

CFA Consumer Federation of America

August 9, 2005

Chief Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Bureau
Attn: Notice No. 41
P.O. Box 14412
Washington, DC 20044-4412

Re: Notice No. 41

The Consumer Federation of America (CFA) appreciates this opportunity to comment regarding the Alcohol and Tobacco Tax and Trade Bureau's (TTB) advance notice of proposed rulemaking on alcohol beverage labeling and advertising.

CFA is a nonprofit association of 300 local, state and national consumer interest groups representing more than 50 million Americans. The organization was established in 1968 to advance the interests of consumers through research, education, and advocacy. CFA joined in the December 21, 2004 petition, submitted by the National Consumers League and the Center for Science in the Public Interest, calling for a mandatory "Alcohol Facts" panel on labels of alcoholic beverages.

Our members believe that the modernization of TTB's alcohol beverage labeling regulations is long overdue.¹ Currently, even the most important information about an alcoholic beverage, its alcohol content, is not required on the labels of malt beverages or most wines. Other important information, such as the number of calories in the product and the presence of allergenic ingredients, also is not required to appear on the labels of most alcoholic beverages.

We urge TTB to require a mandatory "Alcohol Facts" panel on the labels of all alcoholic beverages, regardless of product category. This would enable consumers to go to one place on the label and find a clear, easy-to-read summary of all the information they need to make healthful and informed purchasing and consumption decisions. CFA also urges TTB to require ingredient and allergen labeling on all alcoholic beverages. Finally, because this rulemaking will likely take years to complete and consumers need alcohol content, calorie, and allergen information now, we request that TTB issue an

¹Current labeling rules are a patchwork of antiquated federal requirements, each different for beer, wine, and spirits." Cindy Skrzycki, "Another Shot at Labeling Alcohol," *The Washington Post*, July 19, 2005, p. D1.

interim policy allowing bottlers to voluntarily provide this information on their labels pending issuance of a final rule.

1. An Alcohol Facts panel should be required by TTB on the labels of all alcohol beverages.

CFA urges TTB to require a mandatory Alcohol Facts panel on the labels of all alcohol beverage products regulated by the agency. It does not matter whether TTB calls the panel "Alcohol Facts" or "Serving Facts," as long as the panel includes the information that consumers need about alcohol and calorie content.² The Alcohol Facts panel should be required to contain the following information:

- The serving size (i.e., 12 fluid ounces (fl oz) for beer, 5 fl oz for wine, and 1.5 fl oz for distilled spirits);
- The number of calories per serving;
- The amount of alcohol (in fl oz) per serving;
- The percentage alcohol by volume;
- The definition of a "standard drink";
- The number of standard drinks per container; and
- The *Dietary Guidelines'* advice on moderate drinking (i.e., U.S. *Dietary Guidelines* advise moderate drinking: no more than 2 drink per day for men, 1 drink per day for women").³

Information about fat, carbohydrate, and protein content should be optional. However, if the product makes a carbohydrate claim (e.g., "low carb"), then carbohydrate information should be required.

CFA does not support any of the alternatives to Alcohol Facts discussed in the preamble to the ANPRM, such as listing on the label a telephone number or website where consumers can obtain this information, unless label space precludes presentation of Alcohol Facts. Consumers need Alcohol Facts information at the point of purchase where it can inform the purchasing decision. In addition, since alcohol beverages often are consumed immediately after purchase in restaurants and bars, this information must be on the label if it is to guide consumers' consumption decisions. Providing a telephone number or website where consumers could obtain this information would not accomplish the intended purpose -- assisting consumers in making healthful and informed purchasing and consumption decisions.

²For ease of reference, we refer to this label feature is referred to simply as "Alcohol Facts" throughout these comments.

³U.S. Department of Agriculture (USDA) and Department of Health and Human Services (HHS), *Dietary Guidelines for Americans 2005*, 6th edition, p. 44.

- **More label information about alcohol content would advance important public health goals.**

Given the many public health problems caused by excessive consumption of alcohol, providing consumers better label information about alcohol content should be TTB's highest priority in this rulemaking. Providing consumers more information about alcohol content would help consumers make responsible drinking decisions and would help them follow the *Dietary Guidelines'* advice on moderate alcohol consumption. Potential benefits include reduced alcohol abuse, reduced drunk driving, and a reduction in the many diseases attributable to excessive alcohol intake.

It is essential that consumers be able to determine from the label how much alcohol they are consuming, both the amount of alcohol and the number of standard drinks. The definition of a "standard drink" is recognized throughout the federal government and public health community and should not be controversial.⁴ This is also how most consumers talk about alcohol consumption in everyday speech — in terms of number of "drinks." The *Dietary Guidelines'* advice on moderate drinking is phrased in terms of number of drinks per day (i.e., no more than two for men, one for women). This advice is of little value if consumers have no idea what a drink is or cannot relate the definition to the beverage they are consuming. Therefore, it is important that labels of alcohol beverages provide sufficient information for consumers to count the number of drinks they are consuming. For consumers who prefer to measure alcohol in fluid ounces, this information should also be provided.

Such alcohol content information arguably is required by the governing statute, the Federal Alcohol Administration Act (the FAA Act). The FAA Act requires that labels of alcohol beverages provide "adequate information" on the identity, quality, and alcohol content of regulated products.⁵ Adequate information regarding alcohol content must at least be sufficient for consumers to follow the *Dietary Guidelines'* advice on moderate drinking.

The Alcohol Facts panel that CFA is proposing would include complete alcohol content information. It would enable the consumer to determine the number of drinks per serving and per container, as well as the absolute amount of alcohol per serving and per container. Use of an icon (e.g., a wine glass) in the Alcohol Facts panel, as proposed in

⁴ The *Dietary Guidelines* published by USDA and HHS state: "Twelve fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits count as one drink...." *Id.* The Centers for Disease Control and Prevention (CDC) uses the same definition. See CDC, Questions and Answers on Alcohol Consumption, available at <http://www.cdc.gov/alcohol/faqs/htm>.

⁵ 21 U.S.C. § 205(e)(2). An FAA Act provision prohibiting alcohol content information on labels of malt beverages was struck down as unconstitutional by the Supreme Court ten years ago. *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

the petition submitted by NCL and CSPI, the information would be more likely to be noticed and read by consumers.

- **Calorie information would advance the public health goal of reducing overweight and obesity.**

Alcohol is a significant source of calories. As a recent FDA report makes clear, there is a growing recognition that counting calories and balancing energy consumed against energy expended is the key to maintaining a healthy weight.⁶ FDA has initiated a rulemaking that would increase the prominence of the calorie declaration in the Nutrition Facts panel on FDA-regulated foods. Meanwhile, TTB does not require any calorie information on the labels of most alcohol beverages. At a time when the United States faces a rising obesity epidemic, this makes no sense.

CFA also believes that calorie information is arguably required by the FAA Act, which calls for "adequate information" about product quality. Calorie content is an aspect of product quality that, if known, would undoubtedly affect the purchasing decisions of many consumers. Without calorie information, we do not see how it can be said that alcohol beverage labels provide "adequate information" about quality.

The Alcohol Facts panel we are proposing would include the number of calories per serving. This information would make it possible for consumers to estimate the number of calories they are consuming and, with this information, follow the *Dietary Guidelines'* advice on maintaining their weight within a healthy range.⁸

2. Labels of all alcoholic beverages should be required to list ingredients and identify any major food allergens present in the product.

In addition to the Alcohol Facts panel, all alcohol beverages should be required to list ingredients by their common or usual names and to identify any major food allergens (i.e., milk, eggs, peanuts, tree nuts, wheat, soybeans, fish, and crustacean shellfish) present in the product. Consumers have a right to know the ingredients used to make any product that is to be ingested.⁹ Identification of major food allergens is necessary to ensure that consumers with food allergies have the information they need to avoid those

⁶FDA, "Calories Count," Report of the Obesity Working Group, March 12, 2004 (available at <http://www.cfsan.fda.gov/dms/owg-toc.html>).

70 Fed. Reg. 17,008 (April 4, 2005).

⁸U.S. Department of Agriculture (USDA) and Department of Health and Human Services (HHS), *Dietary Guidelines for Americans* 2005, 6th edition, p. 14.

⁹Some consumers may have a sensitivity to a particular ingredient (i.e., an adverse reaction that is not an allergic reaction).

CFA does not believe the Serving Facts panel outlined in TTB's specifications has any potential to mislead consumers. The information in the Serving Facts panel (i.e., serving size; servings per container; and calories, alcohol, fat, carbohydrates, and protein per serving) is simple and straightforward factual information. We can see no reason why TTB should not permit its voluntary use now.

CFA urges TTB to issue an interim policy permitting voluntary use of Serving Facts, or of some other interim labeling scheme that includes alcohol content, calorie, and allergen information. We note that TTB has issued an interim policy permitting voluntary use of carb claims pursuant to Ruling 2004-1 pending completion of this rulemaking. We see no reason why TTB should not do the same for alcohol, calorie, and allergen information, which are far more important to the health and safety of American consumers.

Conclusion

CFA urges TTB to require an Alcohol Facts panel with information on serving size, alcohol content, calories, the definition of a standard drink, and the *Dietary Guidelines'* advice on moderate alcohol consumption on labels of all beverage alcohol products. An ingredients declaration and allergen information should also be required. Pending issuance of a final rule, TTB should permit voluntary use of the Serving Facts panel previously proposed by TTB, or some variation of that panel that includes alcohol, calorie, and allergen information.

We appreciate TTB's consideration of these comments.

Sincerely,

~VV~

Carol Tucker Foreman
Director, Food Policy Institute