

June 6, 2005

Chief, Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
Attn: Notice No. 41
P.O. Box 14412
Washington, D.C. 20044-4412
E-mail: nprm@ttb.gov

To Whom It May Concern,

In regard to Notice No. 41, here are my comments in regard to the various questions that the TTB is soliciting comments on:

QUESTION:

Should TTB seek to require mandatory nutrition labeling for alcohol beverage products, or should nutrition information be permitted only on a voluntary basis?

ANSWER:

The TTB should not allow any nutritional labeling on alcohol beverage products for many reasons including the high cost to smaller wineries and distilleries; however, the most compelling is because any label statement would be misleading to the consumer.

The position of the TTB and industry should always be that alcoholic beverages are not part of any approved diet and that if the consumer is on a diet for either health related reasons or for appearance reasons, then they should refrain from consuming any alcoholic beverage. To provide any information as to caloric and fat content may mislead the consumer into thinking that one type of alcoholic beverage is better (i.e. healthier) for them than another.

Does it not say on the back of every alcoholic beverage sold in the United States in the Government Warning that "... *Women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.*" And that drinking alcoholic beverages "... *may cause health problems.*"

What advantage does providing nutritional information offer the consumer other than to mislead them into believing that one type of alcoholic beverage is better for them – this is blatantly misleading. To give the impression that one type of alcoholic beverage has less fat and/or calories than another will eventually lead to



alcoholic beverage companies making claims – albeit not directly – that their beverage can be part of a “healthy” lifestyle.

If the TTB approves nutritional labeling on alcoholic beverages, consumers might do what others are currently doing with food products – making their decisions on what product to purchase and consume based upon the nutritional labeling of the product because they believe that one product is better (healthier) than another. Let us not fool ourselves – people that read nutrition labels are typically on diets where they must watch what they consume because they either suffer from health problems and/or they want to remain “thin” in appearance.

Consumers should only be told that if they are on a diet, for whatever reason, then alcoholic beverages are not part of any approved diet and they should consult with their physician prior to consuming any alcoholic beverages.

In addition, alcohol should be considered a nutritional carbohydrate. The rationale behind considering certain types of alcohol as having “0” carbohydrates because the TTB or dieticians do not consider alcohol as a nutritional carbohydrate is extremely misleading. The industry desires to catch up with a “low-carb” fad and by allowing the alcoholic beverage producers to include any nutritional information on a products label, the TTB is indirectly allowing the producers to make health claims. Nutritional labeling of any kind should not be allowed – whether mandatory or voluntary.

For those individuals who do desire to know the nutritional content of their favorite alcoholic beverage, the information is assessable by merely asking the alcoholic beverage producer. Many, if not all, of the alcoholic beverage producers have nutritional information readily available and do provide it either on their website or via fax and e-mail when requested.

In addition to nutritional labeling, there should definitely not be an Alcohol Facts label on any alcoholic beverage because they mislead the consumer. The TTB may not consider statements concerning calorie, carbohydrate, protein and fat content as health-related statements; however, why else would someone need this information?

The position of the TTB should always be that alcohol is not part of a healthy lifestyle and we should not promulgate this belief by providing nutritional information to the consumer that may mislead them to believe that alcohol can become part of a “healthy” lifestyle.

QUESTION:

Should TTB seek to require mandatory ingredient labeling for alcohol beverage products, or should ingredient labeling be permitted only on a voluntary basis?

Should TTB harmonize its alcohol beverage labeling regulatory requirements with those of other major producing nations and/or other Federal agencies such as the Food and Drug Administration (FDA)?



Are consumers likely to derive benefits from more specific information on alcohol beverage labels?

ANSWER:

First, before addressing ingredient labeling, you must address the second question.

Each country has their own standards of identity for various alcoholic beverages and has very specific regulations regarding what is or is not allowed. Different limiting ingredient levels (even more stringent than our FDA) and a completely different set of regulations for the use of additives such as flavors exist and would be extremely difficult and costly to convert to. To harmonize with other countries would truly be a daunting and costly task not just to industry but to the TTB.

The most difficult aspect of this job would probably not be the standards of identity for the various alcoholic beverages produced, but the following:

1. Standards of Identities for what is allowed to be added to various products (Harmless Flavoring, Blending & Coloring Material – HFCBM)
2. Use of Maltol, Ethyl Maltol, Vanillin & Ethyl Vanillin as “smoothing” agents in alcoholic beverages
3. N&A Flavors (<0.1% Artificial Topnote) excluding Maltol, Ethyl Maltol, Vanillin & Ethyl Vanillin as being considered Natural for alcoholic beverages
4. Food/Flavor Additives limiting ingredient levels are different for each country and a good example would be Propylene Glycol – limitation in US (by FDA) is 50,000 ppm while in the EU it is 1,000 ppm. To be acceptable in various countries, FDA regulations would have to be re-written since all alcoholic beverages produced for sale in the US must also meet FDA requirements as to limiting ingredient levels.

These are but some of the issues that would have to be addressed in relation to harmonizing various countries regulations. For the most part, if harmonization was to occur between the TTB and FDA, over 80% of products would probably have to be reformulated if they still desired to be considered Naturally Flavored - Naturally Flavored by TTB standards versus FDA standards is completely different.

Now, as far as ingredient labeling, the TTB must decide how they would handle ingredients that are added to alcoholic beverages currently under the products standard of identity - The addition of Caramel Color and HFCBM would need to be addressed. Also, an ingredient list might be used by the alcoholic beverage producers to list ingredients that they believe might give them a marketing advantage and also mislead the consumer.

For example, if a distillery puts Vitamins in an alcoholic beverage or “caffeine” laced ingredients that are currently used to make the energy drinks that are so popular with our youth, might the listing of these ingredients on the label give the companies that list them an advantage in marketing their product to bars and clubs that target young people? Companies would become very creative in what ingredients they add to their beverage so that they may obtain a perceivable advantage in the market place.



The playing field in the alcoholic beverage area is currently “level” in regard to packaging information and this is one area where smaller companies can compete with large multi-nationals. If you allow any information on a label (whether nutritional or ingredient listing), the larger companies will surely figure out a method in which to have an advantage over smaller companies with small marketing budgets.

There is no advantage to the consumer to have any additional information on the label. Alcoholic Beverages are not part of any diet and are surely not a necessity to live on. They are an indulgent product and are not intended to be part of any person’s diet nutritionally – that is why they are not directly regulated by the Food and Drug Administration (FDA).

In conclusion, the TTB is playing a dangerous game – by proposing labeling requirements and regulations that are closer to current FDA requirements, the TTB is leading down a path that may eventually result in litigation from a large beverage alcohol producer desiring for complete harmonization with FDA regulations – including, but not limited to, health claims. This is not the direction the TTB should be going.

QUESTION:

Should TTB promulgate regulations that define “low carbohydrate” for alcohol beverages?

ANSWER:

NO – The TTB should not allow any alcoholic beverage producer to ever claim that any one of their products is low fat, low carbohydrate, low calories, etc.,

Any such claim is misleading to the consumer because some consumers might incorrectly believe that the product is a “healthy” alternative to another alcoholic beverage and if only one consumer believes this, then the TTB has misled the consumer and it should never be allowed.

QUESTION:

Should TTB require allergen labeling on alcohol beverage containers?

ANSWER:

Yes. If there is an allergen present in the alcoholic beverage, then the consumer should be warned and notified. This is essential because some people are extremely allergic to some substances and can die if exposed to them.

If the front label of the product contains the words “Wheat” (on a beer label) and “Cream” (on a liqueur label) as part of their name and it is clearly stated on the front label, I do not believe that an additional warning – in a smaller font size – on the rear of the package is necessary. When an allergen is so clearly identified on the front of a label, then it should not have to be disclosed on the rear label.



As for filtering aids and agents that are potential allergens, if they are still present in the final beverage at any discernible level, then they should be disclosed. This information is provided for the safety of the consumer and that is the only instance when the TTB should consider changing a label – vanity is not an acceptable reason. When a consumer of alcoholic beverages could die or become ill from consuming an alcohol beverage due to the use or misuse of an ingredient, the TTB should then step in and address this matter.

CONCLUSION:

The TTB is seeking to impose regulations on alcoholic beverage producers that are not just costly to the industry, but misleading to the consumers. The CSPI should take the position that in the public interest, consumers should not be drinking alcoholic beverages if they are on a diet or have health concerns – why else would any nutritional information be present on a label. In addition, it is clear that the CSPI does not understand nor desire to understand the standards of identity for various alcoholic beverages and how these standards are completely different from FDA regulations in regard to how a product is labeled, produced and marketed.

Keep alcoholic beverage regulations and requirements separate from the FDA and keep the playing field level. The closer we get to FDA requirements – nutritional, ingredient statements, labeling – the more likely we shall start seeing health claims by alcoholic beverage producers and this is unacceptable.

Keep the label issues simple and truthful – do not mislead the consumer into thinking that alcoholic beverages are good for them or part of a healthy lifestyle. Only make labeling changes if someone's health (Government Warning, Allergen Statement) is at risk.

Regulations, in regard to alcoholic beverages, should not be written or considered if they may potentially mislead the consumer and this is exactly what the TTB is currently proposing.

Best Regards,

Robert B. Back
Vice President – Operations
FLAVORMATIC INDUSTRIES, INC.