

**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 Ec**



proposal to increase substantially the amount of information contained on alcohol labels. The FTC staff recommends that TTB require labels to disclose pure alcohol content in fluid ounces per serving (rather than in the form of ABV) and specify that this disclosure should appear within the Serving Facts panel. In addition, the FTC staff recommends that TTB consider permitting alcohol marketers to make representations about recommended limitations on alcohol intake, and the availability of federal health guidance on that point, in a truthful, non-misleading manner.<sup>5</sup>

The FTC has substantial experience challenging unfair or deceptive acts and practices related to alcohol advertising and labeling<sup>6</sup> as a violation of Section 5 of the Federal Trade Commission Act.<sup>7</sup> The FTC shares with TTB jurisdiction over the advertising of alcohol, and the two agencies often coordinate activities to provide consistent guidance regarding matters within their joint jurisdiction.

The FTC staff also has conducted extensive empirical research concerning the effect of advertising claims, including health and nutrient content claims for foods.<sup>8</sup> This research suggests that government regulations that require or allow marketers to provide nutrient content and health information to consumers may have a significant effect on the type and amount of health information they receive, which, in turn, may affect the products they purchase and use. It also suggests that such regulations may facilitate competition among marketers based upon disclosed attributes, potentially leading to useful product innovations.

Drawing on its law enforcement experience and its research, the FTC staff has filed comments with other agencies advocating policies permitting health and nutrient content cla(te)Tj8.6400 0.0000

advance notice of proposed rulemaking (“ANPRM”) in this same matter.<sup>11</sup> The FTC staff appreciates the opportunity to provide views to the TTB as part of this rulemaking proceeding.

## **II. RESEARCH ON CONSUMER DRINKING PATTERNS**

Empirical data regarding American drinking patterns are relevant to determining whether the proposed regulations are likely to provide adequate information to consumers who purchase and use beverage alcohol products. The available research shows that most American adults drink and that alcohol intake is likely to play a significant role in consumer health, given the manner in which it is often consumed.

About 65 percent of Americans drink alcohol.<sup>12</sup> Studies evaluating alcohol consumption typically have assumed that a “standard” drink contains 0.5 or 0.6 ounces of ethanol (pure alcohol), equivalent to 12 or 14 grams, respectively. In one study, the mean amount of ethanol in drinks that consumers poured for themselves at home was 0.56 ounces for beer, 0.66 ounces for wine, and 0.89 ounces for distilled spirits; across beverage types, the mean drink contained 0.67 ounces of ethanol, 11.7 percent larger than the 0.6 ounce standard.<sup>13</sup> A study of college students showed that students over-poured shots by 26 percent, mixed drinks by 80 percent, and beer by 25 percent.



pressure, stroke, violence, some types of cancer, and suicide.<sup>21</sup>

Additionally, even for those who drink moderately, beverage alcohol consumption may contribute significantly to their calorie and other nutrient intake. Accordingly, improved alcohol product labels may help allow consumers to make better-informed decisions about drinking.

### **III. STAFF RECOMMENDATIONS REGARDING ALCOHOL LABELING**

#### **A. Alcohol Content Disclosure**

TTB states that the alcohol content of a beverage is one of the most important pieces of information about that product.<sup>22</sup> It concludes that the display of a percentage of ABV is the best way to express alcohol content on a product label or in advertisements, because “consumers are familiar with alcohol content expressed in this manner.”<sup>23</sup> The proposed regulations require that all products disclose alcohol content, expressed as a percent of ABV (denominated as “Alcohol by volume,” “alc/vol,” or “Alc by vol.”)<sup>24</sup> on all alcohol beverage products, including table wines and malt beverages.<sup>25</sup> This disclosure may appear on “any label affixed to the container,” *i.e.*, it need not appear on the newly proposed Serving Facts label.<sup>26</sup>

Disclosure of alcohol content in fluid ounces per serving is not required by the proposed regulations, but it is permitted at the marketer’s discretion. If a marketer desires to disclose alcohol content in fluid ounces, this information must be presented in conjunction with an ABV disclosure in the Serving Facts panel.

Examples of Serving Facts labels that would comply with TTB’s proposed regulations are set forth below. Figure 2 is an example of a Serving Facts panel that could be used by a marketer who chose not to disclose alcohol in fluid ounces, whereas Figure 3 is an example of a Serving Facts label that could be used by a marketer who did choose to do so.<sup>27</sup>



Figure 2

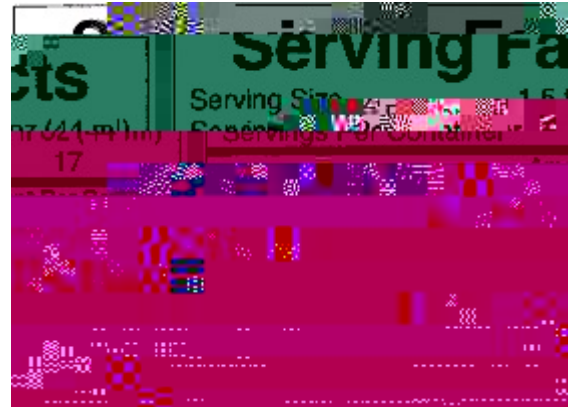


Figure 3

The FTC staff believes that TTB's proposal is not likely to provide consumers with adequate information about the alcohol content of the products currently available on the market, insofar as it does not mandate disclosure of alcohol content in fluid ounces per serving for all beverage alcohol products. Disclosure of ABV has been available on some beverages for many years, but the FTC staff is aware of no reliable evidence supporting the conclusion that consumers are able to use such disclosures to make decisions about alcohol consumption in light of health authority guidance. Further, under the current proposal, a standard beer with an alcohol content of 4.5 percent and an ice beer with an alcohol content of 6.0 percent could have identical Serving Facts labels. It is unclear, under these circumstances, that consumers would undertake the effort to locate and compare the ABV disclosures that, under the proposed rules, may appear anywhere on the product label.

The FTC staff recommends that TTB consider requiring disclosure of absolute alcohol content on a per serving basis, in lieu of ABV disclosures. Most Americans who drink alcohol

consume products in more than one of the three primary alcohol categories (beer, wine, and spirits).<sup>28</sup> TTB has stated that disclosure of absolute alcohol content by serving would “allow [consumers] to compare the quantity of alcohol contained in single servings of different commodities without doing mathematical calculations.”<sup>29</sup> The FTC staff agrees. For example, mandatory disclosure of alcohol content per serving could be beneficial for consumers looking at a 12-ounce bottle of 5 percent ABV flavored malt beverage, a 750-milliliter bottle of 40 percent ABV vodka, or a 750-milliliter bottle of 14 percent ABV wine. As proposed by the FTC staff, the labels would give consumers not only the standard serving size for each beverage (12, 1.5, and 5 ounces, respectively), but also tell them the amount of pure alcohol per serving in each of them (0.6 fluid ounces, 0.6 fluid ounces, and 0.7 fluid ounces, respectively), so that they can properly compare the beverages.

Disclosure of alcohol content per serving also would assist those already aware of, and interested in complying with, moderate drinking information as provided by government health agencies, as discussed further below. Thus, the FTC staff recommends that the Serving Facts panel include, below the “per serving” legend, a disclosure of alcohol content in a form such as “pure alcohol content \_\_ fl oz.” or “ethanol content \_\_ fl oz.”<sup>30</sup>

#### B. Reference to Recommendations to Limit Alcohol Intake

The U.S. Dietary Guidelines for Americans state that consumers who choose to drink should do so in moderation, defined as no more than “one drink per day for women and up to two drinks per day for men.”<sup>31</sup> The FTC staff’s comment to the ANPRM recommended that TTB permit marketers 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





The current ban on references to the alcohol chapter of the Dietary Guidelines may be overly broad, to the extent that it prohibits truthful and non-misleading information about the importance of limiting alcohol consumption to moderate levels. The most recent public health publications have assumed that a “drink” is one containing about 14 grams, or about 0.6 fluid ounces, of ethanol.<sup>36</sup> TTB may wish to consider adopting this definition, and to evaluate whether American consumers could, on balance, benefit from an “intake limit” disclosure such as, “Daily pure alcohol [or ethanol] consumption should not exceed 1.2 ounces for men, and 0.6 ounces for women.” In addition, it would appear appropriate to permit neutral references to health guidance, *e.g.*, such as “Information about alcohol consumption is available online at [website address for Dietary Guidelines].” Such references could provide consumers with more information than they currently possess regarding government recommendations on alcohol intake.

#### **IV. CONSUMER PERCEPTION RESEARCH**

TTB’s proposed regulations will result in a substantial change in the appearance and content of alcohol labels. Consumer research, such as copy testing, can provide important information about the effectiveness of proposed disclosures, including whether certain descriptors are sufficiently prominent and made in a format that consumers can understand.

Issues that warrant copy testing include:

- whether consumers are able to identify products with a higher amount of alcohol content per serving, if alcohol is disclosed only in terms of ABV;
- whether consumers are able to identify products with a higher amount of alcohol content per serving, if alcohol content does not appear on the serving facts label;



## **VI. CONCLUSION**

The FTC staff commends TTB on its proposal to significantly increase the amount of information on alcohol labels. We encourage the TTB to consider the possible changes discussed above, in an effort to help consumers identify products containing lower levels of ethanol and to facilitate compliance with government health recommendations.

Respectfully submitted,

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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*, 72 Fed. Reg. 41,860 (July 31, 2007) (hereinafter, “NPRM”).
2. *Id.* at 41,871.
3. *Id.* at 41,866.
4. *Id.* at 41,883.
5. U.S. Dietary Guidelines for Americans (2005), Chapter 9, *available at* <http://www.health.gov/dietaryguidelines/dga2005/document/html/chapter9.htm> (hereinafter, “Dietary Guidelines”).
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 coc

11. *See* Comments of FTC Staff in the Matter of Labeling and Advertising of Wines, Distilled Spirits and Malt Beverag

drinking enough to feel drunk 12 or more times in the past year. *Id.*

19. *Id.* at Table 4-1.

20. In setting

30. As set forth in Part IV, the FTC staff recommends that TTB conduct consumer research prior to adopting the final rules. We further recommend that TTB mandate use of a single term to characterize the pure alcohol content (which could be “alcohol,” “pure alcohol,” or “ethanol,”) to avoid the confusion that could arise if different marketers used different terms.
31. Dietary Guidelines, *supra* note 5.
32. NPRM at 41,869.
33. See FTC Staff Comment In the Matter of Draft Guidance for Industry and FDA Staff: Whole Grains Label Statements, Docket No. 2006-0066 (2006), at 2-3, *available at* <http://www.ftc.gov/os/2006/04/v060014FTCStaffCommentstotheFDAREDocketNo2006-0066.pdf>.
34. *Id.* at 3.
35. *Id.*
36. The FTC’s comment on the ANPRM noted previous inconsistency in public health authority characterizations of the amount of ethanol in a standard drink. FTC Staff Comment on ANPRM, at 6. Since then, however, NIAAA has issued several publications defining a “drink” as one containing about 0.6 fluid ounces of ethanol. See *NIAAA Alcohol Use Survey*, *supra* note 18, at 5; NIAAA, *Alcohol Screening and Brief Intervention* (2005), *available at* [http://pubs.niaaa.nih.gov/publications/Practitioner/pocketguide/pocket\\_guide.htm](http://pubs.niaaa.nih.gov/publications/Practitioner/pocketguide/pocket_guide.htm); NIAAA, *Patient Education Materials* (2005), *available at* [http://pubs.niaaa.nih.gov/publications/Practitioner/CliniciansGuide2005/clinicians\\_guide13\\_p\\_mats.htm](http://pubs.niaaa.nih.gov/publications/Practitioner/CliniciansGuide2005/clinicians_guide13_p_mats.htm). This definition also appears to be consistent with the intent underlying the description of a “drink” in the Dietary Guidelines. They describe a drink as 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits. Each of these would contain 0.6 ounces of pure alcohol, assuming that the “regular” beer contained 5 percent ABV and the wine contained 12 percent ABV. As noted in the FTC Staff Comment on the ANPRM, however, actual products in the marketplace range significantly in alcohol content.