



**TTB**

**ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**  
*U.S. Department of the Treasury*

# **PREVENTING UNDERAGE ALCOHOL USE: A NATIONAL MEETING OF THE STATES**

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# Introduction

- ❑ Minimum Drinking Ages
- ❑ Historical Perspective
- ❑ Twenty-first Amendment & State Authority
- ❑ TTB Authority & Limits of the Federal Role
  - ❑ Labeling of Alcohol Beverage Products
    - Statutes and Regulations
    - Constitutional Concerns
    - Court Cases and Rulemaking
- ❑ Questions



# National Minimum Drinking Age

- ❑ On July 17, 1984, President Reagan signed legislation that placed certain conditions on the receipt of Federal highway funds by States. The law provides that 10% of certain funds would be withheld unless the State made it unlawful for persons under the age of 21 to purchase or publicly possess alcoholic beverages. See 23 U.S.C. 158.
- ❑ All 50 States have now enacted such legislation.

# Pre-Prohibition Era

Late 1800's and early 1900's:

- ❑ Corruption among whisky producers.
- ❑ Alcohol abuse became a large social concern.
- ❑ “Temperance” movement grew.
- ❑ Large segment of population believed alcohol should be banned.

# Prohibition

- ❑ 1919 — Eighteenth Amendment to the U.S. Constitution was passed.
- ❑ Nationwide ban on the “manufacture, sale or transportation of intoxicating liquors for beverage purposes.”

# Prohibition Era Problems

- ❑ Ban on alcohol did not stop alcohol consumption.
- ❑ Alcohol production and distribution went “underground” and were taken over by criminal organizations.
- ❑ Racketeers made huge profits from illegal alcohol.
- ❑ Increased crime and corruption associated with Prohibition.

# Repeal of Prohibition

## 21st Amendment — Repeal of the Eighteenth Amendment:

- ❑ **Section 1.** The eighteenth article of amendment to the Constitution of the United States is hereby repealed.
- ❑ **Section 2.** The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
- ❑ The 21st Amendment grants the States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.
- ❑ The Webb-Kenyon Act provides that the shipment or transportation of any beverage alcohol product from one State into any other State in violation of any law of such State is prohibited. This was amended by the Twenty-first Amendment Enforcement Act, which authorizes State Attorneys General to enjoin violations of the Act by out-of-State shippers.
- ❑ Basic permits under the FAA Act are conditioned upon compliance with the Twenty-first Amendment and other Federal laws relating to its enforcement, including the Webb-Kenyon Act. In the appropriate circumstances, violations of the Webb-Kenyon Act could result in permit action by TTB. It should be noted that retailers do not have basic permits under the FAA Act.

# Post-Prohibition Federal Government Controls

- ❑ Until enactment of “all-in-bond,” there was on-premises supervision of distilled spirits plants by government officers.
- ❑ Stamps were used to evidence tax payment.
- ❑ Permit system for importers, wholesalers and most producers.
- ❑ Controls over labeling and advertising of alcohol.
- ❑ Controls over trade practices to ensure retailer independence.

# Federal Regulation and Control of the Industry Today

- ❑ **Permit System** — Importers, wholesalers and most producers must have basic permits. Brewers must qualify under the Internal Revenue Code.
- ❑ **Records** — Comprehensive system of records (production, storage, processing, and removal of alcohol).
- ❑ **Reports** — Regular reports submitted to the National Revenue Center.
- ❑ **Audits and Inspections** — Periodic audits and inspections by field personnel.

# “Three-tier” System

- ❑ A complex set of Federal and State laws and regulations preserve a “three-tier” system for alcohol beverages:
  - Manufacturer
  - Wholesaler
  - Retailer
- ❑ Federal controls are more rigorous for producers.

# State and Local Controls

- ❑ States have two systems of control:
  - Government control of distribution—18 “control” States and Montgomery County, Maryland.
  - Government license system—32 “license” States.
- ❑ States have authority to determine distribution requirements.

## Direct Shipments – Limits on States' Authority Under Twenty-first Amendment

- In 2005, the Supreme Court held that the Twenty-first Amendment did not allow States to discriminate against interstate commerce in violation of the Commerce Clause. *See Granholm v. Heald*, 125 S. Ct. 1885 (2005).

## **Do Direct Shipments Facilitate Underage Consumption?**

The Supreme Court found that the States' claims that direct shipment of wine would increase the risk of underage drinking –

- were not supported by concrete evidence;  
and

- would not justify regulations limiting only out-of-state direct shipments.

# TTB's Authority to Regulate Labeling of Alcohol Beverage Products

□ TTB's statutory mandate, under the Federal Alcohol Administration (FAA) Act, is to implement regulations governing the labeling and advertising of alcoholic beverage products in order to:

1. Prevent consumer deception,
2. Provide the consumer with adequate information as to the identity and quality of the product, and
3. Prevent statements or representations which are false or mislead the consumer. See 27 U.S.C. 205(e) and 205(f).

□ TTB issues regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages in accordance with 27 CFR parts 4, 5, and 7 respectively.

Provide consumers with adequate information as to the identity and quality of products.

# Constitutional Limits: First Amendment

In 1980, in a case known as [Central Hudson Gas and Electric](#), the Supreme Court established a four-part test for determining whether limitations on commercial speech are constitutional.

1. Is the speech protected by the First Amendment? If it is false or misleading, or concerns illegal activity, it is not protected.
2. Does the regulation serve a substantial governmental interest?
3. Does the regulation directly advance the substantial governmental interest?
4. Is the regulation more restrictive than necessary to serve the governmental interest?

# Statutory Limits of Federal Authority

- TTB does not have explicit statutory authority to evaluate labels and advertisements based on their appeal to youth.
- Nonetheless, the issue of underage consumption sometimes plays a role in labeling cases, as illustrated by the following examples.

# “Black Death Vodka”

## U.S. District Court for the Northern District of California



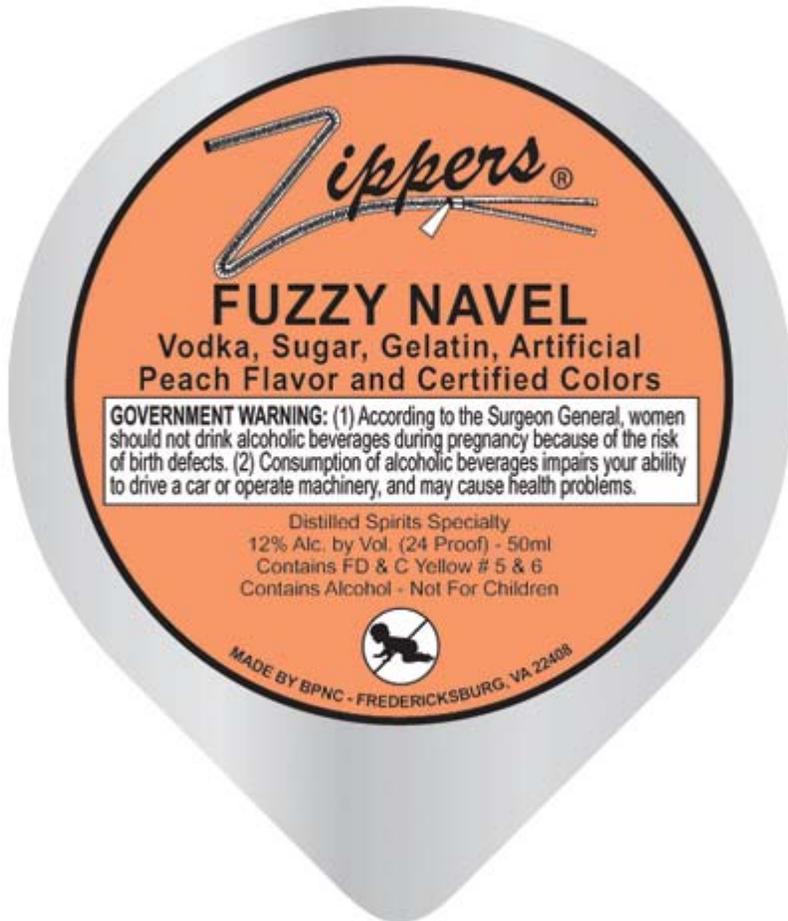
- ❑ The U.S. Surgeon General, Antonia Novello, made statements on the “Today Show” in which she criticized the importer’s decision to market the vodka to young people.
- ❑ In this promotional campaign, the importer apparently targeted young alcohol drinkers by using such techniques as selling bottles in miniature coffins and associating the vodka with slogans such as “Drink in Peace.”
- ❑ In addition, Cabo hired Saul Hudson, (“Slash” from the rock band “Guns ‘nRoses”), to promote “Black Death Vodka.”
- ❑ ATF revoked the label, among other issues, on the grounds that it undermined the health warning statement. ATF lost the court case. The court found that the label was not misleading, and stressed the limited nature of ATF’s authority.

# Standard of Fill: Aggregate Packaging Concerns



- ❑ Notice No. 872, an NPRM that ATF issued in 1999, sought comments on aggregate standards of fill and nontraditional containers of alcohol beverages.
- ❑ We expressed concern that “aggregate packaging” might confuse consumers, undermine State and local controls, and encourage consumption by underage individuals.
- ❑ No final TTB Ruling to date.

# Standard of Fill: Aggregate Packaging Concerns



- ❑ In the interim, safeguards encouraged by TTB include: labeling the individual containers as “not for individual sale” and “not for children,” sealing the outer container with shrink wrap or other secure methods, and encouraging bottlers to bottle the individual units of the package in authorized standards of fill.

# Are These Labels Misleading?

## Flavored Malt Beverages



# Flavored Malt Beverages - Proposed Rule

- ❑ On March 24, 2003, TTB issued a notice of proposed rulemaking, soliciting comments on a number of regulatory changes concerning flavored malt beverages. Among other things, we sought comments on whether certain products should be classified as malt beverages or distilled spirits.
- ❑ We recognized that the proposed changes would affect the rate of tax applicable to such products, the premises on which they may be produced, and the way that the products are labeled, advertised, and marketed.

# FMBs and Underage Drinkers

- ❑ TTB recognized the concerns of many commenters that so-called “alcopop” products such as FMBs were particularly appealing to underage consumers.
- ❑ We noted that the Federal Trade Commission issued a report in September of 2003, which found no evidence of targeting underage consumers in the marketing of FMBs.

# FTC Concerns

- ❑ The FTC recognized that ad content that appeals to new legal drinkers, as well as the sweet taste of FMBs, may be attractive to underage drinkers.
- ❑ The FTC urged the industry to exercise significant caution when introducing new alcohol beverage products, to ensure that they are not marketed to an underage audience.

# TTB Final Rule

- ❑ TTB recognized the concern of many commenters that FMBs may be particularly attractive to young drinkers, and noted the significant public health issue posed by underage consumption of alcohol beverages.
- ❑ Nonetheless, TTB concluded that the concerns of many of these commenters were beyond the scope of our authority. TTB's regulation was limited to implementing its statutory authority to ensure that such products are properly classified, and are labeled and advertised in a manner that does not mislead consumers.



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# QUESTIONS?

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