

§ 7.31 Label approval and release.

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(e) *Formula and samples.* The Administrator may require you to submit a formula for a malt beverage, and a sample of any malt beverage or ingredients used in producing a malt beverage in conjunction with the filing of a certificate of label approval on ATF Form 5100.31.

7. We amend § 7.54 by revising paragraph (a) and by adding a new paragraph (a)(8), to read as follows:

§ 7.54 Prohibited statements.

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

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(8)(i) Any statement, design, device, or representation which relates to alcohol content or which tends to create the impression that a malt beverage:

- (A) Contains distilled spirits; or
- (B) Is similar to a distilled spirit; or
- (C) Has intoxicating qualities.

(ii) A label statement of alcohol content in conformity with § 7.71 is not considered a prohibited practice in violation of this section. Use of a brand name of a distilled spirits product as a malt beverage brand name is permitted. Use of a cocktail name as a brand name or as a fanciful name is permitted if the overall malt beverage advertisement does not present a misleading impression about the identity of the product.

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PART 25—BEER

8. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

9. We amend § 25.11 by revising the definition of “beer” to read as follows:

§ 25.11 Meaning of terms.

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Beer. Beer, ale, porter, stout, and other similar fermented beverages (including saké and similar products) of any name or description containing one-half of one percent or more alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt. Standards for the beer tax rate appear in § 25.15.

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10. We amend subpart B by adding an undesignated center heading and a new section, § 25.15, to read as follows:

Standards for Beer Tax Rate**§ 25.15 What standards must be met to qualify as a fermented product to be taxed at the beer rate?**

(a) You may use barley malt, malted grains other than barley, unmalted grains, sugars, syrups, molasses, honey, fruit, fruit juice, fruit concentrate, herbs, spices, and other food materials for fermenting beer.

(b) You may use alcohol flavoring materials, taxpaid wine, and other ingredients containing alcohol in producing beer, provided these alcohol ingredients contribute less than 0.5 percent alcohol by volume of the finished beer. For example, a finished beer of 5.0% alc/vol must derive more than 4.5% alc/vol from the fermentation of ingredients at the brewery. Added flavors or other ingredients containing alcohol may constitute less than 0.5% alc/vol of the finished beer.

11. We amend Subpart F by adding two undesignated center headings, and by adding new §§ 25.53, and 25.55 through 25.58, to read as follows:

Subpart F—Miscellaneous Provisions

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Samples**§ 25.53 Am I required to furnish samples of my fermented products or ingredients?**

The appropriate TTB officer may, at any time, require you to submit samples of:

(a) Cereal beverage, saké, or any fermented product produced at the brewery.

(b) Materials used in the production of cereal beverage, saké, or any fermented product.

(c) Cereal beverage, saké, or any fermented product, in conjunction with the filing of a formula. (26 U.S.C. 5415, 5555, 7805(a))

Formulas**§ 25.55 Are formulas required for my fermented products?**

(a) *For what fermented products must a formula be filed?* You must file a formula with TTB if you intend to produce:

(1) Any fermented product that will be treated by any special processing, filtration, or other methods of manufacture that change the character of beer or remove material from beer. The removal of any volume of water from beer, filtration of beer to remove color, flavor, or character, the separation of a beer into different components, reverse osmosis, concentration of beer, and ion exchange treatments are examples of processes that require you to file a formula under this section.

(2) Any fermented product to which taxpaid wine or any flavor or other ingredient containing alcohol will be added.

(3) Any fermented product to which coloring or natural or artificial flavors will be added.

(4) Any fermented product to which fruits, herbs, spices, or honey will be added.

(5) Saké, flavored saké, or sparkling saké.

(b) *Are separate formulas required for different products?* You must file a separate formula for each fermented product for which a formula is required.

(c) *When must I file a formula?* (1) Except as provided in paragraph (2), you may not produce a fermented product for which a formula is required until you have filed and received approval of a formula for that product.

(2) You may, for research and product development purposes, produce a fermented product without an approved formula, but you may not sell or market this product until you receive approval of a formula.

(d) *How long is my formula approval valid?* Your formula approved under this section remains in effect until you supersede it with a new formula, until you voluntarily surrender it to TTB, or until TTB cancels or revokes it.

(e) *Are my previously approved statements of process valid?* Your statements of process approved before [EFFECTIVE DATE OF FINAL RULE] are considered approved formulas under this section, provided the finished product under the statement of process is in compliance with § 25.15. You do not need to resubmit any approved statements of process. (26 U.S.C. 5415, 5555, 7805(a))

§ 25.56 How do I file a formula?

(a) *What are the general requirements for filing a formula?*

(1) You must identify each brewery where the formula is valid by including each brewery name, address, and the brewery registry number for each brewery for which the formula applies.

(2) You must serially number each formula, commencing with “1” and continuing in numerical sequence.

(3) You must date and sign each formula.

(4) You must submit two copies of each formula to TTB.

(b) *Where do I file a formula?* File your formulas with the Chief, Advertising, Labeling and Formulation Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226. (26 U.S.C. 5401, 7805)