (18) of this section, held a COLA or a certificate of exemption from label approval (see § 4.22) issued before March 10, 2006, for a wine label bearing the same brand name or brand name and a distinctive or fanciful name and on which the semi-generic designation appeared; and

(3) The wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations in this part or, if there is no such standard, to the trade understanding of such class or type.

(d) Imported wine originating from the place indicated by the name. In the case of wine originating from the place indicated by the name, the semi-generic designation may be used to designate the wine only if:

(1) The wine conforms either to the standard of identity specified for the wine in subpart I of this part or, if no such standard exists, to the trade understanding of the class or type of the wine; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.175 Nongeneric designation of geographic significance and nongeneric designations that are distinctive designations of specific grape wines.

(a) Definition. A nongeneric designation of geographic significance is a name of geographic significance that has not been found by the Administrator to be generic or semi-generic. A nongeneric name of geographic significance may be deemed to be the distinctive designation of a wine if the Administrator finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

(b) Use of nongeneric designations of geographic significance. Nongeneric designations of geographic significance are appellation of origin names that may be used only to designate wines of the origin indicated by such name in accordance with §§ 4.88 through 4.91, as applicable. Examples of

nongeneric names that are not distinctive designations of specific grape wines are American, California, Lake Erie, Napa Valley, New York State, French, and Spanish. Additional examples of foreign nongeneric names are listed in subpart C of part 12 of this chapter.

(c) Use of nongeneric names that are distinctive designations of specific grape wines. Nongeneric designations of geographic significance are appellation of origin names that may be used only to designate wines of the origin indicated by such name in accordance with §§ 4.88 through 4.91, as applicable, and that may also be used as the class and type designation of the wine. Examples of nongeneric names that are distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, Saint-Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster, Deidesheimer, Schloss Johannisberger, Lagrima, and Lacryma Christi. A list of foreign distinctive designations, as determined by the Administrator, appears in subpart D of part 12 of this chapter.

§§ 4.176 – 4.177 [Reserved]

Subpart J—American Grape Variety Names

§ 4.191 Approval of grape variety names.

(a) Any interested person may petition the Administrator for the approval of a grape variety name. The petition may be in the form of a letter and should provide evidence of the following:

(1) Acceptance of the new grape variety;

(2) The validity of the name for identifying the grape variety;

(3) That the variety is used or will be used in winemaking; and

(4) That the variety is grown and used in the United States.

(b) For the approval of names of new grape varieties, documentation submitted with the petition to provide evidence that the requirements in paragraph (a) of this section have been met may include:

(1) Reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;

(2) Reference to a plant patent, if so patented; and

(3) Information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

(c) The Administrator will not approve a grape variety name if:

(1) The name has previously been used for a different grape variety;

(2) The name contains a term or name found to be misleading under § 4.122; or

(3) The name of a new grape variety contains the term “Riesling.”

(d) For new grape varieties developed in the United States, the Administrator may determine if the use of names which contain words of geographical significance, place names, or foreign words are misleading under § 4.122. The Administrator will not approve the use of a grape variety name found to be misleading.

(e) TTB administratively approves grape variety names pending future rulemaking. An administrative approval is temporary in nature, and it means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of subsequent rulemaking on the grape variety name. The list of administratively approved grape variety names can be found on TTB's Web site at https://www.ttb.gov.

§ 4.192 List of approved names.

The following grape variety names have been approved by the Administrator for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the grape variety name. Grape variety names may be spelled with or without the hyphens or diacritic marks indicated in the list. The list of grape variety names administratively approved under § 4.191(e) is available on the TTB Web site at https://www.ttb.gov.

Aglianico

Agawam

Albariño (Alvarinho)

Albemarle

Aleatico

Alicante Bouschet

Aligoté

Alvarelhão

Alvarinho (Albariño)

Arneis

Aurore

Auxerrois

Bacchus

Baco blanc

Baco noir

Barbera

Beacon

Beclan

Bellandais

Beta

Biancolella

Black Corinth

Black Malvoisie (Cinsaut)

Black Monukka

Black Muscat (Muscat Hamburg)

Black Pearl

Blanc Du Bois

Blaufränkish (Lemberger, Limberger)

Blue Eye

Bonarda

Bountiful

Brianna

Burdin 4672

Burdin 5201

Burdin 11042

Burgaw

Burger

Cabernet Diane

Cabernet Doré

Cabernet franc

Cabernet Pfeffer

Cabernet Sauvignon

Calzin

Campbell Early (Island Belle)

Canada Muscat

Canaiolo (Canaiolo Nero)

Canaiolo Nero (Canaiolo)

Captivator

Carignan (Carignane)

Carignane (Carignan)

Carlos

Carmenère

Carmine

Carnelian

Cascade

Castel 19–637

Catawba

Cayuga White

Centurion

Chambourcin

Chancellor

Charbono

Chardonel

Chardonnay

Chasselas doré

Chelois

Chenin blanc

Chief

Chowan

Cinsaut (Black Malvoisie)

Clairette blanche

Clinton

Colombard (French Colombard)

Colobel

Corot noir

Cortese

Corvina

Concord

Conquistador

Couderc noir

Counoise

Cowart

Creek

Crimson Cabernet

Cynthiana (Norton)

Dearing

De Chaunac

Delaware

Diamond

Dixie

Dolcetto

Doreen

Dornfelder

Dulcet

Durif (Petite Sirah)

Dutchess

Early Burgundy

Early Muscat

Edelweiss

Eden

Ehrenfelser

Ellen Scott

Elvira

Emerald Riesling

Erbaluce

Favorite

Feher Szagos

Fernão Pires

Fern Munson

Fiano

Flame Tokay

Flora

Florental

Folle blanche

Forastera

Fredonia

Freedom

Freisa

French Colombard (Colombard)

Frontenac

Frontenac gris

Fry

Fumé blanc (Sauvignon blanc)

Furmint

Gamay noir

Garnacha (Grenache, Grenache noir)

Garnacha blanca (Grenache blanc)

Garronet

Geneva Red 7

Gewürztraminer

Gladwin 113

Glennel

Gold

Golden Isles

Golden Muscat

Graciano

Grand Noir

Green Hungarian

Grenache (Garnacha, Grenache noir)

Grenache blanc (Garnacha blanca)

Grenache noir (Garnacha, Grenache)

Grignolino

Grillo

Gros Verdot

Grüner Veltliner

Helena

Herbemont

Higgins

Horizon

Hunt

Iona

Interlaken

Isabella

Island Belle (Campbell Early)

Ives

James

Jewell

Joannes Seyve 12–428

Joannes Seyve 23–416

Kerner

Kay Gray

Kleinberger

La Crescent

LaCrosse

Lagrein

Lake Emerald

Lambrusco

Landal

Landot noir

Lenoir

Léon Millot

Lemberger (Blaufränkish, Limberger)

Limberger (Blaufränkisch, Lemberger)

Louise Swenson

Lucie Kuhlmann

Madeline Angevine

Magnolia

Magoon

Malbec

Malvasia bianca (Moscato greco)

Mammolo

Maréchal Foch

Marquette

Marsanne

Mataro (Monastrell, Mourvèdre)

Melody

Melon (Melon de Bourgogne)

Melon de Bourgogne (Melon)

Merlot

Meunier (Pinot Meunier)

Mish

Mission

Missouri Riesling

Monastrell (Mataro, Mourvèdre)

Mondeuse (Refosco)

Montefiore

Montepulciano

Moore Early

Morio-Muskat

Moscato greco (Malvasia bianca)

Mourvèdre (Mataro, Monastrell)

Müller-Thurgau

Münch

Muscadelle

Muscat blanc (Muscat Canelli)

Muscat Canelli (Muscat blanc)

Muscat du Moulin

Muscat Hamburg (Black Muscat)

Muscat of Alexandria

Muscat Ottonel

Naples

Nebbiolo

Négrette

Negrara

Negro Amaro

Nero d'Avola

New York Muscat

Niagara

Noah

Noble

Noiret

Norton (Cynthiana)

Ontario

Orange Muscat

Palomino

Pamlico

Pedro Ximenes

Peloursin

Petit Bouschet

Petit Manseng

Petit Verdot

Petite Sirah (Durif)

Peverella

Picpoul (Piquepoul blanc)

Pinotage

Pinot blanc

Pinot Grigio (Pinot gris)

Pinot gris (Pinot Grigio)

Pinot Meunier (Meunier)

Pinot noir

Piquepoul blanc (Picpoul)

Prairie Star

Precoce de Malingre

Pride

Primitivo

Princess

Rayon d'Or

Ravat 34

Ravat 51 (Vignoles)

Ravat noir

Redgate

Refosco (Mondeuse)

Regale

Reliance

Riesling (White Riesling)

Rkatsiteli (Rkatziteli)

Rkatziteli (Rkatsiteli)

Roanoke

Rondinella

Rosette

Roucaneuf

Rougeon

Roussanne

Royalty

Rubired

Ruby Cabernet

St. Croix

St. Laurent

St. Pepin

St. Vincent

Sabrevois

Sagrantino

Saint Macaire

Salem

Salvador

Sangiovese

Sauvignon blanc (Fumé blanc)

Sauvignon gris

Scarlet

Scheurebe

Sémillon

Sereksiya

Seyval (Seyval blanc)

Seyval blanc (Seyval)

Shiraz (Syrah)

Siegerrebe

Siegfried

Southland

Souzão

Steuben

Stover

Sugargate

Sultanina (Thompson Seedless)

Summit

Suwannee

Sylvaner

Symphony

Syrah (Shiraz)

Swenson Red

Tannat

Tarheel

Taylor

Tempranillo (Valdepeñas)

Teroldego

Thomas

Thompson Seedless (Sultanina)

Tinta Madeira

Tinto cão

Tocai Friulano

Topsail

Touriga

Traminer

Traminette

Trebbiano (Ugni blanc)

Trousseau

Trousseau gris

Ugni blanc (Trebbiano)

Valdepeñas (Tempranillo)

Valdiguié

Valerien

Valiant

Valvin Muscat

Van Buren

Veeblanc

Veltliner

Ventura

Verdelet

Verdelho

Vergennes

Vermentino

Vidal blanc

Vignoles (Ravat 51)

Villard blanc

Villard noir

Vincent

Viognier

Vivant

Welsch Rizling

Watergate

Welder

White Riesling (Riesling)

Wine King

Yuga

Zinfandel

Zinthiana

Zweigelt

§ 4.193 Alternative names permitted for temporary use.

(a) Johannisberg Riesling. The name "Johannisberg Riesling" may be used as the type designation in lieu of "Riesling" for wines bottled prior to January 1, 2006.

(b) Agwam. The name "Agwam" may be used as the type designation in lieu of "Agawam" for wines bottled prior to October 29, 2012.

Subpart K—Standards of Fill and Authorized Container Sizes

§ 4.201 General.

(a) Except as provided in paragraph (b) of this section, no person engaged in business as a producer, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any wine in containers, unless the wine is bottled in conformity with §§ 4.202 and 4.203.

(b) Sections 4.202 and 4.203 do not apply to:

(1) Rice wine;

(2) Wine packed in containers of 18 liters or more;

(3) Imported wine in the original containers in which such wine entered customs custody, if the wine was bottled or packed before January 1, 1979; or

(4) Imported wine bottled or packed before January 1, 1979, and certified as to such in a statement, available to the appropriate TTB officer upon request, signed by an official duly authorized by the appropriate foreign government .

(c) Section 4.203 does not apply to wine domestically bottled or packed, either in or out of customs custody, before January 1, 1979, if the wine was bottled or packed according to the standards of fill (listed in ounces, quarts, and gallons) prescribed by regulation before that date.

§ 4.202 Standard wine containers.

(a) General. Wine must be bottled in standard wine containers, as defined in this paragraph. A standard wine container is a container that is made, formed, and filled in such a way that it does not mislead purchasers as regards it

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. Wine containers must be designed and filled so that the headspace, or empty space between the top of the wine and the top of the container, meets the following specifications:

(1) If the net contents stated on the label are 187 milliliters or more, the headspace must not exceed 6 percent of the container's total capacity after closure.

(2) In the case of all other containers, the headspace must not exceed 10 percent of the container's total capacity after closure.

(c) Design. Regardless of the correctness of the stated net contents, a wine 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) Fill. Containers must be filled with a quantity of wine that corresponds to one of the authorized container sizes prescribed in § 4.203.

§ 4.203 Standards of fill (container sizes).

(a) Authorized standards of fill. Subject to the container requirements set forth in § 4.202, wine subject to this part must be placed in one of the following authorized container sizes:

(1) 3 liters.

(2) 1.5 liters.

(3) 1 liter.

(4) 750 milliliters.

(5) 500 milliliters.

(6) 375 milliliters.

(7) 187 milliliters.

(8) 100 milliliters.

(9) 50 milliliters.

(b) Sizes larger than 3 liters. Wine may be bottled in containers of 4 liters or larger if the containers are filled and labeled in quantities of whole liters (4 liters, 5 liters, 6 liters, etc.). This applies to containers that have a capacity of up to 17 liters.

(c) Tolerances. The tolerances in fill are the same as are allowed by § 4.62 in respect to statement of net contents on labels.

§ 4.204 Aggregate packaging to meet standard of fill requirements.

(a) Under the conditions set forth in paragraphs (b) through (f) of this section, industry members may use aggregate packaging to satisfy a standard of fill required under § 4.203. In other words, industry members may bottle wine in containers that do not meet a standard of fill, as long as those containers are then packaged together in a larger container and the entire net contents of the aggregate package meets a standard of fill. For example, thirty 25-milliliter (mL) bottles may be packaged together to meet the 750 mL standard of fill. The industry member must submit the actual external container and a sample of one

of the internal containers to TTB together with the industry member's application for label approval.

(b) The class and type, tax class, and alcohol content of the wine in each of the individual internal containers of the aggregate package must be the same.

(c) The external container, as well as each of the individual internal containers, must be labeled with all of the mandatory label information required by this part and parts 16 and 24 of this chapter; however, an appropriate standard of fill is not required for internal containers.

(d) The external container must include a net contents statement that indicates how the aggregate package equals an authorized standard of fill (for example, "750 mL = 30 containers of 25 mL each"). The internal container must include a net contents statement in accordance with § 4.68.

(e) The external container must be shrink-wrapped, boxed, or sealed in such a manner that the smaller containers cannot be easily removed.

(f) Each of the smaller containers must be labeled "NOT FOR INDIVIDUAL SALE."

Subpart L—Recordkeeping and Substantiation Requirements

§ 4.211 Recordkeeping requirements—certificates.

(a) Certificates of label approval (COLAs). Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of wine is covered by a COLA or a certificate of exemption. This requirement may be satisfied by providing original certificates, photocopies or electronic copies of COLAs, or records showing the TTB Identification number

assigned to the COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(b) Labels with revisions. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(c) Other recordkeeping requirements under this part. See § 4.30 for other recordkeeping requirements under this part.

§ 4.212 Substantiation requirements.

(a) Application. The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) Reasonable basis in fact. 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 (such as "tests prove," or "studies show") must have the level of substantiation that is claimed. 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, will be considered misleading within the meaning of § 4.122(b)(2).

(c) Evidence that claims are adequately substantiated. The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the wine was removed from the bottling premises or from customs custody, as applicable.

Subpart M—Penalties and Compromise of Liability

§ 4.221 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.

§ 4.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling 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.

§ 4.223 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—Paperwork Reduction Act

§ 4.231 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) Chart. The following chart 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.

Section where contained	**Current OMB Control No.**
4.21	1513–0020
4.22	1513–0020 1513–0111
4.23	1513–0020 1513–0111
4.24	1513–0020 1513-0064
4.25	1513–0020 1513–0111
4.27	1513–0020
4.28	1513–0122
4.30	1513–0064 1513–0119 New control number.
4.62	1513–0087
4.63	1513–0084 1513–0087
4.81	1513–0087 1513–0121
4.82	1513–0087 1513–0121
4.83	1513–0087
4.84	1513–0087
4.85	1513–0087

4.86	1513–0087
4.87	1513–0087
4.88	1513–0087
4.89	1513–0087
4.90	1513–0087
4.91	1513–0087
4.92	1513–0087
4.93	1513–0087
4.94	1513–0087
4.95	1513–0087
4.96	1513–0087
4.97	1513–0087
4.98	1513–0087
4.121	1513–0087
4.122	1513–0087
4.123	1513–0087
4.124	1513–0087
4.125	1513–0087
4.126	1513–0087
4.127	1513–0087
4.128	1513–0087
4.129	1513–0087
4.130	1513–0087
4.131	1513–0087
4.133	1513–0087
4.134	1513–0087
4.135	1513–0087
4.136	1513–0087

4.201	1513-0064
4.211	New control number
4.212	New control number

2. Revise part 5 to read as follows:

PART 5—LABELING 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 Compliance with Federal and State requirements.
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 Firmly affixed requirements.
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 Environmental, sustainability, and similar statements.
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 Depictions simulating government stamps or relating to supervision.
5.128 Claims related to wine or malt beverages.
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 Absinthe or absinth.
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 Aggregate packaging to meet standard of fill requirements.
5.205 Distinctive liquor bottle approval.

Subpart L—Recordkeeping and Substantiation Requirements

5.211 Recordkeeping requirements—certificates.
5.212 Substantiation requirements.

Subpart M—Penalties and Compromise of Liability

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

Subpart N—Paperwork Reduction Act

5.231 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.

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.

Age. The length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels in such a manner that chemical changes take place as a result of direct contact with the wood. 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.

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 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 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, and malt beverages, or the removal of bottled wine, distilled spirits, and 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.

Container. Any can, bottle, box with an internal bladder, cask, keg, or other closed receptacle, in any size or material, that 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 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 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.

Oak barrel. A cylindrical oak drum of approximately 50 gallons used to age bulk spirits.

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.

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 bottler, wholesaler, or importer of distilled spirits, 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 the distilled spirits are bottled in containers, and the containers are marked, branded and labeled, 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 § 5.82) must comply with the rules for regulated 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 §§ 5.81(b) and 5.121(b)) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of distilled spirits;

(5) The class and type designation on the label(s), 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; and

(6) The distilled spirits in the container may not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

(e) Bottled in accordance with this part. In order to be bottled 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 half of one 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.

Distilled spirits that are exported in bond without payment of tax directly from a distilled spirits plant or from customs custody are not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after distilled spirits have been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 5.9 Compliance with Federal and State requirements.

(a) General. Compliance with the requirements of this part relating to the labeling and bottling of distilled spirits does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) Ingredient safety. While it remains the responsibility of the industry member to ensure that any ingredient used in production of distilled spirits complies fully with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance. As set forth in § 5.3(d), distilled spirits that are adulterated under the Federal Food, Drug, and Cosmetic Act are not labeled in accordance with this part.

(c) Containers. While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for

consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 5.10 Other related regulations.

(a) TTB regulations. Other TTB regulations that relate to distilled spirits are listed in paragraphs (a)(1) through (9) 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 14—Advertising of Alcohol Beverage Products;

(4) 27 CFR Part 16—Alcoholic Beverage Health Warning Statement;

(5) 27 CFR Part 19—Distilled Spirits Plants;

(6) 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands;

(7) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(8) 27 CFR Part 28—Exportation of Alcohol; and

(9) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) Other Federal Regulations. The regulations listed in paragraphs (b)(1) through (9) 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 101—Food Labeling;

(8) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(9) 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 Web site at https://www.ttb.gov.

(c) Obtaining paper forms. Forms required by this part are available for printing through the TTB Web site (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 determine 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 of Distilled Spirits. Copies of this order can be obtained by accessing the TTB Web site (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) This section applies to distilled spirits bottled in the United States, outside of customs custody.

(b) 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.

§ 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 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. The list of allowable changes can be found on the TTB Web site at https://www.ttb.gov.

(b) What a COLA does not do. Among other things, the issuance of 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 the distilled spirit comply with applicable requirements of the Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcohol Beverage Labeling Act of 1988, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A distilled spirit may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that

are false or misleading when applied to the product in the container, the distilled spirit is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) 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.

(d) 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 this part, 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 COLA covering the distilled spirits from the appropriate TTB officer.

(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 and is in possession of a COLA covering the distilled spirits.

(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 brand 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 certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) 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.

(e) 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 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.

(b) What a COLA does not do. Among other things, the issuance of 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 the distilled spirit comply with applicable requirements of the Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) Distilled spirits may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container the distilled spirits are not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) <u>When to obtain a COLA.</u> The COLA must be obtained prior to the removal of distilled spirits in containers from customs custody for consumption.

(d) <u>Application for a COLA.</u> 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 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, 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. The appropriate TTB officer also may request such information or samples after the issuance of such a COLA, or in connection with any distilled spirit that is required to be covered by a COLA. A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on Form 5100.51. See § 5.11 for more information on forms and Formulas Online.

(b) 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 distilled spirits are labeled in accordance with this part.

§ 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. 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 with the application for label approval, 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;

(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; and

(iii) That the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended 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, including 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 two 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 containers, 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 issued by an official duly authorized by the Mexican Government 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 issued by an official duly authorized by the Mexican Government 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), that is imported in containers may be released from customs custody for econsumption only if the invoice is accompanied by a certificate issued by a duly authorized official of 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 five 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. The bottler of distilled spirits imported in bulk must retain for five years following the removal of such spirits from the domestic plant where bottled copies of the certificates required by paragraphs (a) through (f), and must provide them upon request of the appropriate TTB officer.

(i) Retention of distilled spirits certificates – distilled spirits in bulk. The bottler of distilled spirits imported in bulk must retain, for five 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 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 the regulations in this part and with State or local law, or 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. Proprietors 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.

(b) Relabeling after removal from distilled spirits plant premises. Proprietors of distilled spirits plant premises may relabel domestically bottled distilled spirits after removal from distilled spirits plant premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(c) Relabeling in customs custody. Under the supervision of 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. Imported distilled spirits in containers may be relabeled by the importer thereof 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.

Any persons holding distilled spirits for sale who need to relabel the containers but are not eligible to obtain a COLA to cover the labels that they wish to affix to the containers 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. 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.

§ 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 Firmly affixed requirements.

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. Mandatory information on labels, except brand names, must be separate and apart from any additional information. 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), as long as the additional information does not detract from the prominence of the mandatory information. The statements required by § 5.63(c) may not include additional 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 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)(4), 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 part 14 of this chapter 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 paragraphs (c) and (d) 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.

(d) Exception for country of origin statements. The country of origin statement for distilled spirits may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 5.56 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

§ 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 film, 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 for mandatory information that must appear on labels in this part:

(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 part 14 of this chapter.

§ 5.62 Packaging (cartons, coverings, and cases).

(a) General. The term “packaging” includes any covering, carton, case, carrier, or other packaging of distilled spirits 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 distilled spirits containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that violates the provisions of subpart F, G, or H of this part.

(c) Requirements for closed packaging. If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 5.63.

(1) 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.

(2) 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 be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) Packaging that is not closed. The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside 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, 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. For example, if the packaging displays a class or type designation for a brandy for which a truthful and adequate statement of composition is required on the container, the packaging must also include the statement of composition as well.

(e) 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 § 5.68.

(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 § 5.70;

(2) Coloring or treatment with wood. Coloring or treatment with wood, in accordance with §§ 5.71 and 5.72;

(3) Age. A statement of age or age and percentage of type, when required or used, in accordance with § 5.73;

(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 and not by a range, or by maximums or minimums.

(i) In addition, the alcohol content in degrees of proof may be stated on a label as long as it appears immediately adjacent to the mandatory statement of alcohol content as a percentage of alcohol by volume. Additional statements of

proof may appear on the label without being immediately adjacent to 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) Examples. 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 Web site 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) 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) 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).

(iii) 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. (1) 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.

(2) A trade name may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, if a distiller or bottler of the spirits authorizes the use of its trade name by another distiller or bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the distiller or bottler.

§ 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 bottled after importation. 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 Web site 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) Principal place of business. 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 and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product.

§ 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 Web site 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 and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product.

§ 5.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the container of distilled spirits imported in containers or bottled in the United States after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported wines, as well as for blends of imported distilled spirits with domestically produced distilled spirits, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when distilled spirits are imported in containers and when imported distilled spirits are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 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 net contents for the external container of an aggregate package must be stated as specified in § 5.204. 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 U.S. equivalents 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 2½ 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 in such a manner that chemical changes take place as a result of direct contact with the wood. 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, even if the spirits were actually aged for more than 2 years, because it is inconsistent with the standard of identity.

(3) If spirits are aged in more than one oak barrel (for example, if a whisky is aged 2 years in a new charred oak barrel and then placed into a second new charred oak barrel for an additional 6 months,) only the time spent in the first barrel is counted towards the "age."

(4)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 four years, including blends containing a whisky that is aged less than four 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 four 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) 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";

(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, white whisky, unaged 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;"

(5) In the case of white whisky that is not aged, the statement must appear as follows: "unaged," "not aged," or a similar statement. The designation "unaged whisky" satisfies this requirement.

(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 two 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 of this part, 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 four 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. "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 Web site (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 Web site 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 Environmental, sustainability, and similar statements.

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") may appear as long as the statements are truthful, specific and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as,

"Biodyvin," "Salmon-Safe," or "Fair Trade Certified") may appear on distilled spirits that are actually certified by the appropriate organization.

§ 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 four years in wooden barrels wherein the spirits have been in contact with the wood surface, except for gin and vodka, which

must be stored for at least four years in wooden barrels coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(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; except that only additional distillations beyond those required to meet the product's production standards may be counted as additional distillations. For example, if in order to meet the production standards for vodka (which requires the spirits reach an alcohol content level of at least 95 percent), a particular product must be distilled three times, and then the vodka is distilled two more times, that vodka could be labeled as "triple distilled." 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 only be used to designate 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 prohibited 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 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) As set forth in § 5.212(b), 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) Examples. (1) An example of an explicit statement that falsely disparages a competitor's product is "Brand X is not aged in oak barrels," when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is "We do not add arsenic to our distilled spirits,"

when such a claim may lead consumers to falsely believe that other distillers do add arsenic to their distilled spirits.

(c) 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.

(a) 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 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.

(b) Government seals. Distilled spirits labels, containers, or packaging may not contain any government seal or other insignia that is likely to create a false or misleading impression that the product has been endorsed by, made by, used by, or made for, or under the supervision of, or in accordance with the specification of, that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 5.127 Depictions simulating government stamps or relating to supervision.

Distilled spirits labels, containers, or packaging may not contain any statements, images, and designs that mislead consumers to believe that the distilled spirits are manufactured or processed under government authority. Distilled spirits labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, other than stamps authorized or required by this or any other government, and may not contain statements or indications that the distilled spirits are distilled, blended, bottled, packed or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by applicable law or regulation. If a municipal, State, or Federal Government permit number is stated on distilled spirits labels, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number.

§ 5.128 Claims related to wine or malt beverages.

(a) General. Except as provided in paragraph (b) of this section, no label, carton, case, or any other packaging material may contain a statement, design, or representation that tends to create a false or misleading impression that the distilled spirits product is a wine or malt beverage product, or that it contains wine or malt beverages. For example, the use of the name of a class or type designation of a wine or malt beverage product, as set forth in parts 4 or 7 of this chapter, is prohibited, if the use of that name creates a misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) Exceptions. This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a wine or malt beverage product as a distilled spirits product 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 wine or malt beverage cocktail name as a brand name or a distinctive or fanciful name of a distilled spirits product, provided that a statement of composition, in accordance with § 5.166, appears in the same field of vision as the brand name or the distinctive or fanciful name and the overall label does not create a misleading impression about the identity of the product;

(4) The use of truthful and accurate statements about the production of the distilled spirits product, as part of a statement of composition or otherwise, such as "flavored with chardonnay grapes," so long as such statements do not create a misleading impression as to the identity of the product; or

(5) The use of terms that simply compare distilled spirits products to wine or malt beverages without creating a misleading impression as to the identity of the product.

§ 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) Documentation. The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) 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.

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) Where an intermediate product is used to manufacture a distilled spirits product, the components of that intermediate product are considered as being directly added to the finished product for purposes of determining the class or type of the finished product and for any applicable limitations or statements of composition.

(3) Some distilled spirits products may conform to the standards of identity of more than one class. Such products may be designated with any 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 class and type must be in the same type size and in the same field of vision.

(d) Words in a designation. All words in a designation must be in the same type size 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). The source material may, but need not, appear in the class designation (for example, "Apple Neutral Spirits" or "Grain Neutral Spirits"). 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" that are stored in wood barrels 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 so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color. Vodka may not be aged or stored in wood barrels at any time except when labeled as bottled in bond pursuant to § 5.68. 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." Vodka may contain up to two grams per liter of sugar and up to one gram per liter of citric acid. 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, white whisky, and unaged 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". Whisky conforming to one of the types of whisky defined in paragraph (c) of this section must be designated as that type on the label, except that whisky distilled in Tennessee may be called "Tennessee Whisky" even if it conforms to one of the specific type designations. 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; blending and bottling need not have taken place in the same place, state, or region (e.g., "New York Bourbon Whisky" must be distilled and aged in the State of New York). 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" and "Blended light whisky" 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 countries. For the whiskies listed in Table 1, a whisky may use 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. The designation "white whisky"

may only appear on whiskies that are clear in color and that meet the rules in paragraph (b)(15) of this section.

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 if the whisky does not meet one of the type designations.	Fermented grain mash	Less than 190^0	Oak barrels with no minimum time requirement	No	Yes
(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]	160^0 or less	Charred new oak barrels at 125^0 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	160^0 or less	Required only if age is claimed on the label. If stored, must be stored at 125^0 or less in used or uncharred new oak barrels.	No	Yes

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**
(4) Straight Whisky	Fermented mash of less than 51% corn, rye, wheat, malted barley, or malted rye grain. (Includes mixtures of straight whiskies made in the same state.)	160^0 or less	Charred new oak barrels at 125^0 or less for a minimum of two 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	160^0 or less	Charred new oak barrels at 125^0 or less for a minimum of two years	No	No
(6) Straight Corn Whisky	Fermented mash of not less than 80% corn	160^0 or less	125^0 or less in used or uncharred new oak barrels for a minimum of 2 years	No	No
(7) Whisky distilled	Fermented mash of not	160^0 or less	Used oak barrels	No	Yes

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**
from Bourbon/ Rye/Wheat/ Malt/ Rye Malt/ [Name of other grain] mash	less than 51%, respectively: Corn Rye Wheat Malted Barley Malted Rye Grain [Other grain]				
(8) Light Whisky	Fermented grain mash	More than 160^0	Used or uncharred new oak barrels	No	Yes
(9) Blended Light Whisky (Light Whisky – a blend)	Fermented grain mash but mixed with less than 20% Straight Whisky on a proof gallon basis	Blend	Used or uncharred new oak barrels	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	160^0 or less	Will contain a blend of spirits, some stored and some not stored.	Maximum of 80% on a proof gallon basis	Yes
(11)	At least 51%	Blend	Will contain a	Maximum	Yes

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**
Blended Bourbon Whisky Blended Rye Whisky Blended Wheat Whisky Blended Malt Whisky Blended Rye Malt Whisky Blended Corn Whisky (or ___ Whisky – a blend)	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 of spirits, some stored and some not stored.	of 49% on a proof gallon basis	
(12) Blend of Straight Whiskies (Blended Straight Whiskies)	Mixture of Straight Whiskies that does not conform to "Straight Whisky"	160^0 or less	Will contain a blend of spirits which were aged at least two years.	No, except as part of a flavor	Yes
(13) Blended Straight Bourbon Whisky Blended Straight Rye Whisky Blended Straight Malt Whisky Blended	Mixture of Straight Whiskies of the same named type produced in different states or produced in the same state but contains	160^0 or less	Will contain a blend of spirits which were aged at least two years.	No, except as part of a flavor	Yes

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**
Straight Rye Malt Whisky Blended Straight Corn Whisky	flavoring material				
(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
(15) White Whisky or Unaged Whisky (Unaged whisky may only be used as a	Fermented grain mash. When the mash is made up of at least 51% of a single type of grain, the	Less than 190^0	Storage is not required for “white whisky” and is prohibited for “unaged whisky.” If white whisky is stored, oak	No	Yes

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**
designation if the whisky is not aged.)	product may be further designated as White [Name of grain] Whisky or Unaged [Name of grain] Whisky.		barrels, with no minimum time requirement, and filtered after storage to remove color.		

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 two years in oak containers must be designated "grape brandy" or "brandy." Grape brandy that has been stored in oak barrels for fewer than two 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 from which made preceded by the word "dried", for example, "dried apricot brandy."
(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	Brandy distilled from the skin and pulp of sound, ripe

Marc brandy	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 two 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 sugar. 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 not contain added flavoring or coloring materials, except as specified in § 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 Absinthe or absinth.

(a) The class absinthe. Absinthe is distilled spirits distilled at less than 95 percent alcohol by volume (190º proof) made with wormwood (Artemisia absinthium), anise, and fennel (with or without other flavoring materials) and possessing the taste, aroma, and characteristics generally attributed to absinthe. Absinthe may contain added sugar. When bottled, absinthe must be at least 30 percent alcohol by volume (60° of proof). The designations "absinthe" and "absinth" are interchangeable.

(b) Thujone-free requirement. Absinthe must be thujone-free in accordance with U.S. Food and Drug Administration (FDA) regulations and standards.

§ 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 2½ 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 "distilled," "compound," or "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.

The Types of Cordials and Liqueurs	
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 2½ 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 2½ 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 2½ 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)(3) 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)(3) 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 5.150 (the “base spirits”) to which have been added nonbeverage 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 2½ 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 12½ 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.

§ 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. (Note: TTB Procedure XXXX–XX, available on the TTB Web site (https://www.ttb.gov) provides guidance on the use of the terms "natural" and "artificial" when referencing flavoring materials);

(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 designation (for example, Imitation Whisky).

§ 5.153 Diluted spirits.

(a) The class diluted spirits. When a minimum bottling alcohol content (proof) is required for a class or type and a product would meet one of the classes or types prescribed in this subpart except that that product does not meet the minimum bottling alcohol content, the product must be designated with the applicable class or type designation (and statement of composition, if required) immediately preceded by the word "Diluted" in readily legible type at least half as

large as the class or type designation to which it refers. Examples of such designations are “Diluted Vodka,” “Diluted Cherry Lees Brandy,” and “Diluted flavored whisky.”

(b) [Reserved]

§ 5.154 Rules for geographical designations.

(a) Geographical designations. (1) Geographical names for distilled spirits found by the appropriate TTB officer to have lost their geographical significance by usage and common knowledge to such extent that they have become generic may be used without regard to where the product is actually manufactured or bottled. The following names have been found to be generic: London dry gin, Geneva (Hollands) gin.

(2) Except as provided in paragraph (a)(3) of this section, geographical names that have not become generic shall not be applied to distilled spirits made in any place other than the particular place or region indicated in the name. Examples are Greek brandy, Jamaica rum, Puerto Rico rum, Demerara rum, and Andong Soju.

(3) Geographical names that are not generic may be used as the designation for types of distilled spirits made in a place other than the particular region indicated by the name if:

(i) The appropriate TTB officer has determined that the name represents a type of distilled spirits;

(ii) The word “type,” “style,” or some other statement indicating the true place of production appears as part of the designation; and

(iii) The distilled spirits to which the name is applied conforms to the standard of identity identified in this subpart.

(iv) The following geographical names are recognized as types of distilled spirits in accordance with paragraph (a)(3)(i) of this section: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, and Swedish punch.

(b) Products without geographical designations that are associated with a particular geographical region. (1) A name that is not a geographical name but that is generally perceived as a name associated with a particular geographic place, region, or country may not be used on the label of a product of any other place, region or country, except as otherwise provided in this paragraph.

(2) Designations for distilled spirits listed in this paragraph and that by usage and common knowledge have lost any geographical significance to such an extent that the appropriate TTB officer finds they have become generic may be used to designate spirits of any origin. Examples of names that TTB has found to be generic include: Zubrovka, Aquavit, Arrack, Kummel, Amaretto, and Ouzo.

(3) Designations for distilled spirits listed in this paragraph that the appropriate TTB officer has determined have, by usage and common knowledge, become associated with distilled spirits produced in geographic areas other than the region with which the name was originally associated may be used to designate products of any origin, as long as the designation for such product includes the word “type” or an adjective such as “American” that clearly indicates

the true place of production. TTB has determined that the names “Habanero,” “Sambuca,” and “Goldwasser” fall into this category.

§ 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 ½ 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) Exceptions. 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 2½ 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 contain all of the information specified in this section, as applicable. The statement must specify all harmless coloring, flavoring, and blending materials, except to the extent the materials in the product are part of a distilled spirit that is identified in the statement of composition and the distilled spirit contains the materials within the limitations specified in the standards of identity for the distilled spirit, or the standards set out in § 5.155. If an intermediate product is used to make a distilled spirits specialty product, the materials used to make the intermediate product should be identified in the statement of composition as if they were mixed directly into the distilled spirits without regard to the fact that they were first mixed into an intermediate product.

(1) Identify the distilled spirits and wines. The statement of composition must clearly identify the distilled spirits and wines used in the finished product.

The statement of composition must show the required class and/or type designation for each distilled spirit (e.g., "vodka," "whisky," "rum," "gin"). The statement of composition must identify any wines used in the product, but the statement is not required to specifically identify the classes and/or types of the wines. The statement of composition must list each distilled spirit and wine in order of predominance on a proof gallon basis. If a product contains multiple classes and/or types of wine and the statement of composition does not specifically identify each one, the predominance of the wine must be determined based on its total quantity in the product on a proof gallon basis.

(2) Identify flavoring and blending material(s) (not including distilled spirits and wines) used before, during, and after distillation. The statement of composition must disclose flavoring and blending materials used in the finished product. If the flavoring materials were used before or during the distillation process, the statement of composition must indicate that the distilled spirits were distilled with the flavoring material (e.g., Vodka Distilled with Cinnamon). If a single flavoring material is used in the production of the distilled spirits product, the flavoring material may be specifically identified (such as, "strawberry flavor," “strawberry juice,” or “whole strawberries”) or generally referenced (such as, “natural flavor”). If two or more flavoring materials are used in the production of the distilled spirits product, each flavoring material may be specifically identified (such as, "peach flavor, kiwi flavor," or "peach and kiwi flavors") or the characterizing flavor may be specifically identified and the remaining flavoring material(s) may be generally referenced (such as, "peach

and other natural and artificial flavor(s)"), or all flavors may be generally referenced (such as, “with artificial flavors”). (Note: TTB Procedure XXXX–XX, available on the TTB Web site (https://www.ttb.gov), provides guidance on the use of the terms “natural” and “artificial” when referencing flavoring materials.)

(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), if the addition of such material(s) to the base distilled spirits is not in accordance with the standards of identity. The coloring material(s) 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 part 74, or "artificially colored," to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5, cochineal extract, and carmine require specific disclosure in accordance with § 5.71 and may be disclosed either in the statement of composition or elsewhere, in accordance with that section, if the statement of composition contains only a general disclosure of added colors. Where the standard of identity for that base spirit does not require disclosure, caramel used in the production of the base spirit is not required to be disclosed as part of the statement of composition. However, caramel added in the production of the specialty product must be disclosed.

(4) Identify added artificial or other non-nutritive sweeteners. The statement of composition must disclose any artificial sweetener that is added to a distilled spirits 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 § 5.63.

(5) Identify certain ingredients. The statement of composition must disclose any ingredient that is permitted by a standard of identity, but used in a method or quantity that makes the finished product no longer meet the standard of identity. For example, vodka to which more than two grams of sugar per liter is added is no longer designated as vodka. The statement of composition may read “Vodka with added sugar.”

(b) [Reserved]

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 complete and file TTB Form 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages, electronically or in paper format, in accordance with the instructions for the form. 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 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:

(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 (except for harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to § 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, blender, or other producer, or as an importer or wholesaler, or as a 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) 1.75 liters.

(ii) 1.00 liter.

(iii) 750 mL.

(iii) 375 mL.

(iv) 200 mL.

(v) 100 mL.

(vi) 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 Aggregate packaging to meet standard of fill requirements.

(a) Under the conditions set forth in paragraphs (b) through (f) of this section, industry members may use aggregate packaging to satisfy a standard of fill required under § 5.203 of this part. That is, industry members may bottle distilled spirits in containers that do not meet a standard of fill, as long as those containers are then packaged together in a larger container and the entire net contents of the aggregate package meets a standard of fill. For example, thirty 25-mL containers may be packaged together to meet the 750 mL standard of fill. The industry member must submit the actual external container and a sample of one of the internal containers to TTB upon request by the appropriate TTB officer as part of the COLA review process.

(b) The distilled spirits in each of the individual internal containers of the aggregate package must have the same alcohol content.

(c) The external container, as well as each of the individual internal containers, must be labeled with all of the mandatory label information required by this part and parts 16 and 19 of this chapter; however, an appropriate standard of fill is not required for internal containers.

(d) The external container must include a net contents statement that indicates how the aggregate package equals an authorized standard of fill (for

example, “750 mL = 30 containers of 25 mL each”). Internal containers must include a net contents statement in accordance with § 5.68 of this part.

(e) The external container must be shrink-wrapped, boxed, or sealed in such a manner that the smaller containers cannot be easily removed.

(f) Each of the smaller containers must be labeled “NOT FOR INDIVIDUAL SALE.”

§ 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 COLA.

Subpart L—Recordkeeping and Substantiation Requirements

§ 5.211 Recordkeeping requirements—certificates.

(a) Certificates of label approval (COLAs). Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of distilled spirits is covered by a certificate of label approval (COLA) or a certificate of exemption. 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. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(b) Labels with revisions. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(c) Other recordkeeping requirements under this part. See §§ 5.26, 5.30, and 5.192(b) for other recordkeeping requirements under this part.

§ 5.212 Substantiation requirements.

(a) Application. The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) Reasonable basis in fact. 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 (such as "tests prove," or "studies show") must have the level of substantiation that is claimed. 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, will be considered misleading within the meaning of § 5.122(b)(2).

(c) Evidence that claims are adequately substantiated. The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the distilled spirits were removed from the bottling premises or from customs custody, as applicable.

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 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—Paperwork Reduction Act

§ 5.231 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) Chart. The following chart 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.

Section where contained	Current OMB Control No.
5.21	1513–0020
5.22	1513–0020 1513–0111
5.23	1513–0020 1513–0111
5.24	1513–0020

	1513–0064 1513–0122
5.25	1513–0020 1513–0111 1513–0122
5.27	1513–0020 1513–0122
5.28	1513–0122
5.30	New control number.
5.62	1513–0087
5.63	1513–0084 1513–0087
5.81	1513–0087
5.82	1513–0087 1513–0121
5.83	1513–0087 1513–0121
5.84	1513–0087
5.85	1513–0087
5.86	1513–0087
5.87	1513–0087
5.88	1513–0087
5.89	1513–0087
5.90	1513–0087
5.121	1513–0087
5.122	1513–0087
5.123	1513–0087
5.124	1513–0087
5.125	1513–0087
5.126	1513–0087
5.127	1513–0087
5.128	1513–0087

5.129	1513–0087
5.130	1513–0087
5.192	1513–0122 1513–0046
5.193	1513–0122 1513–0046
5.194	1513–0122
5.203	1513–0064
5.211	New control number
5.212	New control number

3. Revise part 7 to read as follows:

PART 7—LABELING 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 Compliance with Federal and State requirements.
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 Firmly affixed requirements.
7.52 Legibility and other requirements for mandatory information on labels.
7.53 Type size of mandatory information.
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 Environmental, sustainability, and similar statements.
7.86 [Reserved].
7.87 Use of the term “draft.”

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 Depictions simulating government stamps or relating to supervision.
7.128 Claims related to distilled spirits or wines.
7.129 Health-related statements.
7.130 Appearance of endorsement.
7.131 The word “bonded” and similar terms
7.132 Strength claims.

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-K—Reserved

Subpart L—Recordkeeping and Substantiation Requirements

7.211 Recordkeeping requirements–certificates.
7.212 Substantiation requirements.

Subpart M—Penalties and Compromise of Liability

7.221 Criminal penalties.
7.222 Conditions of basic permit.
7.223 Compromise.

Subpart N—Paperwork Reduction Act

7.231 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.

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.

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 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 TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and 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.

Container. 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 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.

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.

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 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 the malt beverages are bottled in containers and the containers are marked, branded, and labeled 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 the label(s), containers, and packaging (as defined in § 7.62) must comply with the rules for regulated 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 §§ 7.81(b) and 7.121(b)) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of malt beverages;

(5) The class and type designation on the label(s), 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; and

(6) The malt beverage must not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

§ 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 sold within that State.

(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. 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 regulations in this part do not apply to domestically bottled malt beverages that are not and will not be sold, shipped, delivered for sale or 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 one-half of one 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.

Malt beverages that are exported in bond without payment of tax directly from a brewery or from customs custody are not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after malt beverages have been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 7.9 Compliance with Federal and State requirements.

(a) General Compliance with the requirements of this part relating to the labeling and bottling of malt beverages does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) Ingredient safety. While it remains the responsibility of the industry member to ensure that any ingredient used in production of malt beverages complies fully with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance.

(c) Containers. While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 7.10 Other related regulations.

(a) TTB regulations. Other TTB regulations that relate to malt beverages are listed in paragrpahs (a)(1) through (9) 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 14—Advertising of Alcohol Beverage Products;

(4) 27 CFR Part 16—Alcoholic Beverage Health Warning Statement;

(5) 27 CFR Part 25—Beer;

(6) 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(7) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(8) 27 CFR Part 28—Exportation of Alcohol; and

(9) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) Other Federal regulations. The regulations listed in paragraphs (b)(1) through (9) 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 I, Prior Notice of Imported Food;

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

(7) 21 CFR Part 101—Food Labeling;

(8) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(9) 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 Web site at https://www.ttb.gov.

(c) Obtaining paper forms. Forms required by this part are available for printing through the TTB Web site (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 of Malt Beverages. Copies of this order can be obtained by accessing the TTB Web site (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 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 identical 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.)

§ 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 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. The list of allowable changes can be found on the TTB Web site at https://www.ttb.gov.

(b) What a COLA does not do. Among other things, the issuance of 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 the malt beverage comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A malt beverage may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the malt beverage is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) 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.

(d) 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 COLA covering the malt beverages from the appropriate TTB officer.

(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 and is in possession of a COLA covering the malt beverages.

(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 brand 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 certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) 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.

(e) 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.

(f) State law. Paragraph (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 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 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.

(b) What a COLA does not do. Among other things, the issuance of 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 the malt beverage comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) Malt beverages may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container the malt beverage is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) <u>When to obtain a COLA.</u> The COLA must be obtained prior to the removal of malt beverages in containers from customs custody for consumption.

(d) <u>Application for a COLA.</u> 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 TTB's Web site (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 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. The appropriate TTB officer also may request such information after the issuance of such COLA or in connection with any malt beverage that is required to be covered by a COLA. 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.

(b) 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 malt beverages are labeled in accordance with

this part. TTB may also request such information after the issuance of such a COLA, or in connection with any malt beverage that is required to be covered by a COLA.

§ 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. 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 with the application for label approval, 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 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 the regulations in this part and with State or local law, or 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. Brewers 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.

(b) Relabeling after removal from brewery premises. Brewers may relabel domestically bottled malt beverages after removal from brewery premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(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 COLA upon their removal from customs custody for consumption. See § 7.24(b).

(d) Relabeling after removal from customs custody. Imported malt beverages in containers may be relabeled by the importer thereof 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.

Any persons holding malt beverages for sale who need to relabel the containers but are not eligible to obtain a COLA to cover the labels that they wish to affix to the containers 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. 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.

§ 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 the appropriate TTB officer 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 Firmly affixed requirements.

(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. A label on a keg with a capacity of 10 gallons or more that is in the form of a keg collar or tap cover is not required to be firmly affixed, provided that the name of the bottler of the malt beverage 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. 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. Mandatory information on labels, except brand names, must be separate and apart from any additional information. 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) as long as the additional information does not detract from the

prominence of the mandatory information. The statements required by § 7.63(b) may not include additional 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.

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(a) Minimum type size—(1) Containers of more than one-half pint. All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least two millimeters in height.

(2) Containers of one-half pint or less. All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least one millimeter in height.

(b) Maximum type size for alcohol content statement—(1) Containers of more than 40 fluid ounces. The alcohol content statement 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. The alcohol content statement 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 part 14 of this chapter 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 paragraphs (c) and (d) 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.

(d) Exception for country of origin statements. The country of origin statement for malt beverages may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 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, film, 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 for mandatory information that must appear on labels in this part:

(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 part 14 of this chapter.

§ 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 violates the provisions of subpart F, G, or H of this part.

(c) Requirements for closed packaging. If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 7.63.

(1) 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.

(2) 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 be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) Packaging that is not closed. The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside 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, 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. 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.

(e) 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.

§ 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. When alcohol content is stated, 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 and not by proof, by a range, or by maximums or minimums.

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 one half of one 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 up to one percentage point 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 0.5%) 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 Sates 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 Web site 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 brewed and 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, and as long as use of that name would not create a misleading impression as to the age, origin, or identity

of the product. For example, if a brewery authorizes the use of its trade name by another brewery that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

§ 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 state 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 and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product. In addition, the label may, but is not required to, state the name and principal place of business of the foreign manufacturer, bottler, or shipper.

§ 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 Web site addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 7.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the container of malt beverages imported in containers or bottled in the United States

after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported malt beverages, as well as for blends of imported malt beverages with domestically fermented malt beverages, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when malt beverages are imported in containers and when imported malt beverages are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 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. standard measures 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 Web site (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 Web site 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 Environmental, sustainability, and similar statements.

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") may appear as long as the statements are truthful, specific and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as,

"Biodyvin," "Salmon-Safe," or "Fair Trade Certified") may appear on malt beverages that are actually certified by the appropriate organization.

§ 7.86 [Reserved]

§ 7.87 Use of the term "draft."

(a) General. A malt beverage may be labeled with the term "draft" only if it complies with the requirements of paragraph (b)(1), (2), or (3) of this section. The word "draft" may be spelled "draft" or "draught."

(b) Requirements. (1) Malt beverages in a container of one gallon or more that dispenses the malt beverages through a tap, spigot, faucet, or similar device may be described as draft.

(2) Malt beverages packaged in customary bottles or cans may be described as draft if they are unpasteurized and require refrigeration for preservation, or if the beer has been sterile filtered and aseptically filled (but not pasteurized).

(3) Malt beverages that have been pasteurized that are packaged in customary bottles or cans may be described as "draft brewed," "draft beer flavor," "old time on-tap taste," or with a similar expression only if the word "pasteurized" appears conspicuously on the label or container.

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 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) As set forth in § 7.212(b), 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) Examples. (1) An example of an explicit statement that falsely disparages a competitor's product is "Brand X is not aged in oak barrels" when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is "We do not add arsenic to our malt beverage," where such a claim is true but it may lead consumers to falsely believe that other brewers do add arsenic to their malt beverages.

(c) 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.

(a) 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.

(b) Government seals. Malt beverage labels, containers, or packaging may not contain any government seal or other insignia that is likely to create a false or misleading impression that the product has been endorsed by, made by, used by, or produced for, under the supervision of, or in accordance with the specification of that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 7.127 Depictions simulating government stamps or relating to supervision.

Malt beverage labels, containers, or packaging may not contain any statements, images, or designs that mislead consumers to believe that the malt beverage is manufactured or processed under government authority. Malt beverage labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, other than stamps authorized or required by this or any other government, and may not contain statements or indications that the malt beverage is produced, blended, bottled, packed, or sold under, or in accordance with any municipal, State, Federal, or foreign authorization, law, or regulations unless such statement is required or specifically authorized by applicable law or regulation. If a municipal, State, or Federal Government permit number is stated on malt

beverage labels, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number.

§ 7.128 Claims related to distilled spirits or wines.

(a) General. Except as provided in paragraph (b) of this section, no malt beverage labels, containers, or packaging may contain a statement, design, or representation that tends to create a false or misleading impression that the malt beverage product is a distilled spirits or wine product, or that it contains distilled spirits or wine. For example, the use of the name of a class or type designation of a wine or distilled spirits product, as set forth in parts 4 and 5 of this chapter, is prohibited if the use of that name tends to create a false or misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) Exceptions. This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a wine or 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;

(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,” “fermented with grapes,” or “Beer brewed with chardonnay

grapes" as long as such statements do not create a misleading impression as to the identity of the product;

(5) The use of the designation "barley (or wheat or rye) wine ale" or "barley (or wheat or rye) style wine ale"; or

(6) The 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.

§ 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) Documentation. The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) 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.

§ 7.131 The word "bonded" and similar terms.

Malt beverage labels, containers, or packaging may not contain the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under Customs supervision," or other phrases containing these or synonymous terms that create a misleading impression as to governmental supervision over production or bottling.

§ 7.132 Strength claims.

(a) General. For purposes of this section, the term "strength claim" means a statement that directly or indirectly makes a claim about the alcohol content of the product. This section does not apply to the use of the terms "low alcohol," "reduced alcohol," "non-alcoholic," and "alcohol-free" in accordance with § 7.65; to claims about low alcohol content in general; or to labeling with an alcohol content statement in accordance with § 7.65.

(b) Prohibition. The use of a strength claim on malt beverage labels, containers, or packaging is prohibited if it misleads consumers by implying that products should be purchased or consumed on the basis of higher alcohol strength. Examples of strength claims are "full strength," "extra strength," "high test," and "high proof."

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.

(c) The name “Pilsen” (or “Pilsener” or “Pilsner”) may be used as the class designation for beers produced in the Czech Republic or the United States without use of the word “type” or a similar qualifying statement. See § 7.106. The name also may be used as the class designation for beer produced outside of those countries, as long as it is qualified in accordance with the requirements of § 7.146.

§ 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, malt beverage labels may not include misleading representations that imply that a malt beverage contains distilled spirits or wine or is a distilled spirits or wine product. 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 Web site (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 one-half of 1 percent (0.5%) 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 one-half of 1 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 one-half of 1 percent or more of alcohol by volume.

§ 7.146 Geographical names.

(a) General. Except as provided further in paragraphs (b) through (e) of this section, any geographical name that may be interpreted as designating the origin of the malt beverage may not be used unless it is a truthful representation as to the origin of the malt beverage.

(b) Generic names. The appropriate TTB officer may find certain geographic names of types of malt beverages to be generic if they have lost their

geographic significance through use and common knowledge. Generic names may be used to designate a malt beverage regardless of its origin. TTB publishes a list of generic names on its Web site (https://www.ttb.gov). The following are examples of names that have been found to be generic: India Pale Ale, Scotch ale (Scottish ale), and Russian Imperial Stout (Imperial Russian Stout).

(c) Brand names. A geographical name may be used as part of the brand name for a product that does not come from the geographical area named in the brand as long as the name is qualified with the word “brand” or with some other qualification that is adequate to dispel any misleading impression that might otherwise be created in accordance with § 7.64.

(d) References to types and styles. (1) A geographical name may be used on a label to precede a class designation where the name refers to a particular type or style of product rather than the geographical origin of the malt beverage, under the following conditions:

(i) The word “type” or “style” appears immediately adjacent to, and in type size at least half as large as, the geographical name (such as “Irish style ale”); or some other statement indicating the true place of production appears in the same field of vision as, and in type size at least half as large as, the geographical name (such as “Irish ale – brewed in California” or “American Vienna lager”); and

(ii) The malt beverage to which the name is applied conforms to the type or style so designated.

(2) The following are examples of references to types or styles of malt beverages: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, and California Common. These names of types or styles of malt beverages may be used in addition to, but not in lieu of, a class designation (for example, "Vienna style Beer," "Bavarian Stout – Brewed in the United States," or "California Common Lager – Brewed in Michigan").

(3) The words "type" or "style" may also be used to designate malt beverages that are manufactured in the geographic area indicated by the name (such as "German style Dortmunder beer" or "Vienna beer – an Austrian type of malt beverage") as long as the label does not create confusion as to the origin of the malt beverage. Such products may also be designated without the words "type" or "style" (for example, "Dortmunder beer" or "Vienna beer") for products that originate in the geographical area named.

(e) Pilsen or Pilsener or Pilsner. The name "Pilsen" (or "Pilsener" or "Pilsner") has not been recognized as generic, but it may be used to designate beers produced in the Czech Republic or the United States without use of the word "type" or a similar qualifying statement and without an additional class or type designation. See § 7.102(c).

§ 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”). (Note: TTB Procedure XXXX–XX, available on the TTB Web site (https://www.ttb.gov), provides guidance on the use of the terms “natural” and “artificial” when referencing flavoring materials.)

(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).

Subpart J-K—Reserved

Subpart L—Recordkeeping and Substantiation Requirements

§ 7.211 Recordkeeping requirements—certificates.

(a) Certificates of label approval (COLAs). 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. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(b) Labels with revisions. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(c) Other recordkeeping requirements under this part. See § 7.26 for other recordkeeping requirements under this part.

§ 7.212 Substantiation requirements.

(a) Application. The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) Reasonable basis in fact. 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 (such as “tests prove” or “studies show”) must have the level of substantiation that is claimed. 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 will be considered misleading within the meaning of § 7.122(b)(2).

(c) Evidence that claims are adequately substantiated. The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the malt beverages were removed from the bottling premises or from customs custody, as applicable.

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 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—Paperwork Reduction Act

§ 7.231 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) Chart. The following chart 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.

Section where contained	Current OMB Control No.
7.21	1513–0020 1513–0087
7.22	1513–0020 1513–0087 1513–0111
7.24	1513–0020

	1513–0064
7.25	1513–0020 1513–0111
7.27	1513–0020 1513–0087
7.28	1513–0122
7.62	1513–0087
7.63	1513–0084 1513–0087
7.66	1513–0085
7.67	1513–0085
7.81	1513–0087
7.82	1513–0087 1513–0121
7.83	1513–0087 1513–0121
7.84	1513–0087
7.85	1513–0087
7.121	1513–0087
7.122	1513–0087
7.123	1513–0087
7.124	1513–0087
7.125	1513–0087
7.126	1513–0087
7.127	1513–0087
7.128	1513–0087
7.129	1513–0087
7.130	1513–0087
7.131	1513–0087
7.132	1513–0087
7.211	New control number

7.212	New control number

4. Add part 14 to read as follows:

PART 14—ADVERTISING OF WINE, DISTILLED SPIRITS, AND MALT BEVERAGES

Sec.

14.0 Applicability.

Subpart A—General Provisions

14.1 Definitions.
14.2 Territorial extent.
14.3 Delegations of the Administrator's authorities.
14.4 General requirements under the Federal Alcohol Administration Act.

14.5 Legibility of mandatory information.

14.6 Mandatory statements.

Subpart B—Rules Related to Specific Practices in Advertisements

14.11 Statements and representations in advertisements.
14.12 Regulated practices.
14.13 Prohibited practices.
14.14 Misleading statements or representations.
14.15 Additional rules for wine.
14.16 Additional rules for distilled spirits.
14.17 Additional rules for malt beverages.

Subpart C—Penalties and Compromise of Liability

14.21 Criminal penalties.
14.22 Conditions of basic permit.
14.23 Compromise.

Subpart D—Paperwork Reduction Act

14.31 OMB control numbers assigned under the Paperwork Reduction Act.

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 14.0 Applicability.

(a) General. Except as otherwise provided in paragraph (b) of this section, the provisions of this part prescribe rules under section 105(f) of the

Federal Alcohol Administration Act for the advertising of wine, distilled spirits, and malt beverages.

(b) Malt beverages. The provisions of this part apply to the advertising 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 the State, only to the extent that the laws or regulations of such State impose similar requirements with respect to the advertising of malt beverages sold within that State.

Subpart A—General Provisions

§ 14.1 Definitions.

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

Advertisement or Advertising. The term "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction that 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 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, and publication, or in a radio or television broadcast, or in any other media. However, the term "advertisement" does not include:

(1) Any label, container, or packaging that is subject to the provisions of part 4, 5 or 7 of this chapter; or

(2) Any editorial or other reading material (such as a release) in any periodical or publication or newspaper, for the publication of which no money or valuable consideration or a 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 a permittee or brewer.

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 1135.14, Delegation of the Administrator's Authorities in 27 CFR Part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages.

Consumer Specialty Items. Items that are designed to be carried away by the consumer, such as nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

Container. Any can, bottle, box used to protect an internal bladder, cask, keg, barrel or other closed receptacle, in any size or material, that is for use in the sale of wine, distilled spirits, or malt beverages at retail.

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 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 0.5 percent alcohol by volume.

FAA Act. Federal Alcohol Administration Act.

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 of this chapter for standards applying to the use of processing methods and flavors in malt beverage production.

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.

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, Department of the Treasury.

United States. The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines "wine" as any of the following products for nonindustrial use that contain not less than 7 percent and not more than 24 percent alcohol by volume:

(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392); and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and saké.

§ 14.2 Territorial extent.

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

§ 14.3 Delegations of the Administrator's authorities.

Most of the regulatory authorities of the Administrator contained in this part are delegated to "appropriate TTB officers." To determine which officers have been delegated specific authorities, see the current version of TTB Order 1135.14, Delegation of the Administrator's Authorities in 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages. You may obtain a

copy of this order by accessing the TTB Web site (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.

§ 14.4 General requirements under the FAA Act.

(a) General. No person engaged in business as a distiller, brewer, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a processor, bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, may publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or by electronic or Internet media, or any other printed or graphic matter, any advertisement of wine, distilled spirits, or malt beverages, if such advertising is in, or is calculated to induce sale in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with the provisions of this part.

(b) Exclusion. The provisions of this part do not apply to a retailer or to the publisher of any newspaper, periodical, or other publication, or to a radio or television or Internet broadcast, unless the retailer or publisher or broadcaster is engaged in business as a distiller, brewer, blender, or other producer, or as an importer or wholesaler of wine, distilled spirits, or malt beverages, or as a processor, bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly, or through an affiliate.

(c) Substantiation. The substantiation requirements of this paragraph apply to any claim made on any advertisement subject to the requirements of this part.

(1) Reasonable basis in fact. 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 (such as, “tests prove,” or “studies show”) must have the level of substantiation that is claimed. Any advertising claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading within the meaning of § 14.14(a)(2).

(2) Evidence that claims are adequately substantiated. The appropriate TTB officer may request that the responsible advertiser provide evidence that advertising claims are adequately substantiated at any time within a period of five years from the time the advertisement was last disseminated or published.

§ 14.5 Legibility of mandatory information.

(a) Statements required by this part that appear in any written, printed, electronic, Internet, or other graphic advertisement must be in legible type of sufficient size and on a contrasting background so as to be readable under ordinary conditions.

(b) In the case of signs, billboards, and displays that are designed for viewing from a distance, the required name and address, or name and other contact information (such as, telephone number, Web site, or email), of the responsible advertiser may appear in lettering or type size that is smaller than that of the other mandatory information, provided that the name and contact

information can be readily ascertained upon closer examination of the sign, billboard, or display.

(c) Information required under this part that appears in an advertisement in any audio-visual medium must be clear and conspicuous and understandable to a consumer viewing or listening to the advertisement under ordinary conditions.

(d) Information required under this part must be presented as being clearly part of the advertisement and may not be separated in any manner from other parts of the advertisement.

(e) If an advertisement covers two or more products, the information required under this part that differs between the products must appear in the advertisement separately for each product.

§ 14.6 Mandatory statements.

(a) General. Advertisements of wine, distilled spirits, and malt beverages must include the following mandatory information.

(1) 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, Web site, or email address) where the responsible advertiser may be contacted.

(2) Class, type, or other designation. An advertisement must contain a statement of the class, type, or other designation that applies to the wine, distilled spirits, or malt beverage, and that is required to appear on the label of the product under subpart I of part 4, 5, or 7 of this chapter. The statement must be clear and conspicuous and be legible in accordance with § 14.5.

(3) Exceptions. The following exceptions apply to the rules in paragraphs (a)(1) and (2) of this section:

(i) If an advertisement refers to a general product line or to all of the wine, distilled spirits, or malt beverage products of one company, whether by the brand name common to all the products in the line or by the company name, the only information required is the name, city, and State or the name and other contact information of the responsible advertiser in accordance with paragraph (a)(1) of this section. However, this exception does not apply when only one type of wine, distilled spirits, or malt beverage product is marketed under the specific brand name advertised; and

(ii) In the case of a consumer specialty item (for example, a T-shirt, hat, bumper sticker, or refrigerator magnet), the only information required is the company name of the responsible advertiser or the brand name of the wine, distilled spirits, or malt beverage product.

(b) Additional rules for distilled spirits. The rules set forth in this paragraph apply to distilled spirits advertisements and are in addition to the rules specified in paragraph (a) of this section.

(1) Alcohol content—(i) 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.

(ii) Optional statement. The advertisement may also state the alcohol content of the distilled spirits product in degrees of proof if that information

appears immediately adjacent to the percent-alcohol-by-volume statement prescribed in paragraph (b)(1)(i) of this section.

(2) Percentage of neutral spirits and name of commodity—(i) Production with neutral spirits. In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or other processing, if neutral spirits were used in the production of the spirits, the advertisement must state the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits were distilled. 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, or fruit as appropriate)"; or "____% neutral spirits (vodka) distilled from _____ (insert grain, cane products, or fruit, 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.

(ii) Neutral spirits and gin produced by continuous distillation. In the case of neutral spirits or in the case of gin produced by a process of continuous distillation, the advertisement must state the name of the commodity from which the neutral spirits or gin was distilled. The statement of the name of the commodity must appear 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.

Subpart B—Rules Related to Specific Practices in Advertisements

§ 14.11 Statements and representations in advertisements.

(a) General. Sections 14.12 through 14.14 specify rules that apply to advertisements for wine, distilled spirits, and malt beverages. Additional rules that apply only to advertisements for wine, only to advertisements for distilled spirits, or only to advertisements for malt beverages are contained in §§ 14.15, 14.16, and 14.17, respectively.

(b) Statement or representation defined. For purposes of the rules 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.

§ 14.12 Regulated practices.

(a) General. The practices, statements, and representations in this section may be used on wine, distilled spirits, and malt beverage labels only when used in compliance with this subpart.

(b) Statements inconsistent with labeling. (1) An advertisement may not contain any statement concerning a brand or lot of the product that is inconsistent with any statement appearing on the label.

(2) Any label depicted on a container in an advertisement must be covered by a certificate of label approval (COLA) or certificate of exemption from label approval obtained pursuant to part 4, 5, or 7 of this chapter, 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. In all cases,

the label appearing on an advertisement must be identical to that appearing on the container.

(c) Comparative advertising in general. Comparative advertising for a wine, distilled spirits, or malt beverage may not be disparaging of a competitor's product and may not deceive or mislead the consumer.

(1) Taste tests. Taste test results may appear in an advertisement comparing competitors' products, provided that:

(i) The results are not disparaging, deceptive, or likely to mislead the consumer;

(ii) The taste test procedure used must 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); and

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

(2) [Reserved]

§ 14.13 Prohibited practices.

An advertisement may not contain any of the following:

(a) Any statement or representation that is obscene or indecent;

(b) Any statement or representation that is false or misleading; or

(c) Any subliminal or other deceptive technique or device that conveys, 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.

§ 14.14 Misleading statements or representations.

(a) General prohibition—(1) Misleading statements or representations. No 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 beverage, or with regard to any other material factor may appear on an advertisement.

(2) Ways in which statements or representations may be misleading. (i) 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.

(ii) As set forth in § 14.4(c), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on an advertisement 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.

(b) Disparaging statements. False or misleading statements that explicitly or implicitly disparage a competitor's product are prohibited.

(1) Examples. (i) An example of an explicit statement that falsely disparages a competitor's product is "Brand X is not aged in oak barrels," when such statement is not true.

(ii) An example of an implicit statement that disparages competitor's products in a misleading fashion is "We do not add arsenic to our distilled spirits," when such a claim may lead consumers to falsely believe that other distillers do add arsenic to their distilled spirits.

(2) This paragraph does not prevent truthful and accurate comparisons between products (such as "Our wine contains more strawberries than Brand X") or statements of opinion (such as "We think our beer tastes better than any other beer on the market").

(c) Analyses, standards, or tests. 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 is prohibited. 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;

(d) Guarantees. Any statement or representation relating to guarantees is prohibited if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

(e) Government authority. Any statement or representation that misleads the consumer to believe that the wine, distilled spirits, or malt beverage is produced, blended, bottled, packed, or sold under Government authority is prohibited, except that:

(1) A municipal, State, or Federal permit number may appear in the advertisement, but the permit number may not be accompanied by any additional statement relating to it; and

(2) Such a statement may appear in an advertisement for distilled spirits if it conforms to the statement permitted in subpart E of part 5 of this chapter for labels of distilled spirits products.

(f) Cross-commodity claims. (1) An advertisement may not contain a statement or representation that tends to create the false or misleading impression that a product is a different commodity (as defined in paragraph (f)(2) of this section), or that it contains another commodity. For example, the use of the name of a class or type designation recognized in part 4 or 5 of this chapter is prohibited on a malt beverage advertisement, if the use of that name creates a misleading impression as to the identity of the product. This prohibition includes the use of homophones or coined words that simulate or imitate a class or type designation. This paragraph does not prohibit the following on advertisements:

(i) A truthful and accurate statement of alcohol content;

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

(iii) The use of a wine, distilled spirits, or malt beverage cocktail name as a brand name or a distinctive or fanciful name of another commodity's product,

provided that a statement of composition, in accordance with part 4, 5, or 7 of this chapter, as appropriate, appears in the same field of vision as the brand name or the distinctive or fanciful name and the overall advertisement does not create a misleading impression about the identity of the product;

(iv) The use of truthful and accurate statements about the production of the product, as part of a statement of composition or otherwise, such as “finished in whisky barrels,” “fermented with rye,” or “Beer brewed with chardonnay grapes,” so long as such statements do not create a misleading impression as to the identity of the product; or

(v) The use of terms that compare a product or products of one commodity to a product or products of a different commodity without creating a misleading impression as to the identity of the product.

(2) When used in this paragraph, “commodity” means wine, distilled spirits, or malt beverages.

(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 an 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) Government seals. Advertisements may not contain any government seal or other insignia that is likely to mislead the consumer to believe that the product has been endorsed by, made by, used by, or produced for, under the supervision of, or in accordance with the specification of that government.

(i) Health-related statements—(1) Definitions. When used in this section, the following terms have the meaning indicated:

(i) Health-related statement. "Health-related statement" means any statement related to health (other than the health warning statement required under part 16 of this chapter) and includes any statement of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, a wine, distilled spirits, or malt beverage product, or any substance found within such a 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, a wine, distilled spirits, or malt beverage product, or any substance found within such a 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 wine, distilled spirits, or malt beverage product, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of caloric, carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(ii) Specific health claim. "Specific health claim" means a type of health-related statement that, expressly or by implication, characterizes the relationship of alcohol, a wine, distilled spirits, or malt beverage product, or any substance found within such a product, 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, a wine, distilled spirits or malt beverage product, or any substance found within such a product, and a disease or health-related condition.

(iii) Health-related directional statement. "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 alcohol or consumption of wine, distilled spirits, or malt beverages.

(2) Rules for advertising—(i) Health-related statements. In general, an advertisement for a wine, distilled spirits, or malt beverage product 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 a disclaimer or other qualifying statement must appear as prominently 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; it is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; it adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and it 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 as prominently as the specific health claim.

(iii) Health-related directional statements. A health-related directional statement 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 alcohol or wine, distilled spirits, or malt beverage consumption; and

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

(2) Includes as part of the health-related directional statement, and as prominently 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.

§ 14.15 Additional rules for wine.

The rules in this section apply to advertisements for wine and are in addition to the rules that apply to all advertisements as set forth in §§ 14.12 through 14.14.

(a) Statements in advertisements. An advertisement for wine may not contain:

(1) Any statement of bonded wine cellar and bonded winery numbers, unless stated immediately adjacent to the name and address of the person operating the wine cellar or winery. A statement of bonded wine cellar and bonded winery numbers may appear in the following form: "Bonded Wine Cellar No. ___," "Bonded Winery No. ___," "B.W.C. No. ___," "B.W. No. ___." No additional reference to the statement may be made, and the statement may not be used in a way that might give the impression that the wine has been made or matured under government supervision or in accordance with government specifications or standards; or

(2) Any statement, design, device, or representation that relates to alcohol content or that tends to create the impression that a wine is intoxicating or has intoxicating qualities, other than a truthful and accurate statement of alcohol content.

(b) Statement of age. Subject to paragraph (c) of this section, an advertisement for wine may not contain any statement of age or other representation relative to age (including words, symbols, or other devices in any brand name or mark), except for:

(1) Vintage dates on vintage wine, in accordance with § 4.95 of this chapter;

(2) References relating to methods of wine production involving storage or aging which are used for the advertised wine; and

(3) Use of the word “old” as part of a brand name.

(c) Statement of bottling date. For purposes of paragraph (b) of this section, a statement of the bottling date of a wine will not be deemed to be a representation relative to age, provided that the statement appears in the advertisement without undue emphasis in the following form: “Bottled in ___” (inserting the year in which the wine was bottled).

(d) Miscellaneous date statements. Except in the case of vintage dates and bottling dates as provided in paragraphs (b)(1) and (c) of this section, an advertisement of wine may not bear any date unless, in addition to the date and immediately adjacent to the date and in the same size and kind of printing, a statement of the significance or relevance of the date is provided, such as “established” or “founded in.” If the date refers to the date of establishment of any business or brand name, the date and its accompanying statement must appear immediately adjacent to the name of the person, company, or brand name to which it relates if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date applies.

(e) Statements indicative of origin. An advertisement for wine may not contain any statement or representation that indicates or implies an origin other

than the true place of origin of the wine, except for brand names of geographical significance, when used in accordance with § 4.64(c) of this chapter, and semi-generic designations, when used in accordance with § 4.174 of this chapter.

§ 14.16 Additional rules for distilled spirits.

The rules in this section apply to advertisements for distilled spirits products and are in addition to the rules that apply to all advertisements as set forth in §§ 14.12 through 14.14.

(a) Statements in advertisements. An advertisement for a distilled spirits product may not contain:

(1) The words “bond,” “bonded,” “bottled in bond,” or “aged in bond,” or any other phrase containing “bond” or “bonded,” unless those words or phrases appear in the advertisement in the same manner and form as prescribed in § 5.88 of this chapter for a label for the distilled spirits product in question;

(2) A statement regarding multiple distillations, such as “double distilled” or ”triple distilled,” unless used in accordance with the rules in § 5.89 of this chapter; or

(3) The word “pure” unless it:

(i) Refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient;

(ii) Is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) Is part of the bona fide name of the permittee who bottled the distilled spirits.

(b) Statements of age. (1) Except at provided in paragraph (b)(2) of this section, an advertisement for a distilled spirits product may 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 in accordance with § 5.73 of this chapter appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in an advertisement, it must include (immediately adjacent to it and with substantially equal conspicuousness) all parts of the statement concerning age and percentages required to appear on a label of the product under part 5 of this chapter.

(2) An advertisement for any whisky or brandy (except immature brandies) for which a statement of age is not required on a label, or an advertisement for any rum or Tequila that has been aged for four years or more, may contain an inconspicuous, general representation as to age or maturity, or other similar representations, even though a specific age statement does not appear on the label of the advertised product or in the advertisement itself.

(c) Place of origin and producer or processor. An advertisement for a distilled spirits product may not contain any statement, design, device, or representation, stating or implying that the distilled spirits were manufactured in, or imported from, a country or place other than their actual country or place of origin, or that the distilled spirits were produced or processed by a person who was not in fact the actual producer or processor.

§ 14.17 Additional rules for malt beverages.

The rules in this section apply to advertisements for malt beverages and are in addition to the prohibited practice rules that apply to for all wine, distilled spirits, or malt beverage advertisements as set forth in §§ 14.12 through14.14.

(a) "Bonded" and other terms. An advertisement may not contain the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under Customs supervision," or other phrases containing these or synonymous terms that may create a misleading impression as to governmental supervision over production or bottling.

(b) Statement of class. An advertisement may not identify a product containing less than one-half of one percent (0.5%) of alcohol by volume with the designation "beer," "lager beer," "lager," "ale," "porter," or "stout," or with any other class or type designation commonly applied to fermented malt beverages containing one-half of one percent or more of alcohol by volume. In addition, an advertisement may identify a product with the class designation "ale," "porter," or "stout" only if the product was fermented at comparatively high temperature, was produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices), and possesses the characteristics generally attributed to ale, porter, or stout. Any statement of class or designation used in an advertisement should be identical to the designation on the label.

(c) Strength claims—(1) General. For purposes of this section, the term "strength claim" means a statement that directly or indirectly makes a claim about the alcohol content of the product. This section does not apply to the use of the

terms “low alcohol,” “reduced alcohol,” “non-alcoholic,” and “alcohol-free” in accordance with § 7.65 of this chapter; to claims about low alcohol content in general; or to the use of an alcohol content statement in accordance with § 7.65 of this chapter.

(2) Prohibition. The use of a strength claim on malt beverage advertisements is prohibited if it misleads consumers by implying that products should be purchased or consumed on the basis of higher alcohol strength. Examples of strength claims are “full strength,” “extra strength,” “high test,” and “high proof.”

Subpart C—Penalties and Compromise of Liability

§ 14.21 Criminal penalties.

A violation of the advertising provisions of 27 U.S.C. 205(f) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 14.22 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the 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.

§ 14.23 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 D—Paperwork Reduction Act

§ 14.31 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) Chart. The following chart 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.

Section where contained	Current OMB Control No.
14.4	New information collection.
14.6	1513–0087
14.12	1513–0087
14.14	1513–0087
14.15	1513–0087
14.16	1513–0087
14.17	1513–0087

PART 19—DISTILLED SPIRITS PLANTS

5. The authority citation continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

6. In § 19.356, revise paragraphs (c) and (d) to read as follows:

§19.356 Alcohol content and fill.

* * * * *

(c) *Variations in alcohol content.* Variations in alcohol content may not exceed 0.3 percent alcohol by volume above or below the alcohol content stated on the label.

(d) *Example*. Under paragraph (c) of this section, a product labeled as containing 40 percent alcohol by volume would be acceptable if the test for alcohol content found that it contained no less than 39.7 percent alcohol by volume and no more than 40.3 percent alcohol by volume.

Signed: August 28, 2018.

John J. Manfreda,

Administrator.

Approved: November 1, 2018.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade and Tariff Policy).

[FR Doc. 2018-24446 Filed: 11/23/2018 8:45 am; Publication Date: 11/26/2018]