

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

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

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

EFFECTIVE DATE NOTE: By TTB T.D.-21, 70 FR 235, Jan. 3, 2005, § 7.54 was amended by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(8), effective Jan. 3, 2006. For the convenience of the user, the revised and added text is set forth as follows:

**§ 7.54. Prohibited statements.**

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

\* \* \* \* \*

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

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

(ii) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall advertise-

ment does not present a misleading impression about the identity of the product; or

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

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**§ 7.55 Comparative advertising.**

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

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

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

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

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

**Subpart G—General Provisions**

**§ 7.60 Exports.**

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

**Subpart H—Interim Regulations for Alcoholic Content Statements**

**§ 7.71 Alcoholic content.**

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

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

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percent by weight, proof, or by maximums or minimums.

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

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

(c) *Tolerances.* (1) For malt beverages containing 0.5 percent or more alcohol by volume, a tolerance of 0.3 percent will be permitted, either above or below the stated percentage of alcohol. Any malt beverage which is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance.

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

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

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

(e) *Non-alcoholic.* The term “non-alcoholic” may be used on malt beverages, provided the statement “contains less

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than 0.5 percent (or .5%) alcohol by volume” appears in direct conjunction with it, in readily legible printing and on a completely contrasting background.

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

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

### Subpart I—Use of the Term “Organic”

#### §7.81 Use of the term “organic.”

(a) Use of the term “organic” is optional and is treated as “additional information on labels” under §7.28(e).

(b) Any use of the term “organic” on a malt beverage label or in advertising of malt beverages must comply with the United States Department of Agriculture’s (USDA) National Organic Program rules (7 CFR part 205) as interpreted by the USDA.

(c) This section applies to labels and advertising that use the term “organic” on and after October 21, 2002.

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

## PART 8—EXCLUSIVE OUTLETS

### Subpart A—Scope of Regulations

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- 8.2 Territorial extent.
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### Subpart B—Definitions

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### Subpart C—Prohibited Practices

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- 8.53 Practice not resulting in exclusion.
- 8.54 Criteria for determining retailer independence.

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