

## §5.21

the term “Territory” means the Commonwealth of Puerto Rico.

(26 U.S.C. 7805 (68 Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

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### Subpart C—Standards of Identity for Distilled Spirits

#### §5.21 Application of standards.

The standards of identity for the several classes and types of distilled spirits set forth in this part shall be applicable only to distilled spirits for beverage or other nonindustrial purposes.

#### §5.22 The standards of identity.

Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows (see also §5.35, class and type):

(a) *Class 1; neutral spirits or alcohol.* “Neutral spirits” or “alcohol” are distilled spirits produced from any material at or above 190° proof, and, if bottled, bottled at not less than 80° proof.

(1) “Vodka” is neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color.

(2) “Grain spirits” are neutral spirits distilled from a fermented mash of grain and stored in oak containers.

(b) *Class 2; whisky.* “Whisky” is an alcoholic distillate from a fermented mash of grain produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, stored in oak containers (except that corn whisky need not be so stored), and bottled at not less than 80° proof, and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(1)(i) “Bourbon whisky”, “rye whisky”, “wheat whisky”, “malt whisky”, or “rye malt whisky” is whisky produced at not exceeding 160° proof from a fermented mash of not less than 51

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percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125° proof in charred new oak containers; and also includes mixtures of such whiskies of the same type.

(ii) “Corn whisky” is whisky produced at not exceeding 160° proof from a fermented mash of not less than 80 percent corn grain, and if stored in oak containers stored at not more than 125° proof in used or uncharred new oak containers and not subjected in any manner to treatment with charred wood; and also includes mixtures of such whisky.

(iii) Whiskies conforming to the standards prescribed in paragraphs (b)(1)(i) and (ii) of this section, which have been stored in the type of oak containers prescribed, for a period of 2 years or more shall be further designated as “straight”; for example, “straight bourbon whisky”, “straight corn whisky”, and whisky conforming to the standards prescribed in paragraph (b)(1)(i) of this section, except that it was produced from a fermented mash of less than 51 percent of any one type of grain, and stored for a period of 2 years or more in charred new oak containers shall be designated merely as “straight whisky”. No other whiskies may be designated “straight”. “Straight whisky” includes mixtures of straight whiskies of the same type produced in the same State.

(2) “Whisky distilled from bourbon (rye, wheat, malt, or rye malt) mash” is whisky produced in the United States at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored in used oak containers; and also includes mixtures of such whiskies of the same type. Whisky conforming to the standard of identity for corn whisky must be designated corn whisky.

(3) “Light whisky” is whisky produced in the United States at more than 160° proof, on or after January 26, 1968, and stored in used or uncharred new oak containers; and also includes mixtures of such whiskies. If “light

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predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

### § 5.35 Class and type.

(a) *Designation of product.* The class and type of distilled spirits shall be stated in conformity with § 5.22 if defined therein. In all other instances the product shall be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (except as provided in paragraph (b)(2) of this section) followed by a truthful and adequate statement of composition. The word “cordial” or “liqueur” need not be stated in the case of cordials and liqueurs unless the appropriate ATF officer finds such word is necessary to clearly indicate that the product is a cordial or liqueur.

(b) *Products designed in accordance with trade and consumer understanding.* In the case of products designated in accordance with trade and consumer understanding:

(1) A statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

(2) No statement of composition is required if the designation through general and established usage adequately indicates to the consumer the composition of the product.

A product shall 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.

(c) *Origin of whiskies in mixtures.* In the case of any of the types of whisky defined in § 5.22(b), Class 2, which contains any whisky or whiskies produced in a country other than that indicated

by the type designation, there shall be stated on the brand label the percentage of such whisky and the country or origin thereof. In the case of mixtures of whisky, not conforming to any type designation in § 5.22(b), Class 2, the components of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation “whisky” a truthful and adequate statement of the composition of the product.

(d) *Whisky manufactured in Scotland, Ireland, or Canada.* All whisky manufactured in Scotland, Ireland, or Canada, shall be deemed to be Scotch, Irish, or Canadian whisky, and shall be so designated, in conformity with § 5.22(b) (7), (8), and (9), unless the application of such designation to the particular product will result in consumer deception, or unless such a product is not entitled to such designation under the laws of the country in which manufactured.

(e) *Cordials and liqueurs.* The alcoholic components of cordials and liqueurs may, but need not, be stated on labels.

### § 5.36 Name and address.

(a) “*Bottled by*”. (1) On labels of domestic distilled spirits there shall be stated the phrase “bottled by”, “packed by”, or “filled by”, immediately followed by the name (or trade name) of the bottler and the place where such distilled spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling operations, there may, in addition, be stated immediately following the name (or trade name) of such bottler the addresses of such other plants.

(2) Where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase “bottled by”, “packed by”, or “filled by”, followed by the bottler’s name (or trade name) and address, the phrase “distilled by”, followed by the name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits labeled as bottled in bond) any trade name shown on the distiller’s permit (covering the premises where the particular

whisky” is mixed with less than 20 percent of straight whisky on a proof gallon basis, the mixture shall be designated “blended light whisky” (light whisky—a blend).

(4) “Blended whisky” (whisky—a blend) is a mixture which contains straight whisky or a blend of straight whiskies at not less than 20 percent on a proof gallon basis, excluding alcohol derived from added harmless coloring, flavoring or blending materials, and, separately, or in combination, whisky or neutral spirits. A blended whisky containing not less than 51 percent on a proof gallon basis of one of the types of straight whisky shall be further designated by that specific type of straight whisky; for example, “blended rye whisky” (rye whisky—a blend).

(5)(i) “A blend of straight whiskies” (blended straight whiskies) is a mixture of straight whiskies which does not conform to the standard of identify for “straight whisky.” Products so designated may contain harmless coloring, flavoring, or blending materials as set forth in 27 CFR 5.23(a).

(ii) “A blend of straight whiskies” (blended straight whiskies) consisting entirely of one of the types of straight whisky, and not conforming to the standard for straight whisky, shall be further designated by that specific type of straight whisky; for example, “a blend of straight rye whiskies” (blended straight rye whiskies). “A blend of straight whiskies” consisting entirely of one of the types of straight whisky shall include straight whisky of the same type which was produced in the same State or by the same proprietor within the same State, provided that such whisky contains harmless coloring, flavoring, or blending materials as stated in 27 CFR 5.23(a).

(iii) The harmless coloring, flavoring, or blending materials allowed under this section shall not include neutral spirits or alcohol in their original state. Neutral spirits or alcohol may only appear in a “blend of straight whiskies” or in a “blend of straight whiskies consisting entirely of one of the types of straight whisky” as a vehicle for recognized flavoring of blending material.

(6) “Spirit whisky” is a mixture of neutral spirits and not less than 5 per-

cent on a proof gallon basis of whisky, or straight whisky, or straight whisky and whisky, if the straight whisky component is less than 20 percent on a proof gallon basis.

(7) “Scotch whisky” is 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” (Scotch whisky—a blend).

(8) “Irish whisky” is 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” (Irish whisky—a blend).

(9) “Canadian whisky” is 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” (Canadian whisky—a blend).

(c) *Class 3; gin*. “Gin” is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and 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 shall derive its main characteristic flavor from juniper berries and be bottled at not less than 80° proof. Gin produced exclusively by original distillation or by redistillation may be further designated as “distilled”. “Dry gin” (London dry gin), “Geneva gin” (Hollands gin), and “Old Tom gin” (Tom gin) are types of gin known under such designations.

(d) *Class 4; brandy*. “Brandy” is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the

distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof. Brandy, or mixtures thereof, not conforming to any of the standards in paragraphs (d) (1) through (8) of this section shall be designated as “brandy”, and such designation shall be immediately followed by a truthful and adequate statement of composition.

(1) “Fruit brandy” is brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, 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 shall include mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy, derived from grapes, shall be designated as “grape brandy” or “brandy”, except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy or grappa brandy) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers for less than 2 years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word “immature”. Fruit brandy, other than grape brandy, derived from one variety of fruit, shall 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”. Fruit brandy derived from more than one variety of fruit shall be designated as “fruit brandy” qualified by a truthful and adequate statement of composition.

(2) “Cognac”, or “Cognac (grape) brandy”, is grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French Government.

(3) “Dried fruit brandy” is 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, shall be designated as “raisin brandy”. Other brandies shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word “dried”.

(4) “Lees brandy” is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as “lees brandy”, qualified by the name of the fruit from which such lees are derived.

(5) “Pomace brandy”, or “marc brandy”, is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as “pomace brandy”, or “marc brandy”, qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as “grappa” or “grappa brandy”.

(6) “Residue brandy” is brandy distilled wholly or in part from the fermented residue of fruit or wine, and shall be designated as “residue brandy” qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (d) (1), (3), (4), and (5) 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.

(7) “Neutral brandy” is brandy produced at more than 170° proof and shall be designated in accordance with the standards in this paragraph, except that the designation shall be qualified by the word “neutral”; for example, “neutral citrus residue brandy”.

(8) “Substandard brandy” shall bear as a part of its designation the word “substandard”, and shall include:

(i) Any brandy 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 °C.); measurements of volatile acidity shall be calculated exclusive of water added to facilitate distillation.

(ii) Any brandy which has been 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.

(e) *Class 5; blended applejack.* “Blended applejack” (applejack—a blend) is a mixture which contains at least 20 percent of apple brandy (applejack) on a proof gallon basis, stored in oak containers for not less than 2 years, and not more than 80 percent of neutral spirits on a proof gallon basis if such mixture at the time of bottling is not less than 80° proof.

(f) *Class 6; rum.* “Rum” is an alcoholic distillate from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma and characteristics generally attributed to rum, and bottled at not less than 80° proof; and also includes mixtures solely of such distillates.

(g) *Class 7; Tequila.* “Tequila” is an alcoholic distillate from a fermented mash derived principally from the Agave Tequilana Weber (“blue” variety), with or without additional fermentable substances, distilled in such a manner that the distillate possesses the taste, aroma, and characteristics generally attributed to Tequila and bottled at not less than 80° proof, and also includes mixtures solely of such distillates. Tequila is a distinctive product of Mexico, manufactured in Mexico in compliance with the laws of Mexico regulating the manufacture of Tequila for consumption in that country.

(h) *Class 8; cordials and liqueurs.* Cordials and liqueurs are products obtained 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, dextrose, or levulose, or a combination thereof, in an amount not less than 2½ percent by weight of the finished product.

(1) “Sloe gin” is a cordial or liqueur with the main characteristic flavor derived from sloe berries.

(2) “Rye liqueur”, “bourbon liqueur” (rye, bourbon cordial) are liqueurs, bottled at not less than 60° proof, 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 § 5.23 for coloring, flavoring, and blending materials.

(3) “Rock and rye”, “rock and bourbon”, “rock and brandy”, “rock and rum” are liqueurs, bottled at not less than 48° proof, 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 § 5.23 for harmless coloring, flavoring, and blending materials.

(4) “Rum liqueur,” “gin liqueur,” “brandy liqueur,” are liqueurs, bottled at not less than 60 proof, 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 § 5.22(d), 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 § 5.23 for harmless coloring, flavoring, and blending materials.

(5) The designation of a cordial or liqueur may include the word “dry” if the sugar, dextrose, or levulose, or a combination thereof, are less than 10 percent by weight of the finished product.

(6) Cordials and liqueurs shall not be designated as “distilled” or “compound”.

(i) *Class 9; flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.* “Flavored brandy,” “flavored gin,” “flavored rum,” “flavored vodka,” and “flavored whisky,” are brandy, gin, rum vodka, and whisky, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60° proof. The name of the predominant flavor shall appear as a part of the designation. 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, 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.

(j) *Class 10; imitations.* Imitations shall bear, as a part of the designation thereof, the word “imitation” and shall 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 required under § 5.35 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added flavors considered to be artificial or imitation. In determining whether a flavor is artificial or imitation, recognition will be given to what is considered to be “good commercial practice” in the flavor manufacturing industry;

(3) Any class of 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.

(k) *Class 11; geographical designations.*

(1) Geographical names for distinctive types of distilled spirits (other than names found by the appropriate ATF officer under paragraph (k)(2) of this section to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (i) in direct conjunction with the name there appears the word “type” or the word “American” or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzic (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(2) Only such geographical names for distilled spirits as the appropriate ATF officer finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic shall be deemed to have become generic. Examples at London dry gin, Geneva (Hollands) gin.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Puerto Rico rum, Demerara rum.

(4) The words "Scotch", "Scots" "Highland", or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not be used to designate any product not wholly produced in Scotland.

(1) *Class 12; products without geographical designations but distinctive of a particular place.* (1) The whiskies of the types specified in paragraphs (b) (1), (4), (5), and (6) of this section are distinctive products of the United States and if produced in a foreign country shall be designated by the applicable designation prescribed in such paragraphs, together with the words "American type" or the words "produced (distilled, blended) in \_\_\_\_\_", the blank to be filled in with the name of the foreign country: *Provided*, That the word "bourbon" shall not be used to describe any whisky or whisky-based distilled spirits not produced in the United States. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whisky and the country of origin thereof.

(2) The name for other distilled spirits which are distinctive products of a particular place or country, an example is Habanero, shall not be given to the product of any other place or country unless the designation for such product includes the word "type" or an adjective such as "American", or the like, clearly indicating the true place of production. The provision for place

of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the appropriate ATF officer finds they have become generic. Examples are Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

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#### § 5.23 Alteration of class and type.

(a) *Additions.* (1) The addition of any coloring, flavoring, or blending materials to any class and type of distilled spirits, except as otherwise provided in this section, alters the class and type thereof and the product shall be appropriately redesignated.

(2) There may be added to any class or type of distilled spirits, without changing the class or type thereof, (i) such harmless coloring, flavoring, or blending materials as are an essential component part of the particular class or type of distilled spirits to which added, and (ii) harmless coloring, flavoring, or blending materials such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Director, or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2½ percent by volume of the finished product.

(3) "Harmless coloring, flavoring, and blending materials" shall not include (i) any material which would render the product to which it is added an imitation, or (ii) any material, other than caramel, infusion of oak chips, and sugar, in the case of Cognac brandy; or (iii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed

(b) *Statements of age for rum, brandy, and Tequila.* Age may, but need not, be stated on labels of rums, brandies, and Tequila, except that an appropriate statement with respect to age shall appear on the brand label in case of brandy (other than immature brandies and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. If age is stated, it shall be substantially as follows: “\_\_\_ years old”; the blank to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statement of storage for grain spirits.* In case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; for example, “\_\_\_% grain spirits stored \_\_\_ years in oak containers.”

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar representation is made relative to any distilled spirits (such representations for products enumerated in paragraph (d) of this section are prohibited), the age shall also be stated on all labels where such representation appears, and in a manner substantially as conspicuous as such representation: *Provided*. That the use of the word “old” or other word denoting age, as part of the brand name, shall not be deemed to be an age representation: *And provided further*. That the labels of whiskies and brandies (except immature brandies) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar

representations without the label bearing an age statement.

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#### § 5.41 Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.31 through 5.42 on labels.

(b) *Sealed opaque cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by “Brand” or “Product of U.S.A.”, must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

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#### § 5.42 Prohibited practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of



such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) 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 is an abbreviation thereof, or any 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: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Miscellaneous*. (1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, 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 Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are "Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.) Government supervision", or in the case of distilled spirits labeled as bottled in bond, "Bottled in bond under United States (U.S.) Government supervision". If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the \_\_\_\_\_ government (name of government) indicating that the product is \_\_\_\_\_ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are:

(i) Composed of the same kind of spirits produced from the same class of materials;

(ii) Produced in the same distilling season by the same distiller at the same distillery;

(iii) Stored for at least four years in wooden containers 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 containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(iv) 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 incorporated in the finished product or result in a change in class or type);

(v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottles at 100 degrees of proof.

In addition to the requirements of § 5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or

specifically authorize such distilled spirits to be so labeled. All spirits labeled as “bonded”, “bottled in bond”, or “aged in bond” pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word “pure” shall not be stated upon labels unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(6) Distilled spirits shall not be labeled as “double distilled” or “triple distilled” or any similar term unless it is a truthful statement of fact; except that “double distilled” or “triple distilled” shall not be permitted on labels of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, 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.

(8) Curative and therapeutic claims. Labels shall not contain any statement, design, representation, pictorial

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representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-180, 49 FR 31673, Aug. 8, 1984; 49 FR 35768, Sept. 12, 1984; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

EFFECTIVE DATE NOTE: By T.D. TTB-1, 68 FR 10104, Mar. 3, 2003, § 5.42 was amended by revising paragraph (b)(8), effective June 2, 2003. For the convenience of the user, the revised text is set forth as follows:

### § 5.42 Prohibited practices.

\* \* \* \* \*

(b) \* \* \*

(8) *Health-related statements*—(i) *Definitions*. When used in this paragraph (b)(8), terms are defined as follows:

(A) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 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, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(B) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled

spirits, and a disease or health-related condition.

(C) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(ii) *Rules for labeling*—(A) *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.

(B) *Specific health claims*. (1) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a distilled spirits label. 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 a distilled spirits label.

(2) 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; 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.

(C) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(1) 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

(2)(i) 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

(ii) 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

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impression conveyed by the health-related directional statement.

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### Subpart E—Standards of Fill for Bottled Distilled Spirits

#### § 5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, 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 distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983]

#### § 5.46 Standard liquor bottles.

(a) *General.* A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) *Headspace.* A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(c) *Design.* A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exceptions*—(1) *Distinctive liquor bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the appropriate ATF officer, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF-62, 44 FR 71622, Dec. 11, 1979; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983; T.D. ATF-406, 64 FR 2129, Jan. 13, 1999]

#### § 5.47 Standards of fill (distilled spirits bottled before January 1, 1980).

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits, whether domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows:

1 gallon.	½ pint.
½ gallon.	¼ pint.
1 quart.	⅛ pint.
½ quart.	⅜ pint.
1 pint.	⅜ pint (brandy only).

(b) *Tolerances.* The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(b) *Statements of age for rum, brandy, and Tequila.* Age may, but need not, be stated on labels of rums, brandies, and Tequila, except that an appropriate statement with respect to age shall appear on the brand label in case of brandy (other than immature brandies and fruit brandies which are not customarily stored in oak containers) not stored in oak containers for a period of at least 2 years. If age is stated, it shall be substantially as follows: “\_\_\_ years old”; the blank to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statement of storage for grain spirits.* In case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; for example, “\_\_\_% grain spirits stored \_\_\_ years in oak containers.”

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated in paragraph (c) of this section), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) Age may be understated but shall not be overstated.

(2) If any age, maturity, or similar representation is made relative to any distilled spirits (such representations for products enumerated in paragraph (d) of this section are prohibited), the age shall also be stated on all labels where such representation appears, and in a manner substantially as conspicuous as such representation: *Provided*. That the use of the word “old” or other word denoting age, as part of the brand name, shall not be deemed to be an age representation: *And provided further*. That the labels of whiskies and brandies (except immature brandies) not required to bear a statement of age, and rum and Tequila aged for not less than 4 years, may contain general inconspicuous age, maturity or similar

representations without the label bearing an age statement.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985]

#### § 5.41 Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.31 through 5.42 on labels.

(b) *Sealed opaque cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by “Brand” or “Product of U.S.A.”, must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-36, 41 FR 47426, Oct. 29, 1976]

#### § 5.42 Prohibited practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of

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such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) 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 is an abbreviation thereof, or any 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: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Miscellaneous*. (1) Labels shall not be of such design as to resemble or simulate a stamp of the U.S. Government or any State or foreign government. Labels, other than stamps authorized or required by this or any other government, shall not state or indicate that the distilled spirits are distilled, blended, made, bottled, 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 Federal, State, municipal, or foreign law or regulations. The statements authorized by this part to appear on labels for domestic distilled spirits are "Distilled (produced, barreled, warehoused, blended, or bottled, or any combination thereof, as the case may be) under United States (U.S.) Government supervision", or in the case of distilled spirits labeled as bottled in bond, "Bottled in bond under United States (U.S.) Government supervision". If the municipal, State, or Federal Government permit number is stated on a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the \_\_\_\_\_ government (name of government) indicating that the product is \_\_\_\_\_ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless the distilled spirits are:

(i) Composed of the same kind of spirits produced from the same class of materials;

(ii) Produced in the same distilling season by the same distiller at the same distillery;

(iii) Stored for at least four years in wooden containers 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 containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(iv) 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 incorporated in the finished product or result in a change in class or type);

(v) Reduced in proof by the addition of pure water only to 100 degrees of proof; and

(vi) Bottles at 100 degrees of proof.

In addition to the requirements of § 5.36(a) (1) or (2), the label shall bear the real name of the distillery or the trade name under which the distillery produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(4) The words “bond”, “bonded”, “bottled in bond”, “aged in bond”, or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless the distilled spirits meet in all respects the requirements applicable to distilled spirits bottled for domestic consumption, so labeled, and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or

specifically authorize such distilled spirits to be so labeled. All spirits labeled as “bonded”, “bottled in bond”, or “aged in bond” pursuant to the provisions of this paragraph shall bear in direct conjunction with such statement and in script, type, or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(5) The word “pure” shall not be stated upon labels unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(6) Distilled spirits shall not be labeled as “double distilled” or “triple distilled” or any similar term unless it is a truthful statement of fact; except that “double distilled” or “triple distilled” shall not be permitted on labels of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(7) Labels shall not contain any statement, design, device, or pictorial representation which the appropriate ATF officer finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, 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.

(8) Curative and therapeutic claims. Labels shall not contain any statement, design, representation, pictorial

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representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. 7020, 34 FR 20637, Dec. 30, 1969, as amended by T.D. ATF-62, 44 FR 71621, Dec. 11, 1979; T.D. ATF-180, 49 FR 31673, Aug. 8, 1984; 49 FR 35768, Sept. 12, 1984; T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

EFFECTIVE DATE NOTE: By T.D. TTB-1, 68 FR 10104, Mar. 3, 2003, § 5.42 was amended by revising paragraph (b)(8), effective June 2, 2003. For the convenience of the user, the revised text is set forth as follows:

### § 5.42 Prohibited practices.

\* \* \* \* \*

(b) \* \* \*

(8) *Health-related statements*—(i) *Definitions*. When used in this paragraph (b)(8), terms are defined as follows:

(A) *Health-related statement* means any statement related to health (other than the warning statement required by § 16.21 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, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(B) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled

spirits, and a disease or health-related condition.

(C) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(ii) *Rules for labeling*—(A) *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.

(B) *Specific health claims*. (1) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on a distilled spirits label. 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 a distilled spirits label.

(2) 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; 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.

(C) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(1) 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

(2)(i) 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

(ii) 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

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impression conveyed by the health-related directional statement.

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### Subpart E—Standards of Fill for Bottled Distilled Spirits

#### § 5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, 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 distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46 through 5.47a.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983]

#### § 5.46 Standard liquor bottles.

(a) *General.* A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) *Headspace.* A liquor bottle of a capacity of 200 milliliters or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(c) *Design.* A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exceptions*—(1) *Distinctive liquor bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles that are specifically exempted by the appropriate ATF officer, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

(Sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 5301)

[T.D. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-25, 41 FR 10221, Mar. 10, 1976; 41 FR 11022, Mar. 16, 1976; T.D. ATF-62, 44 FR 71622, Dec. 11, 1979; T.D. ATF-146, 48 FR 43321, Sept. 23, 1983; T.D. ATF-406, 64 FR 2129, Jan. 13, 1999]

#### § 5.47 Standards of fill (distilled spirits bottled before January 1, 1980).

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits, whether domestically bottled, or imported, subject to the tolerances allowed in this section, shall be as follows:

1 gallon.	½ pint.
½ gallon.	¼ pint.
1 quart.	⅛ pint.
½ quart.	⅙ pint.
1 pint.	⅓ pint (brandy only).

(b) *Tolerances.* The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

## § 5.65 Prohibited practices.



(a) *Restrictions.* An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State, Federal, or foreign authorization, law, or regulation, unless such statement appears in the manner authorized by §5.42 for labels of distilled spirits. If a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to §5.42, on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label.

(8) The word "pure" unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer from whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(9) The words "double distilled" or "triple distilled" or any similar terms unless it is a truthful statement of fact; except that "double distilled" or "triple distilled" shall not be permitted in advertisements of distilled spirits produced by the redistillation method when a second or third distillation step is a necessary distillation process for the production of the product.

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a bottle in an advertisement shall be a reproduction of an approved label.

(c) *Statement of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§5.31 through 5.42. An advertisement for any whisky or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any

rum or Tequila, which has been aged for not less than 4 years may, however, contain inconspicuous, general representation as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Health-related statements* —(1) *Definitions*. When used in this paragraph (d), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value ( e.g., statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(2) *Rules for advertising* —(i) *Health-related statements*. In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims*. A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements*. A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(B)( 1 ) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: “This statement should not encourage you to drink or increase your alcohol consumption for health reasons;” or

( 2 ) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this subpart or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* An advertisement shall not contain any statement, design, device, or pictorial representation which the appropriate TTB officer finds relates to, or is capable of being construed as relating to the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, 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. 7020, 34 FR 20337, Dec. 30, 1969, as amended by T.D. ATF-180, 49 FR 31674, Aug. 8, 1984; TTB T.D.-1, 68 FR 10105, Mar. 3, 2003]