



Consumer Federation of America

March 29, 2024

Mary G. Ryan
Administrator
Alcohol and Tobacco Tax and Trade Bureau (TTB)
U.S. Department of Treasury

RE: Notice No. 232: Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages with Alcohol Content, Nutritional Information, Major Food Allergens, and Ingredients

VIA ONLINE SUBMISSION

Dear Administrator Ryan:

Consumer Federation of America writes to urge you to put an end to decades of delay and to give consumers basic labeling information on alcoholic beverage labels that they have come to expect when buying all other beverages and food. For over 20 years, CFA and other consumer and public health groups have asked for these commonsense labeling requirements. In November 2022, in response to a lawsuit we filed with the Center for Science in the Public Interest and National Consumers League, Amy Greenberg, Director of TTB's Regulations and Rulings Division, wrote to us to say that "TTB plans to issue proposed rules on mandatory nutrient and alcohol content labeling and mandatory allergen labeling, as well as an ANPRM on mandatory ingredient labeling" by the end of 2023. Yet when the end of 2023 had come and gone, TTB still had not proposed any rules or even issued an Advanced Notice of Proposed Rulemaking. Instead, the agency announced that it would hold these public meetings, and indefinitely postpone its planned rulemakings. As we said in our letter with co-plaintiffs to Treasury Secretary Yellen, TTB should commit to publish the three proposed rules this calendar year.¹

U.S. consumers need access to accurate information on alcohol labeling more than ever today. According to the most recent sales data, "per capita consumption" of alcohol increased 5.5% from 2019 to 2021, "the largest two-year increase since 1969."² During the same time period, estimates of alcohol-related deaths skyrocketed, with a 25.5% spike during the first year of the

¹ Letter Consumer Interest groups to Treasury Secretary Janet Yellen RE: the accelerated publication of promised alcohol labelling rules (February 27, 2024). Available at <https://www.cspinet.org/sites/default/files/2024-02/Letter%20to%20Treasury%20Secretary%20Janet%20Yellen%20-%2002.26.2024.pdf>

² National Institute on Alcohol Abuse and Alcoholism. Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1977-2021. Bethesda, MD: US Department of Health and Human Services, Public Health Service, National Institutes of Health. <https://pubs.niaaa.nih.gov/publications/surveillance120/surveillance-report120.pdf> (2023).

pandemic followed by a 9.9% increase in deaths during 2021.³ Self-reported alcohol consumption and risky drinking patterns increased in particular among women, Black consumers, and consumers with minor children in the home.⁴ According to the CDC, alcohol-related harms, such as increased deaths from chronic liver disease and cirrhosis, have contributed significantly to the unprecedented decline in life expectancy in the United States over two consecutive years.⁵

Better labeling will not eliminate all alcohol-related harms, but the available evidence indicates that it would help reduce those harms. For instance, researchers have documented that consumers take notice of calorie counts for alcohol on restaurant menus,⁶ and that enactment of state laws requiring menu calorie labeling for alcohol were correlated with a small but significant decline in reported alcohol consumption.⁷ Similarly, researchers have found that labels with information about the number of standard drinks per container and low risk drinking guidelines help consumers to more accurately estimate their alcohol consumption than percentage alcohol by volume (%ABV) alone.⁸ Even consumers that do not pay attention to alcohol labels may still benefit from a broader population shift towards more conscientious consumption. Across the world, research shows that declines in the overall level of alcohol consumption—the average per capita consumption—coincide with reduced alcohol-related harms.⁹

Since Congress passed the Nutrition Labeling Education Act (NLEA) in 1990, TTB has presided over an era of what might be called “alcohol labeling exceptionalism.” There is no good reason that the labels of TTB regulated products do not disclose calories, macronutrients, ingredients, and allergens contained within. Consumers know there is no good reason because many alcoholic beverages sold in the U.S., by virtue of a legal technicality, have been required by the U.S. Food and Drug Administration to display this information for over a decade. The labels on these FDA regulated alcoholic beverage products demonstrate the feasibility of applying the NLEA rules

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) [Internet]. National Center for Health Statistics Mortality Data on CDC WONDER. Multiple cause of death, 2018–2021. 2023. Available from: <https://wonder.cdc.gov/controller/saved/D157/D324F825>.

⁴ Barbosa, Carolina PhD; Dowd, William N. BA; Barnosky, Alan MA; Karriker-Jaffe, Katherine J. PhD. Alcohol Consumption During the First Year of the COVID-19 Pandemic in the United States: Results From a Nationally Representative Longitudinal Survey. *Journal of Addiction Medicine* 17(1):p e11-e17, 1/2 2023. | DOI: 10.1097/ADM.0000000000001018

⁵ Press release, Centers for Disease Control & Prevention. “Life Expectancy in the U.S. Dropped for the Second Year in a Row in 2021,” (Aug. 31, 2022), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220831.htm

⁶ Hobin, E., Weerasinghe, A., Schoer, N. *et al.* Efficacy of calorie labelling for alcoholic and non-alcoholic beverages on restaurant menus on noticing information, calorie knowledge, and perceived and actual influence on hypothetical beverage orders: a randomized trial. *Can J Public Health* 113, 363–373 (2022). <https://doi.org/10.17269/s41997-021-00599-0>

⁷ Restrepo, B. J., & Ali, M. M. (2017). Restaurant menu labeling laws and alcohol use. *Preventive Medicine*, 102, 65–71. <https://doi.org/10.1016/j.ypmed.2017.06.031>

⁸ Edmunds, C.E.R., Gold, N., Burton, R. *et al.* The effectiveness of alcohol label information for increasing knowledge and awareness: a rapid evidence review. *BMC Public Health* 23, 1458 (2023). <https://doi.org/10.1186/s12889-023-16327-x>. Current TTB regulations do not even require %ABV on some products, such as “table wine,” which can contain anywhere from 7% to 14% alcohol. See <https://www.ttb.gov/labeling-wine/wine-labeling-alcohol-content>. This lack of transparency does a great disservice to consumers.

⁹ Rossow I, Mäkelä P. Public Health Thinking Around Alcohol-Related Harm: Why Does Per Capita Consumption Matter? *J Stud Alcohol Drugs*. 2021 Jan;82(1):9-17. PMID: 33573718.

to alcohol. TTB does not need to reinvent the wheel to extend these requirements to the products under its jurisdiction, but rather simply follow FDA's lead.

During the public meetings, many industry representatives suggested that TTB should not require labels to present additional information directly, but rather through a QR ("quick response") code that consumers could scan with a smart phone in order to view required information on a website. Several factors militate against the use of QR codes to inform consumers. Many consumers do not have access to a smart phone, or to the internet, as they shop for alcoholic beverages. Many more consumers simply do not wish to take the time to scan a QR code and wait for a website to load in order to access information about a product. As one recent review of consumer behavior experiments sums up, "the spontaneous use of QR codes by consumers is very low."¹⁰ This resistance to using QR codes explains why retailers continue to post prices by conventional means, rather than obliging consumers to look them up online. In addition to being more accessible initially, printed information on a physical label has a greater likelihood of being noticed by the consumer because it is available for review as long as the product is in their possession.

Many industry representatives at the public meeting voiced concerns that labeling requirements would place an undue burden on smaller producers, but relegating standard labeling information to websites accessed through QR codes would put an undue burden on consumers. TTB should explore other strategies to reduce the regulatory compliance costs for smaller producers, including exemptions. As one commenter pointed out, FDA exempts some small producers from nutrition labeling requirements based on overall volume and gross sales revenue.¹¹ A similar carve-out for the smaller alcohol producers regulated by TTB could potentially strike a balance between informing consumers and fostering a vibrant, competitive alcoholic beverage market. Although "craft" beers, wines, spirits are growing in popularity, the vast majority of U.S. alcohol consumption still comes from large producers.¹² Even within the "craft" category, a few large firms tend to supply most of the volume.¹³ Consequently, if TTB were to apply the FDA exemptions from nutrition labeling for "low-volume products" where "the person claiming the exemption employs fewer than an average of 100 full-time equivalent employees and fewer than 100,000 units of that product are sold in the United States in a 12-month period," the impact on consumers would be relatively modest.

Some commenters during the public meeting suggested that TTB should no longer require preapproval of labels. Recent experience with FDA regulated alcoholic beverages, however, suggests that such a reform would subject consumers to deceptive, misleading claims. Molson Coors, for example, persisted in making vitamin fortification claims on its hard seltzer product Vizzy despite clear regulatory language prohibiting that practice. Competitors brought the claims to FDA

¹⁰ https://publications.jrc.ec.europa.eu/repository/bitstream/JRC128410/JRC128410_01.pdf; *see also* <https://onlinelibrary.wiley.com/doi/full/10.1111/dar.13676> (finding that less than 1 in 1000 consumers scanned a QR code placed on point-of-sale signs in a supermarket in Barcelona, Catalonia over a 1-week period).

¹¹ Center for Food Safety and Applied Nutrition (2022). Small Business Nutrition Labeling Exemption. *FDA*. <https://www.fda.gov/food/labeling-nutrition-guidance-documents-regulatory-information/small-business-nutrition-labeling-exemption>

¹² Johnson, R., & Lowry, S. (2021). Craft Alcoholic Beverage Industry: Overview and Regulation. *Congressional Research Service*. <https://crsreports.congress.gov/product/pdf/IF/IF10973/5>

¹³ *See, e.g.* <https://vinepair.com/booze-news/small-craft-distillery-growth-market-share-2024/>

regulators' attention, but while records in response to Freedom of Information Act requests show that FDA staff recognized the apparent legal violation in their initial correspondence, the agency leadership eventually found a reason to look the other way. Not until years later, when a federal court ruled against Molson Coors in connection with a class action lawsuit, did the corporation remove the claims from its hard seltzer.

While unacceptable, FDA's reluctance to enforce its rules is understandable. Compared to denying a request for label approval, bringing an enforcement action requires more time and resources, and TTB's standards regarding deceptive and misleading labeling claims would likely slip as well without preapproval. Even with vigorous enforcement, companies would be more likely to test the boundaries and present consumers with confusing claims—e.g. liver friendly vodka¹⁴—until TTB took action to address non-compliance.¹⁵

Finally, in addition to the labeling rules subject to this public meeting and announcement, TTB also has the responsibility for determining when and how the health warning statement on alcoholic beverages should be updated. That statement has never been updated since the Alcoholic Beverage Labeling Act (ABLA) of 1988 was first implemented. The ABLA provides that:

“If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following November 18, 1988, the Secretary finds that available scientific information would justify a change in, addition to, or deletion of the [health warning statement], the Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this subchapter as the Secretary determines to be appropriate and in the public interest. 27 U.S.C.A. § 217.”

CFA and other advocates petitioned TTB in 2020 to act under this provision and report to Congress on the need for an updated health warning statement, with messages rotated, similar to requirements for tobacco products, and with a new warning about the link between cancer and alcohol.¹⁶ TTB has not responded to our petition or given any indication of what the agency might consider an “appropriate investigation and consultation with the Surgeon General.” The agency should undertake that investigation and consultation now and report to Congress on the need for an update by the end of this year.

Thank you for your consideration of these comments.

Sincerely,

¹⁴ Letter from Amy R. Greenberg from TTB to Jonathan W. Emord, Esq. RE: Petition from Bellion Spirits, LLC regarding proposed health-related statements concerning the hepatoprotective and DNA-protective effects of NTX® (May 3, 2017) Accessed at: <https://www.ttb.gov/images/pdfs/2017-05-03-response-ntx-health-claim-petition.pdf>

¹⁵ See Thomas Gremillion. “Federal Court Victory Underscores Need for FDA to Enforce the Law on Alcohol Labeling.” Jan. 27, 2022. <https://consumerfed.org/federal-court-victory-underscores-need-for-fda-to-enforce-the-law-on-alcohol-labeling/>

¹⁶ Petition for a Report to Congress Supporting a Label on Alcoholic Beverages Warning the Public that Consumption Can Cause Cancer, Including Breast and Colon Cancers from Health and Consumer Groups (October 21, 2020) Accessed at: <https://consumerfed.org/testimonial/consumer-public-health-groups-petition-for-cancer-warning-on-alcohol/>

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