

§ 4.65

27 CFR Ch. I (4-1-02 Edition)

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

(g) *Statements indicative of origin.* No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.

(h) *Use of the word "importer" or similar words.* The word *importer* or similar words shall not appear in advertisements of domestic wine except as part of the bona fide name of the permittee by or for whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated the words "Product of the United States" or similar words to negate any impression that the product is imported, and such negating statements shall appear in the same size and kind of printing as such name.

(i) *Curative and therapeutic claims.* Advertisements shall not contain any statement, design, representation, pictorial representation, or device representing that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(j) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement (or in two or more advertisements in

one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 4.60 through 4.64 or are in any respect untrue.

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

[T.D. 6521, 25 FR 13843, Dec. 29, 1960, as amended by T.D. 6976, 33 FR 15025, Oct. 8, 1968; T.D. ATF-53, 43 FR 37678, Aug. 23, 1978; T.D. ATF-180, 49 FR 31672, Aug. 8, 1984]

§ 4.65 Comparative advertising.

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

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

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the *Manual on Sensory Testing Methods*, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68-15545.

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

[T.D. ATF-180, 49 FR 31673, Aug. 8, 1984]

Subpart H—Standards of Fill for Wine

§ 4.70 Application.

(a) Except as provided in paragraph (b) of this section, no person engaged in

business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine unless such wine is bottled or packed in the standard wine containers herein prescribed.

(b) Sections 4.70 through 4.73 do not apply to:

(1) Sake;

(2) Wine packed in containers of 18 liters or more;

(3) Imported wine in the original containers in which entered customs custody if the wine was bottled or packed before January 1, 1979; or

(4) Wine domestically bottled or packed, either in or out of customs custody, before October 24, 1943, if the container, or the label on the container, bears a conspicuous statement of the net contents, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use.

(c) Section 4.73 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 prescribed by § 4.72.

[T.D. ATF-12, 39 FR 45222, Dec. 31, 1974, as amended by T.D. ATF-49, 43 FR 19848, May 9, 1978; T.D. ATF-76, 46 FR 1727, Jan. 7, 1981]

§ 4.71 Standard wine containers.

(a) A standard wine container shall be made, formed and filled to meet the following specifications:

(1) *Design.* It shall be so made and formed as not to mislead the purchaser. Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

(2) *Fill.* It shall be so filled as to contain the quantity of wine specified in one of the standards of fill prescribed in § 4.72 or § 4.73; and

(3) *Headspace.* It shall be made and filled as to have a headspace not in excess of 6 percent of its total capacity after closure if the net content of the container is 187 milliliters or more, and a headspace not in excess of 10 percent of such capacity in the case of all other containers.

[T.D. ATF-12, 39 FR 45222, Dec. 31, 1974]

§ 4.72 Standards of fill.

(a) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed:

(1) For all wines:

4.9 gallons.	1 pint.
3 gallons.	$\frac{1}{2}$ pint.
1 gallon.	$\frac{1}{2}$ pint.
$\frac{1}{2}$ gallon.	$\frac{2}{5}$ pint.
$\frac{1}{2}$ gallon.	4 ounces.
$\frac{2}{5}$ gallon.	3 ounces.
1 quart.	2 ounces.
$\frac{1}{2}$ quart.	

(2) In addition, for aperitif wines only: $\frac{15}{16}$ quart:

(b) The tolerances in fill shall be the same as are allowed by § 4.37 in respect to statement of net contents upon labels.

(c) This section does not apply after December 31, 1978.

[T.D. ATF-12, 39 FR 45223, Dec. 31, 1974, as amended by T.D. ATF-76, 46 FR 1727, Jan. 7, 1981]

§ 4.73 Metric standards of fill.

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

3 liters.	375 milliliters.
1.5 liters.	187 milliliters.
1 liter.	100 milliliters.
750 milliliters.	50 milliliters.
500 milliliters.	

(b) *Sizes larger than 3 liters.* Wine may be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

(c) *Tolerances.* The tolerances in fill are the same as are allowed by § 4.37 in respect to statement of net contents on labels.

[T.D. ATF-12, 39 FR 45223, Dec. 31, 1974, as amended by T.D. ATF-49, 43 FR 19848, May 9, 1978; T.D. ATF-76, 46 FR 1727, Jan. 7, 1981; T.D. ATF-303, 55 FR 42713, Oct. 23, 1990]