

**BEFORE THE  
DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages  
Notice No. 41**

**Comments of the Staff of the  
Bureau of Consumer Protection,  
the Bureau of Economics,  
and the Office of Policy Planning of the Federal Trade Commission**

September 26, 2005\*

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\*These comments represent the views of the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments.

## **I. INTRODUCTION**

The Alcohol and Tobacco Tax and Trade Bureau (“TTB”) of the U.S. Department of Treasury has requested comments on an advance notice of proposed rulemaking (“ANPRM”) with regard to labeling and advertising of beverage alcohol.<sup>1</sup> The ANPRM requests, *inter alia*, comments regarding whether TTB should require mandatory labeling about alcohol and nutrient content per serving;<sup>2</sup> what areas need further research before TTB can decide whether and how changes can be made;

- serving size,
- number of servings per container; and,
- for each serving,
  - the fluid ounces of ethyl (“pure”) alcohol,
  - calories,
  - fat and saturated fat (in grams), and
  - carbohydrates (in grams).

We also recommend that, before adopting a particular format for such label disclosures, TTB conduct empirical research to ensure that the disclosures are understandable and informative to ordinary consumers. FTC staff recommends against applying these disclosure requirements to advertising because the costs would likely exceed the benefits.

Marketers have expressed an interest in describing how the amount of alcohol in their beverages compares to government health guidelines regarding moderate consumption; however, expert sources appear to provide conflicting infor

The amount of alcohol in beverages varies widely. Many popular beverages – 12 ounces of regular beer containing 5% alcohol by volume (“ABV”), 5 ounces of wine containing 12% ABV, or 1.5 ounces of 80 proof distilled spirits – deliver 0.6 ounces of pure alcohol.<sup>17</sup> Numerous other popular beverages, however, contain more or less alcohol. Beers in the marketplace range from approximately 3.3% to 17% ABV,<sup>18</sup> thus delivering between 0.39 and 2 ounces of pure alcohol per serving. Wines range from 6% to 18% ABV,<sup>19</sup> *i.e.*, providing between 0.3 and 0.9 ounces of alcohol in a 5-ounce serving. Distilled spirits range from 15% to 75% ABV, *i.e.*, providing 0.22 to 1.1 ounces of alcohol per serving.<sup>20</sup>

Alcohol also varies significantly in calories per serving. Calories in a serving of beer range from 95 to 340;<sup>21</sup> in spirits, from 48 to 180;<sup>22</sup> and in wine, from 100 to 235.<sup>23</sup> Similarly, beverage alcohol varies significantly in terms of other nutrients, such as carbohydrates and fat. The limited data that are publicly available suggests that beers range from 5 to 22 grams of carbohydrates per serving;<sup>24</sup> spirits may contain between 0 and 18 grams of carbohydrates;<sup>25</sup> and wines may contain between 1 and 18 grams of carbohydrates.<sup>26</sup> In addition, while FTC staff is unaware of any beers or wines that contain fat, there are a number of distilled spirits products that contain fat from cream, milk, or coconut.<sup>27</sup>

### **III. FTC STAFF RECOMMENDATIONS FOR LABEL DISCLOSURES**

Beverage alcohol labels can play an important role in providing information to consumers. Consumers often will see beverage alcohol labels before they consume the product. Approximately 75% of alcohol is purchased by consumers for use “off premise,” *e.g.*, purchasing beer, wine, or spirits for consumption at home, and 25% is consumed “on premise,” *e.g.*, ordering a cocktail, beer, or wine at a restaurant. Because consumers purchasing beverage alcohol for consumption off-premises will have a chance to examine the label prior to purchase, the label may be an effective means of conveying important alcohol and nutrient content information to consumers.

Because alcohol and nutrients in beverage alcohol can affect health, information about these ingredients on beverage labels may help consumers make better-informed decisions. About 62% of American adults cons

U.S. Dietary Guidelines and other sources regarding calorie, fat, saturated fat, and other nutrient intake. As health consequences became a more important consideration for consumers, the mandated disclosures have given producers a powerful economic incentive to develop and market foods based on their nutritional attributes.

FTC staff believes that disclosure of alcohol and nutrient content information on beverage alcohol labels could have similar beneficial effects on consumers and competition. Such information would increase the ability of consumers to evaluate their actual alcohol, calorie, carbohydrate, and fat intake.<sup>32</sup> It would also increase the incentives for alcohol marketers to engage in product innovation.

Accordingly, FTC staff recommends that beverage alcohol label regulations be modified to require disclosure of the following information: serving size (in fluid ounces) and the number of servings per container; and, for each serving, the fluid ounces of pure alcohol (to the nearest tenth of an ounce), calories, fat (in grams), saturated fat (in grams); and carbohydrates (in grams).

In addition, FTC staff recommends that TTB mandate serving sizes for various beverages.<sup>33</sup> Establishing standard serving sizes will make it easier for consumers to compare the alcohol, calorie, carbohydrate, and fat content of beverage alternatives.<sup>34</sup> Further, standardized serving sizes would avoid the presentation of such information for atypical or contrived serving sizes.<sup>35</sup>

TTB alsoages w TTB also has requested comment on proposed formats for these disclosures.<sup>36</sup> FTC staff recommends that TTB adopt a standardized format, analogous to the “Nutrition Facts” labels on foods.<sup>37</sup> This format should mandate the order in which items appear and the language, including abbreviations, to be used. Use of this format will speed consumer familiarity with the disclosures and more readily enable consumers to compare alcohol and nutrient content of different beverages when making purchase decisions. Before adopting any particular format, however, TTB should conduct consumer research to enand n2T 12.0000 Tf0.0000 Tc0.0000 Tw( Further, standa

drink per day for women.”<sup>39</sup> Additionally, it requests comments on proposals to permit or require that labels compare the amount of alcohol in a serving of a beverage to a standard drink.<sup>40</sup>

Given the wide variety of alcohol levels in various beverages, however, consumers may not know what constitutes a “drink” or whether their consumption is “moderate.” Although some government health publications state that a standard drink contains 0.6 ounces of pure alcohol, others state that a standard drink contains 0.5 or 0.54 ounces of alcohol.<sup>41</sup> Researchers have noted that the lack of standard information about what constitutes a “drink” poses problems in evaluating alcohol intake, particularly for consumers who choose atypical beverages.<sup>42</sup> Thus, any statement about limits on alcohol intake must identify how much pure alcohol is contained in a “drink” or a “standard drink,” if it is to be useful to consumers.

FTC staff therefore recommends that TTB confer with the National Institute on Alcohol Abuse and Alcoholism (“NIAAA”) and USDA to establish the alcohol content in a standard “drink.” Once this issue is resolved, we recommend that TTB *permit* marketers who so choose to include truthful, non-misleading statements comparing the amount of alcohol in a serving of their product to a standard “drink” or to the 2005 Dietary Guidelines’ recommendations.

The FTC staff takes no position, however, on whether TTB should

information, although the costs would vary with the nature of the disclosure and the advertising format.<sup>46</sup> More importantly, it is the FTC staff's belief that disclosure of detailed health-related information – such as alcohol and nutrient content disclosures – as part of an advertisement with a fundamentally unrelated message is unlikely to be effective and, therefore, may provide little

1. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment*, 70 Fed. Reg. 22274 (Apr. 29, 2005).

2. *Id.* at 22280-82.

3. *Id.* at 22275.

4. *Id.* at 22280-82.

5. *Id.* at 22275.

6. *E.g.*, *Allied Domecq Spirits & Wine Americas, Inc.*, 127 F.T.C 368 (1999) (consent order) (prohibiting deceptive “low alcohol beverage” claim for a premixed cocktail containing 5.9 percent alcohol by volume); *Canandaigua Wine Co.*, 114 F.T.C. 349 (1991) (consent order) (prohibiting deceptive low alcohol claims for high alcohol fortified wine).

7. 15 U.S.C. § 45 *et seq.*

8. *See, e.g.*, P. Ippolito & J. Pappalardo, *Advertising Nutrition & Health: Evidence from Food Advertising 1977-1997* (FTC Bureau of Economics Staff Report) (Sept. 2002); D. Murphy, T. Hoppock & M. Rusk, *A Generic Copy Test of Food Health Claims in Advertising* (FTC Bureau of Economics and Consumer Protection Staff Report) (Nov. 1998); P. Ippolito & A. Mathios, *Information and Advertising Policy: A Study of Fat and Cholesterol Consumption in the United States, 1977-1990* (FTC Bureau of Economics Staff Report) (Sept. 1996); P. Ippolito & A. Mathios, (FTC BTj47.2800 0.0000 TD(port) (Se)Tj42.2400 6000 TD(pt. 1996);)Tj46.6800 0.0000 TDot



<http://www.ftc.gov/os/2003/10/fdafattyacidscommenttext.pdf>.

11. Currently, TTB's regulations do not require that beverage alcohol labels disclose alcohol or nutrient content per serving. TTB's implementing regulations require that alcohol labels contain t B's implementing

See Realbeer.com, *Calories, Carbs and Alcohol*, available at <http://www.realbeer.com/edu/health/calories.php>; Washington State Liquor Control Board, *Price List* (May 2005), available at [http://www.liq.wa.gov/PriceBook/PriceListWeb\\_Index.asp](http://www.liq.wa.gov/PriceBook/PriceListWeb_Index.asp). Although the level of alcohol in beers and wines is generally reported in terms of ABV, the level of alcohol in spirits is often reported in terms of the "proof," reflecting the percentage of alcohol by volume multiplied by two. Thus, a distilled spirit labeled as "100 proof" contains 50% alcohol ABV.

18. Examples of beers with lower and higher alcohol levels include:

Anchor Small	3.3% ABV
Amstel Light	3.5% ABV
Mickey's Ice	5.9% ABV
Colt 45	6.0% ABV
Guinness Foreign Extra Stout	7.5% ABV
Sierra Nevada Big Foot	9.6% ABV
Sam Adams Triple Bock	17.0% ABV

See [www.realbeer.com](http://www.realbeer.com), *Calories, Carbs and Alcohol*, note 17 *supra*.

19. Examples of wines with lower and higher alcohol levels:

Wild Vines Raspberry Zinfandel	6.0% ABV
Tosti Asti Spumanti Italy	7.5% ABV
Riunite Lambrusco	8.0% ABV
Gallo White Zinfandel Blush	8.5% ABV
Ravenswood Vintage Blend Shiraz	14.5% ABV
Toasted Head Chardonnay	14.5% ABV
Hogue '00 Reserve Chardonnay	14.7% ABV
Noilly Prat Dry Vermouth	18.0% ABV
Gallo Dry Sherry	18.0% ABV
Nuernberger Gluhwein	20.0% ABV

See Washington State Liquor Control Board May Price List (May 2005), *supra* note 17.

20. Examples of spirits with lower and higher alcohol levels are:

Island Breeze by Bacardi	8.0 % ABV
DeKuyper Sour Apple Schnapps	15.0% ABV
Bailey's Irish Cream	17.0% ABV
Kahlua Coffee	20.0% ABV
Captain Morgan Parrot Bay Coconut Rum	21.0% ABV
many brands of	

flavored vodkas	35.0% ABV
Maker's Mark Bourbon	45.0% ABV
Tanqueray Gin	46.0% ABV
100 proof vodkas	50.0% ABV
151 rums	75.5% ABV

*Id.*; See F.M. Sherbert, *Light Delight: Can Bacardi's breakthrough Island Breeze low-cal brand create a new category of light spirits?*, Market Watch, Apr./May 2005, at 65. Additional information regarding the level of alcohol in spirits, beer, and wines is available on the Vermont Department of Liquor Control's website, available at <http://www.state.vt.us/dlc/retail/descriptions/>.

21. Light beers have approximately 95 calories per serving. Beers with higher calorie levels include:

Lowenbrau	160 cal.
Michelob Honey Lager	175 cal.
Red Hook IPA	188 cal.
Sam Adams Triple Bock	340 cal.

See Realbeer.com, note 17 *supra*.

22. See Dietary Guidelines, *supra* note 13 (providing calorie information for several beverage categories); Anne Collins, *supra* note 22; Bacardi USA, Inc., <http://www.islandbreezelite.com/home/default.aspx>. Examples of higher calorie distilled spirits include flavored vodkas (150 cal.) and Southern Comfort (180 cal.). See Anne Collins, *Supra*, note 5 & 2 and Liqueurs 1 & 2, available at <http://www.annecollins.com/calories/htm>.

23. See Dietary Guidelines, Chapter 9, *supra* note 14; Anne Collins, *Anne Collins Waighori*, Anne Collins, S

25. Many distilled spirits (gin, vodka, whiskey, rum) contain no carbohydrates; flavored spirits contain between 1.5 and 7 grams of carbohydrates per serving; and liqueurs may have between 7 and 18 grams of carbohydrates per serving. See Atkins Nutritionals, *Carb Gram Counter*, available at [http://atkins.com/img/assets/609/atkins\\_carbgramcounter.pdf](http://atkins.com/img/assets/609/atkins_carbgramcounter.pdf) (Triple Sec); Bacardi USA, Inc., *supra*

33. For a discussion of the importance of establishing a uniform system of measurement, also referred to as a “metric,” see H. Beales, R. Craswell, S. Salop, *Information Remedies for Consumer Protection*, American Economic Review, Vol. 71, No. 2, Papers and Proceedings of the Ninety-Third Annual Meeting of the American Economic Association (May, 1981), at 410-413, available at <http://links.jstor.org/sici?sici=0002-8282%28198105%2971%3A2%3C410%3AIRFCP%3E2.0.CO%3B2-7>.
34. It appears that the appropriate serving sizes ordinarily would be 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of spirits, consistent with numerous statements by health and safety authorities, as well as TTB itself. See U.S. Dietary Guidelines, *supra* note 13; National Institute of Alcohol Abuse and Alcoholism (“NIAAA”), *Alcohol Alert: Alcohol Metabolism* (Jan. 1997) available at <http://www.niaaa.nih.gov/publications/aa35.htm>; National Highway Transportation Safety Administration (“NHTSA”), *The ABCs of BAC* (Feb. 2005), available at <http://www.nhtsa.dot.gov/people/injury/alcohol/ABCsBACWeb/page2.htm>; NIAAA, *Risky Business. Alcohol: What You Don’t Know Can Harm You*, available at <http://www.collegedrinkinglearningprevention.gov/students/risky/alcohol.aspx>; TTB, *Caloric and Carbohydrate Representations in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages*, TTB Ruling 2004-1 (Apr. 2004), at 6, available at <http://www.ttb.gov/alcohol/info/revrule/rules/2004-1.pdf>. Establishment of serving sizes consistent with longstanding health authority guidance will facilitate the consumer learning process. However, if a product is sold in a can or bottle that contains more than one but less than two ordinary servings, such that a consumer is likely to consume the entire contents of the container, it may be appropriate to require that the contents of the container be deemed to constitute a single serving. See note 41, *infra*.
35. FTC staff recently submitted comments to FDA regarding the importance of proper serving sizes and the need to make clear to consumers the relationship between serving size, calorie, and nutrient disclosures. FTC Staff Comments in the Matter of Obesity Working Group, (Dec. 12, 2003), available at <http://www.ftc.gov/be/v040003image.pdf>.
36. See ANPRM at 22279-82.
37. The Nutrition Facts Panel is an effective means of conveying nutrient information about foods to consumers. “The provision of information under the NLEA is viewed as more effective because it mandates disclosure on all food products, standardizes label definitions and metrics, and regulates label placement, size, and other display features . . . the NLEA increases the opportunity to process nutrition information while potentially reducing the required ability and motivation.” See C. Moorman, *A Quasi Experiment*, *supra* note 31, at 39-40.
38. Dietary Guidelines, Chapter 9, available at <http://www.health.gov/dietaryguidelines/dga2005/document/html/chapter9.htm>.
39. ANPRM at 22279.

40. *Id.*

41. See NIAAA, *Helping Patients With Alcohol Problems* (Mar. 2004), available at <http://www.niaaa.nih.gov/publications/Practitioner/HelpingPatients.htm#standard> (0.6 ounces of alcohol in a standard drink ); U.S. Department of Transportation, National Highway Transportation Safety Administration, *The ABCs of BAC* (Feb. 2005) (0.54 ounces); NIAAA, *Better Safe Than Sorry*, at 26, (.5 ounces) available at <http://www.niaaa.nih.gov/publications/Science/Power%20Point/FAS.pdf>.

Assuming that health authorities such as USDA and NIAAA agree that a standard drink contains 0.6 ounces of alcohol, a disclosure could, for example, contain this information: “A 1.5-ounce serving of this beverage provides 0.6 ounces of pure alcohol. Moderate drinking means no more than 1.2 ounces of pure alcohol per day for men, 0.6 ounces per day for women.”

42. See Deborah A. Dawson, Ph.D., *Methodological Issues in Measuring Alcohol Use*, Sidebar, available at <http://www.niaaa.nih.gov/publications/arh27-1/18-29.htm>. Dawson notes that “beverages whose container or serving sizes do not correspond to standard drinks may pose problems for drinkers, both when they try to report their level of alcohol consumption and when they try to adhere to low-risk drinking guidelines that are stated in terms of standard drinks.” *Id.*; see also, M. Dufour, *What is Moderate Drinking? Defining “Drinks” and Drinking Levels*, Alcohol Research & Health, Vol. 23, No. 1 (1999), available at <http://www.niaaa.nih.gov/publications/arh23-1/05-14.pdf>, at 7 (noting that variations in alcohol content of various beverages, such as 40 ounce beers and fortified wines, makes it difficult for consumers to determine actual consumption).

43. The primary effect of this disclosure on a beverage alcohol label would be on adult consumers exposed to the label at point of purchase. In considering the costs and benefits of mandating such a disclosure, the TTB also may want to consider the secondary effects on other consumers (e.g., underage consumers) who may be exposed to the disclosure in other contexts.

44. ANPRM at 22275.

45. Although the role of advertising differs from that of labeling, advertising can still play a critical role in educating consumers, raising “consumer awareness about the attributes and significance of the nutrients in particular foods and prompt consumers to examine the food label for more nutrition information.” FTC Staff Comment in The Matter of Obesity Working Group; Public Workshop; Exploring the Link Between Weight Management and Food Labels and Packaging, Docket No. 2003N-0338 (Dec. 12, 2003), at 7, available at <http://www.ftc.gov/be/v040003text.pdf>.

46. In weighing the costs and benefits, one must consider the disclosure in the context of the ad, which could be a 15-second radio ad, a 30-second “image” ad on television, or an Internet banner.

47. FTC Staff Comment in the Matter of Request for Comments on Consumer-Directed Promotion, Docket No. 2003N-0344 (Dec. 1, 2003), at 19-25 (recommending that FDA not require that a substantial proportion of prescription drug product labeling be featured in direct-to-consumer advertising).

48. There may be circumstances in which the failure to disclose nutrient information would make a beverage alcohol advertisement deceptive. For example, in the case of foods, certain health claims in advertising may trigger the need for a disclosure about the presence in the food of other risk-increasing nutrients. *See* FTC, *Enforcement Policy Statement on Food Advertising*, available at

<http://www.ftc.gov/bcp/policystmt/ad-food.htm#Introduction>.