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Part III

Department of the Treasury

**Alcohol and Tobacco Tax and Trade
Bureau**

**27 CFR Parts 4, 5, 7, and 24
Labeling and Advertising of Wines,
Distilled Spirits and Malt Beverages;
Proposed Rule**

DEPARTMENT OF THE TREASURY**Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 4, 5, 7, and 24**

[Notice No. 73; Ref: Notice No. 41]

RIN 1513-AB07

Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations to require a statement of alcohol content, expressed as a percentage of alcohol by volume, on all alcohol beverage products. This statement may appear on any label affixed to the container. TTB also proposes to require a Serving Facts panel on alcohol beverage labels, which would include a statement of calories, carbohydrates, fat, and protein. Industry members may also choose to disclose on the Serving Facts panel the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume. The proposed regulations would also specify new reference serving sizes for wine, distilled spirits, and malt beverages based on the amount of beverage customarily consumed as a single serving. However, TTB is not defining a standard drink in this document. TTB proposes to make these new requirements mandatory three years after the date of publication of the final rule in the **Federal Register**. The agency proposes these amendments to ensure that alcohol beverage labels provide consumers with adequate information about the product.

DATES: Comments must be received on or before October 29, 2007.**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (Federal e-rulemaking portal; follow the instructions for submitting comments); or

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at <http://www.regulations.gov>. A direct link to the appropriate Regulations.gov docket is also available on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml. In addition, you also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, telephone (202) 927-2400.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morgantown, MD 20660; telephone (301) 290-1460; or Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333-7050.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) and its predecessor agencies have considered the issue of requiring calorie and nutrient information on alcohol beverage labels in the past. As a result of a rulemaking initiative in 1993, TTB's immediate predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), concluded that, at that time, there was no significant consumer interest in having nutrition information on alcohol beverage labels. Ultimately, ATF did not implement rules on this issue. For a detailed description of the rulemaking history concerning nutrition labeling on alcohol beverages see TTB Notice No. 41, 70 FR 22274 (April 29, 2005).

The issue of requiring the labeling of alcohol beverage products with calorie and nutrient information was not raised again until 2003, when TTB received a


petition requesting rulemaking action to require an "Alcohol Facts" panel and ingredient labeling. Shortly thereafter, TTB was contacted by an industry member requesting approval to label its products with nutrition and other information on a "Serving Facts" panel. These panels, as well as TTB's authority to regulate alcohol beverage labels and advertisements, are discussed in detail below.

II. Petition for "Alcohol Facts" Label and Ingredient Labeling

On December 16, 2003, the Center for Science in the Public Interest (CSPI), the National Consumers League (NCL), 67 other organizations, and eight individuals, including four deans of schools of public health, petitioned TTB to change the alcohol beverage labeling regulations. Hereinafter, we refer to this petition as "the petition." After receipt of the petition, additional individuals wrote to TTB requesting the addition of their names to the petition. The petition asked TTB to require that labels of all alcohol beverages regulated by TTB include the following information in a standardized format:

- The beverage's alcohol content expressed as a percentage of volume;
- A standard serving size;
- The amount of alcohol (in fluid ounces) contained within each standard serving;
- The number of calories per standard serving;
- The ingredients (including additives) from which the beverage is made;
- The number of standard drinks per container; and
- The current definitions of moderate drinking for men and women published in the "Dietary Guidelines for Americans," which is issued jointly by the United States Department of Health and Human Services and the United States Department of Agriculture (USDA).

The petitioners proposed that all alcohol beverage containers bear this information on an "Alcohol Facts" panel. The petitioners provided the following example for a 750 milliliter bottle of wine:

| Alcohol Facts | |
|---|--|
|  Contains 5 Servings | Calories per Serving: 98 Alcohol by Volume: 13% Alcohol per serving: 0.5 oz |
| | Serving Size: 5 fl oz |
| U.S. Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one drink per day for women. | |

Ingredients: Grapes, yeast, sulfiting agents, and sorbates.

The petition asked that the words “Alcohol Facts” be immediately followed by a declaration of the number of standard drinks (servings) per container. The petitioners asked that, consistent with the “Dietary Guidelines for Americans,” (<http://www.health.gov/DietaryGuidelines>) a serving should be defined as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. The petitioners further recommended that for alcohol beverages not fitting into one of those standard categories, a serving should be defined as an amount of fluid containing approximately 0.5 ounces of ethyl alcohol. The petitioners recommended that a consistent graphic symbol (for example, a beer mug, wine glass, or shot glass) should appear first, followed by the number of drinks in the container (for example, “Contains 5 Servings”). The petition proposed requiring this information on labels of all malt beverages, wines, and distilled spirits products regulated by TTB that contain more than one-half of one percent alcohol by volume. The graphics and type size for the Alcohol Facts label should follow the Nutrition Labeling Education Act standards as set out in the Food and Drug Administration (FDA) regulations at 21 CFR 101.9(d), the petitioners suggested. Further, the petitioners stated that ingredient information should appear on the label immediately below, but segregated from, the “Alcohol Facts” box.

The petitioners suggested that current regulatory requirements force

consumers to guess about the calorie content of alcohol beverages and the alcohol content of malt beverages. The petitioners included a summary of the results of a census-balanced, nationally representative telephone study conducted in September of 2003, among 600 Americans, ages 18 and older. The study was conducted by the Global Strategy Group, an independent polling and marketing research firm. The results were that 91 percent of respondents supported requiring ingredient labeling on alcohol beverages; 94 percent supported requiring alcohol content on alcohol beverage labels; 89 percent supported the mandatory labeling of calorie content for alcohol beverages; and 84 percent supported the labeling of serving size information.

III. Requests for Voluntary Serving Facts Labeling

Following receipt of the petition, TTB was contacted by an alcohol beverage industry member that wished to label its products with nutrient and other information on a “Serving Facts” panel. Subsequently, TTB received other requests from industry members to label products with similar information.

In July and then again in September of 2004, TTB posted on its Web site, <http://www.ttb.gov>, a summary of specifications for a planned ruling concerning the manner in which alcohol beverage labels and advertisements might permissibly reflect information about a single serving in a Serving Facts panel, consistent with the statutory and

regulatory standards administered by TTB. The Bureau sought input from interested parties, including the alcohol beverage industry, consumers, and consumer interest groups, about what information should be permitted on such a panel and in what format the Serving Facts panel should appear.

In the first posting, TTB solicited comments on a variety of options. The Bureau informally asked for comments on an optional Serving Facts panel that would include the serving size in fluid ounces based on what was previously specified in TTB Ruling 2004–1 (1.5 fluid ounces for distilled spirits, 5 fluid ounces for wines, and 12 fluid ounces for malt beverages, regardless of alcohol content). The panel would also include the number of servings per container, and for each serving the following information:

- Fluid ounces of ethyl alcohol (to the nearest tenth of an ounce);
- Calories;
- Fat (in grams);
- Carbohydrates (in grams); and
- Protein (in grams).

The Bureau also informally solicited comments on whether the term “standard drink” should be defined and whether it and the number of standard drinks in a serving should be permitted on alcohol beverage labels and in advertisements. Finally, we solicited comments on the optional use of three icons similar to the ones at the bottom of the label presented below:

Malt Beverage (5% ABV)

| Serving Facts | |
|---|-------|
| Serving Size 12 fl oz | |
| Servings Per Container 1 | |
| Amount Per Serving | |
| Calories | 150 |
| Fat | 0g |
| Carbohydrates | 13.2g |
| Protein | 1.1g |
| Alcohol | .6 oz |
| A standard drink contains 0.6 fl oz of alcohol. A serving of this beverage is 1 standard drink. | |
| | |

In the second posting on our Web site, TTB informally solicited comments on

an alternative label approach that omitted the icons and standard drink

references. An example of this approach is as follows:

Malt Beverage (4 % ABV)

| Serving Facts | |
|---------------------------|-----------|
| Serving Size 12 fl oz | |
| Servings Per Container 1 | |
| Amount Per Serving | |
| Calories | 90 |
| Alcohol | 0.5 fl oz |
| Fat | 0g |
| Carbohydrates | 2.2g |
| Protein | 0.8g |

As a result of the two Web postings, TTB received several comments concerning a voluntary Serving Facts panel. The comments reflected strong and varying opinions. A significant proportion of those who commented felt that the issue should be addressed in public notice and comment rulemaking rather than in a TTB ruling. Furthermore, many commenters believed that certain elements of the Serving Facts panel would tend to confuse or mislead consumers about the product. In response to the issues raised by the commenters, on December 28,

2004, TTB issued a press release indicating that we would address these issues in an advance notice of proposed rulemaking.

IV. Notice No. 41

On April 29, 2005, TTB published in the **Federal Register** (70 FR 22274) Notice No. 41, an advance notice of proposed rulemaking entitled "Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages; Request for Public Comment." Notice No. 41 sought public comment on a wide range of alcohol beverage labeling and advertising issues to help the agency

determine what regulatory changes in alcohol beverage labeling and advertising requirements, if any, TTB should propose in future rulemaking documents. Specifically, TTB sought comments on the petitioned "Alcohol Facts" panel and ingredient labeling, the "Serving Facts" panel presented in TTB's informal request for comments, and each panel's elements. Additionally, TTB requested comments on allergen labeling and the labeling of calorie and carbohydrate claims.

In the preamble to Notice No. 41, TTB announced its interim policy on the use

of Serving Facts panels on labels, as follows:

Pending the completion of rulemaking proceedings, TTB does not intend to issue certificates of label approval bearing the optional "Serving Facts" panel. We believe it is important to have the benefit of public comments on these issues before making a decision as to whether the new elements in the panel might tend to mislead consumers.

During the 60-day comment period, we received several requests from alcohol beverage industry representatives and organizations to extend the comment period for an additional 60 to 90 days beyond the original June 28, 2005, closing date. In support of the extension requests, industry members noted that some of the questions posed in the notice were broad and far reaching from a policy standpoint, while others were very technical, requiring research and coordination within the affected industries. In response to those requests, we extended the comment period for an additional 90 days. See Notice No. 48, 70 FR 36359, June 23, 2005. The extended comment period for the ANRPM closed on September 26, 2005.

V. TTB's Authority To Prescribe Alcohol Beverage Labeling and Advertising Regulations

A. Internal Revenue Code

The Internal Revenue Code of 1986 (IRC) provides the Secretary with authority to issue regulations regarding the marking and labeling of containers of distilled spirits, wines, and beers. See 26 U.S.C. 5301, 5368, and 5412. This authority is based on the Secretary's responsibility to protect the revenue and to collect the taxes imposed on alcohol beverages by Chapter 51 of the IRC.

B. Federal Alcohol Administration Act

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e) and 205(f), set forth standards for regulation of the labeling and advertising of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages, generally referred to as alcohol beverage products throughout this notice. These sections give the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with "adequate information" as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product.

The statutory requirements with respect to alcohol content differ among

the three alcohol beverage categories. The FAA Act requires alcohol content statements on labels of distilled spirits products. The Act also requires alcohol content statements for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content below that level. The Act, when originally enacted, prohibited such statements on malt beverage labels, unless required by State law, but that prohibition was overturned in 1995 by the U.S. Supreme Court in *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995).

The labeling and advertising provisions of the FAA Act also give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. In the case of malt beverages, the labeling and advertising provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. TTB is responsible for the administration of the FAA Act and the regulations promulgated under it.

C. Legislative History of the Federal Alcohol Administration Act

With respect to TTB's authority to regulate the labeling of alcohol beverage products under the FAA Act, the Act's legislative history provides some insight as to the general purpose of the labeling provisions:

* * * the provisions of this bill show that the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary. The purpose was to provide such regulations, not laid down in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary.

Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straight-forward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle.

See Hearings on H.R. 8539 before the Committee on Ways and Means, House of Representatives, 74th Cong., 1st Sess. 10 (1935).

VI. Discussion of Comments on Notice No. 41

In response to Notice No. 41, TTB received over 19,000 comments from consumers, consumer advocacy groups, Government officials, alcohol beverage industry members and associations, health organizations, and other concerned individuals.

A. Comments Regarding Alcohol Content

In Notice No. 41, TTB requested comments on the issue of whether the regulations should be amended to require an alcohol content statement on all alcohol beverage labels. There was significant disagreement as to whether the listing of alcohol content should be mandatory.

Many professional health organizations (including, among others, the American Society of Addiction Medicine, the American Medical Association (AMA), the American Nurses Association, and the American Council on Science and Health) as well as the Distilled Spirits Council of the United States (DISCUS), CSPI, NCL, and many consumers and other commenters supported mandatory alcohol content labeling for all alcohol beverage products. CSPI commented:

Requiring *all* alcoholic beverages, whether beer, wine, distilled spirits, malternatives, or others, to be labeled for alcohol content is essential. Alcohol can be harmful when consumed in excess and even addictive for a substantial number of consumers. For that reason, labeling should provide clear information that allows consumers to measure and moderate their drinking. [Emphasis in the original.]

As previously stated above, the original petition from CSPI, NCL, and others, noted that a consumer survey indicated that 94 percent of respondents supported mandatory alcohol content labeling on alcohol beverages, with 77 percent of consumers strongly supporting such a requirement. The petitioners argued that "the growing popularity of new, non-standard types of alcoholic beverages (e.g., lite beers, ice beers, malt liquors, hard lemonades, hard colas, wine coolers, other ready to drink 'alcopops,' fortified wines, and 'zippers [ready-to-drink liquor shots],' makes it even more difficult for consumers to accurately estimate their alcohol consumption."

Some commenters suggested that mandatory alcohol content labeling is especially important given the problems caused by alcohol abuse. The Marin Institute suggested that "clear, consistent and informative labeling—particularly with respect to alcohol content and serving size—will help

consumers avoid some of these problems by reducing over consumption." The NCL also suggested that "better information about alcohol content per serving is especially important and should be given the highest priority because of the many public health problems caused by excessive consumption of alcohol."

The Consumer Federation of America (CFA), a nonprofit association of 300 local, state and national consumer interest groups representing more than 50 million Americans, stated:

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.

The CFA further stated that such alcohol content is arguably required by the FAA Act, noting that it requires labels of alcohol beverages to provide "adequate information" on the identity, quality, and alcohol content of regulated products. The CFA also noted that the FAA Act provision prohibiting alcohol content information on labels of malt beverages was struck down as unconstitutional by the U.S. Supreme Court in *Rubin v. Coors Brewing Company* over ten years ago.

DISCUS noted that both large and small distillers have had a mandatory alcohol content labeling requirement for the past seventy years, and suggested that all alcohol beverage products should be required to bear alcohol content information, as this information is used by consumers to drink responsibly.

Other commenters, most notably members of the beer industry, objected to the extension of mandatory alcohol content labeling requirements to all malt beverages. The Beer Institute, a national trade association that represents domestic and international brewers, stated:

The alcohol content of most beer is in a very narrow range, and consumers are generally aware of that fact. A weighted average of the alcohol content of the top 20 brands of domestic and imported beer based on 2004 sales data is 4.5 percent alcohol by volume. These brands account for 78.1 percent of the beer volume sold in the United States in 2004. Flavored malt beverage brands, none of which is in the top 20 brands, are required to display alcohol content by volume.

The Brewers Association, an organization representing approximately 1,400 small brewers and thousands of homebrewers and beer enthusiasts, commented in support of optional alcohol content statements on beer labels, but suggested that imposing mandatory alcohol content labeling requirements for malt beverages "would stand congressional intent on its head and impose unnecessary costs on the industry." The comment noted that the FAA Act, as enacted, prohibited brewers from stating alcohol content on labels unless required by State law, and suggested that while the Supreme Court had overturned, on First Amendment grounds, the ban on the use of voluntary alcohol content statements, Congress had never distanced itself from its original intent on this matter. The Brewers Association thus stated that "[w]hile TTB has, out of necessity, adjusted its alcohol content labeling rules to accommodate the demands of the First Amendment, it should not go further by imposing a rule that would *require* the very information that Congress saw fit to *prohibit*." [Emphasis in the original.]

The Serving Facts and Alcohol Facts panels presented in Notice No. 41 included alcohol content. Both panels expressed alcohol in U.S. fluid ounces of pure alcohol, and the Alcohol Facts panel also expressed alcohol content in percentage of alcohol by volume. Commenters disagreed on how to express alcohol content on an information panel. Diageo and many other commenters supported the listing of alcohol content in U.S. fluid ounces per serving, asserting that this information could be used by consumers to regulate their alcohol intake and follow the Dietary Guidelines advice on moderate drinking. It should be noted that the 2005 Dietary Guidelines provide that for purposes of explaining moderation, 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits count as one drink; thus, the implication is that a "drink" would be equal to about 0.6 fluid ounces of pure alcohol. Some commenters further asserted that a consumer would not as easily be able to determine how many "drinks" he or she is consuming if alcohol content were only expressed as a percentage of alcohol by volume.

The National Consumers League suggested that "the alcohol content of a beverage is a function of both serving size and percent alcohol by volume. Providing the amount of alcohol per serving would express alcohol content in a single number and thereby enable consumers to make comparisons

between different products based on their alcohol content."

The staff of the United States Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission (hereinafter collectively referred to as the FTC staff) supported disclosure of alcohol content in ounces of pure alcohol, stating:

The amount of alcohol in beverages varies widely. Many popular beverages—12 ounces of regular beer containing 5% alcohol by volume ("ABV"), 5 ounces of wine containing 12% ABV or 1.5 ounces of 80 proof distilled spirits—deliver 0.6 ounces of pure alcohol. Numerous other popular beverages, however, contain more or less alcohol. Beers in the marketplace range from approximately 3.3% to 17% ABV, thus delivering between 0.39 and 2 ounces of pure alcohol per serving. Wines range from 6% to 18% ABV, i.e., providing between 0.3 and 0.9 ounces of alcohol in a 5-ounce serving. Distilled spirits range from 15% to 75% ABV, i.e., providing 0.22 to 1.1 ounces of alcohol per serving. [Footnotes omitted.]

The FTC staff suggested that information about alcohol on labels may help consumers make better-informed decisions, stating that "research shows that in many instances, consumer decisions are made at the point of purchase." [Footnote omitted.]

CSPI, which originally proposed the listing of alcohol content on labels as both a percentage of alcohol by volume and in U.S. fluid ounces of pure alcohol, submitted a comment reflecting a change in this position. CSPI explained that it no longer favored the labeling of alcohol in U.S. fluid ounces of pure alcohol, stating that "[a]lthough a single drink of an alcoholic beverage may contain approximately 0.6 ounces of alcohol, CSPI believes that it is unnecessary—and perhaps confusing—to put such information on a label." CSPI further stated that "[c]onsumers do not think in those terms, but rather understand that drinks are served generally in standard, common sizes that vary according to the product."

Also voicing its opposition to the ounces of pure alcohol approach, a major brewer stated that when alcohol content is listed in fluid ounces per serving, the number of fluid ounces will rise and fall according to the serving size and, more importantly, will rise and fall according to the amount the consumer actually consumes. The brewer and many other commenters stated that depicting alcohol content in this manner may mislead consumers. The brewer suggested that alcohol content when expressed as a percentage of alcohol by volume is succinct, clear, accurate, neutral, easy to understand, and easy to compare. It also stated that

the percentage of alcohol by volume requires no explanation, definition, or graphic icon, but is a consistent measure that does not vary or fluctuate with the size of the drink.

The Beer Institute opposed expressing alcohol content in fluid ounces for the following reasons:

As compared to labeling beverages in terms of their alcohol concentration, or percent alcohol by volume, labeling beverages in ounces of absolute alcohol is misleading because beverage categories, types, and packages vary in alcohol potency. To achieve the informational goals of TTB and various petitioners, a consumer must compare disparate serving sizes for each product, number of servings in a container, and amount of pure alcohol contained in the stated serving size. Furthermore, the use of a standard serving size is not consistent with the manner in which many alcohol beverages are actually consumed. [Emphasis in original.]

Several commenters further asserted that the display of a percentage of alcohol by volume remains the best means of indicating alcohol content on a product label or in advertising. Some commenters noted that the higher the percentage, the stronger the alcohol and its effect.

Several other commenters stated that displaying alcohol content in U.S. fluid ounces per serving is unnecessary, misleading, and potentially harmful to the consumer. Other commenters contended that such labeling may be in violation of State law and regulations, as most states require alcohol content to be listed as a percentage of alcohol by volume.

Several public health organizations suggested other methods of depicting alcohol content. These include content expressed as a percentage of alcohol by weight, and alcohol expressed in grams.

TTB Response

TTB believes that the alcohol content of a beverage is one of the most important pieces of information about that product. We agree with those commenters who stated that labels should provide the consumers with this very basic information. We also believe that consumers use information about alcohol content to measure and moderate their drinking.

As previously noted, the provisions of the FAA Act regarding the labeling of alcohol content differ by commodity. Accordingly, the current regulations that implement the labeling provisions of the FAA Act also differ by commodity. Alcohol content statements are already required for all distilled spirits products. See 27 CFR 5.32(a)(3), 5.37 and 19.643(b). Wines containing more than 14 percent alcohol by volume

must also bear alcohol content statements; however, under current regulations wines with an alcohol content of at least 7 percent but no more than 14 percent by volume may be labeled with the designation "table wine" or "light wine" in lieu of a percent alcohol by volume statement. See 27 CFR 4.36(a). Finally, with the exception of certain flavored malt beverages that derive alcohol from added ingredients (see 27 CFR 7.22(a)(5)), malt beverages are not required to bear an alcohol content statement under current regulations.

In previous documents published in the **Federal Register**, TTB and its predecessor agency, ATF, have indicated an intention to examine the issue of requiring alcohol content on malt beverage labels. In 1993, after the United States District Court for the District of Colorado first struck down the ban on alcohol content on malt beverage labels as unconstitutional, and before the case went to the Supreme Court, which also held that the ban violated the First Amendment, ATF issued an interim rule allowing optional alcohol content labeling for malt beverages. See T.D. ATF-339, 58 FR 21228 (April 19, 1993). In the preamble to that final rule, ATF stated that it believed that "if a future court action ultimately does not uphold the existing statute prohibiting statements of alcoholic content, or if future legislative action removes the current statutory prohibition, then ATF would consider making the statement of alcoholic content mandatory on labels of malt beverages." See 58 FR 21229. Similarly, in 2005, in the preamble to the final rule on flavored malt beverages, TTB addressed comments that favored mandatory alcohol content for all malt beverages by stating that while we were "not unsympathetic to the comments suggesting mandatory alcohol content labeling for all malt beverages, we are not in a position to implement such a rule without notice and public comment." See TTB T.D.-21, 70 FR 194, 221 (January 3, 2005).

After reviewing the comments received in response to Notice No. 41, TTB is now proposing to require alcohol content statements on the labels of all alcohol beverage products, including table wines and all malt beverages. As noted by CSPI, alcohol can be harmful when consumed in excess; thus, labeling should provide information that allows consumers to measure and moderate their drinking. We received many comments that made similar points from public health organizations, including the American Society of Addiction Medicine, the AMA, the

American Nurses Association, and the American Council on Science and Health.

We agree with those commenters who suggested that providing consumers with more information about alcohol content may help them make responsible drinking decisions. The Beer Institute commented that the alcohol content of most beer is generally in a narrow range, with a weighted average of the alcohol content of the top 20 brands in 2004 being 4.5 percent alcohol by volume. However, while most beer sold is, in fact, within this narrow range, we are also aware of beers being sold today in the United States with an alcohol content as high as 24 percent alcohol by volume. Unless the brewer chooses to place this information on the label, the consumer has no way of knowing whether the alcohol content of the malt beverage he is purchasing is 4.5 percent alcohol by volume or over 5 times that amount. Consumers should not be forced to resort to guesswork about this important element of the alcohol beverages they consume. While table wines fall by definition within a certain range of alcohol content, those wines at the top of the range (14 percent) have an alcohol content twice as high as those wines at the bottom of the range (7 percent). Again, this is important information to consumers, and it should be presented on the label. We agree with the suggestion by the FTC staff that because of the significant variety in the alcohol content of alcohol beverages, label disclosures about alcohol content may assist consumers in choosing among categories and brands.

The Brewers Association suggested that requiring alcohol content statements on malt beverages would be contrary to the congressional intent expressed when the FAA Act was enacted in 1935. We recognize that the FAA Act, as enacted, specifically prohibited the placement of alcohol content statements on malt beverage labels, unless required by State law. This provision of the law was found to be unconstitutional by the Supreme Court in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995). This action by the Court leaves the Secretary with authority to either allow or require alcohol content statements on malt beverage labels. In fact, as previously noted, we have already issued regulations requiring alcohol content statements on certain flavored malt beverage labels.

We also recognize that the FAA Act does not require alcohol content statements on labels of wines containing 14 percent alcohol by volume or less. Accordingly, as stated above, our

regulations implemented under the FAA Act provide that labels for such products may either express alcohol content as a percentage of alcohol by volume or they may bear the type designation to which they are entitled based on the product's alcohol content (for example, "table wine" or "light wine.") See 27 CFR 4.36.

The implementing regulations under the IRC require alcohol content to be labeled on all wine containers; however, they incorporate by reference the rules under 27 CFR part 4. See 27 CFR 24.257(a)(3). This incorporation of the rules under part 4 results in a somewhat inconsistent effect. The IRC regulations require wines under 7 percent by volume (which are not "wines" under the FAA Act and thus fall under the FDA's labeling jurisdiction) to bear a percent-alcohol-by-volume statement; however, they do not require the same statement on wines with an alcohol content of 7 to 14 percent alcohol by volume. TTB believes that the listing of alcohol content should be consistent for all wines regardless of their alcohol content. Accordingly, we are proposing to amend § 24.257(a)(3) of the TTB regulations to require alcohol content, expressed in terms of percent-alcohol-by-volume, on all wine labels. We believe that this amendment would serve an important revenue purpose, as the alcohol content of a wine is one factor in determining its tax classification. See 26 U.S.C. 5041(b). We also believe that our statutory authority under the FAA Act allows us to issue regulations regarding the placement of the mandatory alcohol content statement.

Accordingly, TTB is proposing that alcohol content, expressed as a percentage of alcohol by volume, must appear on labels for all alcohol beverages subject to our labeling jurisdiction under the FAA Act.

TTB is proposing to allow the mandatory alcohol content statement to appear on any label affixed to the container including, at the option of the industry member, as part of a Serving Facts panel as discussed later in this document. This approach is required in order to conform to a trade agreement among the United States, Australia, Argentina, Canada, Chile, and New Zealand, in which it was agreed that wines may be imported bearing certain common mandatory information (including alcohol content) on any wine label on the container, as long as such information is in a single field of vision. TTB is further proposing to remove §§ 4.32(a)(3), 5.32(a)(3) and 7.22(a)(5), which mandate placement of alcohol content statements for wine, distilled

spirits, and malt beverages on the brand label. Under the proposed regulatory changes, listing alcohol content on a Serving Facts panel or elsewhere on the label would satisfy the labeling requirement.

After careful consideration of the comments, TTB continues to believe that the display of a percentage of alcohol by volume is the best way to express alcohol content on a product label or in advertisements. We believe that consumers are familiar with alcohol content expressed in this manner. By contrast, consumers have little or no familiarity with alcohol expressed in U.S. fluid ounces of pure alcohol. Indeed many commenters, including CSPI, suggested that such statements might confuse consumers.

However, we note that several commenters suggested that presenting alcohol in fluid ounces per serving may provide consumers with useful information. As the NCL noted in its comment, providing this information may enable consumers to more easily make comparisons between different products based on their alcohol content.

TTB does not believe that the disclosure of alcohol in fluid ounces is inherently misleading; however, we agree that consumers are used to seeing alcohol content expressed as a percentage of alcohol by volume and might be confused by a statement of alcohol in fluid ounces, without some context in which to evaluate this information. For these reasons, TTB is not proposing that the panel include a mandatory statement of alcohol in U.S. fluid ounces of pure alcohol per serving. We agree that the number of fluid ounces of alcohol per serving might be confusing in isolation; however, we believe that it would not be confusing if presented together with a traditional alcohol content statement. Furthermore, this information might be useful to consumers, and would allow them to compare the quantity of alcohol contained in single servings of different commodities without doing mathematical calculations.

Accordingly, we are proposing to permit the additional display of a statement of the number of fluid ounces of alcohol per serving, as long as it includes a statement of alcohol content expressed as a percentage of alcohol by volume. The proposed rule further provides that the heading "fl oz of alcohol", if it appears in the Serving Facts panel, must be indented beneath the heading "Alcohol by volume."

As previously noted, the proposed rule would allow the mandatory alcohol content statement to appear on the Serving Facts panel or elsewhere on the

label, or both on the Serving Facts panel and elsewhere; however, if the industry member chooses to list the number of fluid ounces of pure alcohol in the product, the proposed rule provides that such information must appear as part of the Serving Facts panel. As noted in the comments, the percentage of alcohol by volume in a given product does not change based on the serving size; however, the number of ounces of pure alcohol does. Thus, to provide context for the consumer, the ounces of pure alcohol must appear as part of the Serving Facts panel, which also discloses the serving size and the number of servings per container. Because the number of fluid ounces of alcohol per serving must appear together with the alcohol content statement, this means that industry members choosing to disclose the number of ounces of alcohol per serving must put both this statement and the percentage of alcohol by volume together in the Serving Facts panel.

We believe that by allowing the use of a statement of fluid ounces of alcohol only if it appears directly underneath a statement of alcohol content on a Serving Facts panel, consumers may come to understand the relationship between alcohol content expressed as a percentage of alcohol by volume and the expression of the number of fluid ounces of pure alcohol per serving.

B. Comments Regarding Calorie and Nutrient Labeling and Advertising

In Notice No. 41, TTB requested comments on the issue of listing calorie and nutrient information on alcohol beverage labels and in advertisements. Over 18,500 consumers who responded to Notice No. 41 indicated that they would like to see this additional information on alcohol beverage labels.

Most of these comments were form letters generated through a letter-writing campaign initiated by Diageo, a major alcohol beverage producer, through its Web site at <http://www.knowyourdrink.com>. Consumers who visited the Web site were invited to submit a comment to TTB on this issue. If consumers chose to submit a comment, the Web site would then generate and forward one of over 20 different form letters to TTB. Many of these consumers expressed confusion as to why alcohol beverage labels do not currently bear this type of information, and some expressed the belief that TTB prohibited the use of this information on labels. The response by consumers who took the time to show their support for calorie and nutrient information on alcohol beverage labels via the <http://>

www.knowyourdrink.com Web site was numerically significant (over 18,000).

TTB received many other comments in support of the display of calorie and nutrient information per serving. Many of these commenters stated that they use facts about calories and nutrient content of the products they eat and drink to balance their diets. Several commenters, including the NCL, suggested that calorie information on alcohol beverage labels would help consumers maintain their weight within a healthy range consistent with the "Dietary Guidelines for Americans" advice. Commenting on this issue, CSPI explained that:

* * * Alcohol provides a significant portion of calories (3% to 5%) in the American diet (for heavier drinkers, it contributes even more generously) and many drinkers and other consumers watch their calorie intake in order to help maintain a healthy weight. Particularly today, when drinking is widely portrayed as an adjunct (if not a prerequisite) to a healthy lifestyle, and popular, newer, ready-to-drink concoctions often contain more than 200 calories per serving, calorie information takes on added importance. Obesity and excessive weight represent substantial threats to individual and public health. The medical and other costs related to those problems are staggering, and continue to grow, along with the human suffering. Calorie labeling could provide a constant, low-cost reminder that alcohol consumption adds generally empty, discretionary calories to the diet. Along with other educational and policy approaches, such labeling could help raise awareness and potentially provide information that consumers can use to modify their drinking behavior.

The NCL, as well as Shape Up America, which is a non-profit organization concerned with public health issues, referred to a recent FDA report, Report of the Obesity Working Group, "Calories Count," March 12, 2004, available at (<http://www.cfsan.fda.gov/dms/owg-toc.html>), which concludes that maintaining a healthy weight is a matter of counting and balancing calories consumed and expended. Shape Up America explained that awareness of the calorie content of food and beverages is essential to implementing this energy balance strategy. Many other commenters, including the American Council on Science and Health, a consumer education consortium concerned with public health issues, asserted that at a time when the prevalence of obesity is becoming a significant public health threat, information about the content of all foods and beverages should be presented to consumers in a standardized, clear format to allow them to make well-informed choices.

The American Dietetic Association (ADA), which is the largest association

of food and nutrition professionals and represents nearly 65,000 members, also commented in support of calorie and nutrient labeling. The ADA asserted that nutrition and ingredient labeling of alcohol beverage products will contribute positively to public health measures to reduce the current burden of chronic disease, including obesity, hypertension, diabetes, and dyslipidemia. The ADA stated that it supports initiatives to label wine, distilled spirits, and malt beverages to provide information consumers can use to maintain health, including a healthy body weight, and to manage chronic conditions such as diabetes. This comment asserted that such information would be best conveyed within the context of dietary guidance based on the "Dietary Guidelines for Americans 2005," which includes advice on the consumption of alcohol beverage products. The ADA also stated that the growing health care costs associated with the rise in chronic diseases and conditions, which can be attributed to over-consumption of foods and beverages, including those containing alcohol, more than justify the costs of revising labels.

TTB received several comments from individuals who suffer from diabetes. These commenters explained that access to nutrition information is critical to their efforts to control their disease. One commenter states that "as a diabetic, I am especially interested in the carbohydrate content of all food and beverages. This is vital information in order to determine necessary insulin administration." Another commenter, a State policy maker and also a diabetic, stated that he regularly checks labels for portion size and nutritional content. He explained that this type of information is invaluable in his efforts to control his disease. Another commenter, The Social & Health Research Center, explained that between 2001 and 2004 diabetes rates grew by 55 percent. They state that the key to this disease is prevention, and explained that a large national study, the Diabetes Prevention Program, reported that high risk individuals who practiced healthy lifestyles were able to reduce their diabetes risk by 58 percent. This commenter, like others, stressed that it is extremely important for people with diabetes and at risk for diabetes, who choose to drink alcohol, to have complete information about the contents of these beverages. The commenter further stated that alcohol is a significant source of calories and that excessive alcohol consumption makes it difficult to ingest sufficient nutrients within an individual's daily calorie

allotment and to maintain a healthy weight.

The FTC staff also commented in support of amending the TTB regulations to require that alcohol beverage labels disclose alcohol and nutrient content (calories, carbohydrates, fat, and saturated fat) per serving, stating that such a change would be likely to have beneficial effects on consumers and competition. The FTC staff did not comment on the listing of protein. Their comment asserted that information on labels about the attributes of alcohol beverages would help consumers select beverages they prefer, including making selections consistent with the recommendations of public health agencies. Additionally, the FTC staff indicated that such labeling would encourage manufacturers to compete based on the nutritional (for example, calorie and carbohydrate content) attributes of their beverages. The FTC staff also stated that such requirements should not extend to advertisements because advertising differs from labeling in important ways that make it likely that the costs of mandatory disclosure in advertisements would outweigh its benefits.

The FTC staff also noted that alcohol varies significantly in calories per serving, pointing to beers that ranged from 95 to 340 calories per serving; spirits that ranged from 48 to 180 calories per serving, and wines that ranged from 100 to 235 calories per serving. This comment also noted ranges in carbohydrate content, with beers ranging from 5 to 22 grams of carbohydrates per serving, spirits ranging from 0 to 18 grams of carbohydrates per serving, and wines ranging from 1 to 18 grams of carbohydrates per serving. While alcohol beverages generally do not contain fat, there are distilled spirits specialty products that contain fat from cream, milk, or coconut.

TTB did not receive any specific comments against providing calorie information on alcohol beverage labels; however, a few commenters were generally opposed to listing any calorie or nutrient information on alcohol beverage labels. Some of these commenters stated that alcohol beverage products are consumed for pleasure and not for nutritional content; therefore, nutritional and calorie content labeling should not be required. One commenter cautioned that alcohol consumption is not a part of a healthy lifestyle and that those on diets should not be drinking any alcohol.

A few commenters were opposed to listing information about certain nutrients. The AMA, while expressing

support for the listing of the number of calories as well as the number of grams of carbohydrate, fat, and protein per serving, suggested that fats and protein only be listed if they reach a threshold.

Like the AMA, CSPI suggested that the listing of fats and proteins should be permitted only if they meet a certain meaningful, minimum threshold amount. CSPI commented that listing information on carbohydrate, fat, and protein content on alcohol beverage labels provides little value to consumers and may even do harm. Specifically, CSPI expressed concern that listing such information on alcohol beverage labels might suggest to consumers that the product is akin to food and represents an ordinary source of nutrition.

Several other commenters stated that nutrition information on alcohol beverage products should be limited to only calories and carbohydrates. One commenter suggested that listing protein on alcohol beverage labels might convince a consumer to drink more of the product to get more protein. Some commenters also expressed concern that listing fat content could open the door to "no-fat" claims for alcohol beverages, which are typically directed towards health foods.

A few commenters expressed concern that listing nutrient content on alcohol beverage labels could be misleading. A large brewing company commented that the Alcohol Facts panel would be inappropriate, and stressed the differences in the labeling of food and alcohol beverages. The commenter made the following point:

Food labels present detailed nutrient content and dietary information in the context of a healthy diet. The servings of listed items such as carbohydrates, cholesterol, protein and fat are expressed not only in grams, but also in a percentage daily value based on a 2,000 calorie diet. The 2,000 calorie diet has no equivalent in alcohol products, which have no recommended daily nutritional value. Furthermore, adding nutritional recommendations would contradict TTB's statements opposing the placement of health claims on alcohol beverage labeling.

The Beer Institute commented that TTB should move with extreme caution on any rulemaking to mandate or permit nutritional labeling similar to that required by FDA on the food and beverage products it regulates. Its comment suggested that any such change should only be considered after thorough research and a formal agency determination that changes in the label format or display of additional information would be consistent with the intent of Congress and in the public interest. The Beer Institute instead

supported the current TTB policy of voluntary disclosure of a statement of average analysis on labels for all types and categories of alcohol beverages. (TTB Ruling 2004-1 allows the use of calorie and carbohydrate references on alcohol beverage labels and in advertisements as part of, or in conjunction with, a statement of average analysis listing the serving size as well as the number of calories, and the number of grams of carbohydrates, protein, and fat, per serving.)

TTB Response

As noted earlier in this document, the purpose of the FAA Act is, in part, to ensure that alcohol beverage products are labeled and advertised in a manner that will provide the consumer with "adequate information" as to the identity and quality of the product, and to prohibit false or misleading statements. As explained in the legislative history, Congress purposefully avoided laying out specific statutory requirements, opting instead to lay down general guidance so that the Department of the Treasury would have the flexibility to draft regulations and change them when necessary. Congress further intended that the purchaser or consumer should be told what was in the bottle, and all the important factors which were of interest to the consumer about the product.

The comments resulting from Notice No. 41 clearly indicate that consumers are very interested in having information about the calorie and nutrient content of the alcohol beverage products they purchase. These consumers expressed the view that this information should be available on the product's label. In fact, many commenters feel that this information is vital to health decisions they make on a daily basis. These comments seem consistent with the results of the survey submitted with the CSPI and NCL petition, in which 89 percent of the respondents supported mandatory labeling of calorie content on alcohol beverage labels, with 65 percent of the respondents strongly supporting such a requirement.

TTB agrees with those commenters who indicated that the calorie and nutrient content of alcohol beverages may constitute important information for consumers interested in monitoring their overall intake of calories, carbohydrates, protein, and/or fat. TTB believes it is important for consumers to have the ability to make informed decisions about the alcohol beverage choices they make. To make informed choices, consumers should have access to information on the calorie, nutrient,

and alcohol content of alcohol beverage products. Without this information, TTB believes a consumer cannot adequately judge the consequences of the beverage selections that he or she makes.

TTB notes that thousands of comments generated by the <http://www.knowyourdrink.com> Web site stated or implied that TTB does not allow the placement of calorie, carbohydrate, protein, and fat information on alcohol beverage labels. This is incorrect. As explained above, TTB's current policy, as most recently set forth in TTB Ruling 2004-1, is to allow producers who wish to put this information on alcohol beverage labels to do so, as long as they include a complete statement of average analysis which lists the number of calories, and the number of grams of carbohydrates, protein, and fat, per serving. The fact that so many of the consumer commenters were unaware that this information already appears on many alcohol beverage labels gives rise to questions as to whether our current policy, which allows the optional placement of calorie and nutrient information on alcohol beverage labels, provides adequate information to consumers about the identity and quality of the product. Given the fact that consumers are used to seeing calorie and nutrient information presented in a standardized format on food labels, it is possible those labels that currently bear statements of average analysis are not presenting this information in a way that is consistent and easy for consumers to notice and understand.

Based on our review of the comments, TTB believes that the calorie and nutrient content of alcohol beverages may constitute a material factor in a consumer's decision to purchase such beverages, and that under the FAA Act and as supported by its legislative history it is appropriate to require that labels present this data for the consumer's consideration. In this respect, our mandate under the FAA Act to ensure that consumers have adequate information about the identity and quality of the product is similar to the intent under those provisions of the current Food and Drug Cosmetic Act (FD&C Act) that state that the labeling of a food is misleading if it fails to reveal the material facts with respect to the consequences that may result from use of the food. See 21 U.S.C. 321.

TTB does not agree with those commenters who suggested that certain nutrients should not be labeled unless they meet a certain threshold level. For 30 years, brewers have included calories, carbohydrates, fat and protein

in a statement of average analysis on labels of malt beverages that made calorie or carbohydrate claims. We have seen no evidence that these labels misled consumers into believing that such products constituted good sources of nutrients. Furthermore, such statements are not specific health claims or health-related statements. Our current regulations define the term "health-related statement" to include statements and claims of nutritional value, but go on to provide that "statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product." See 27 CFR 4.39(h)(1)(i), 5.42(b)(8)(1)(A) and 7.29(e)(1)(i).

Finally, as pointed out by the FTC staff, there is a significant range in calories and carbohydrates among alcohol beverages. While most alcohol beverages do not contain fat, some distilled spirits specialty products contain fat from cream, milk, or coconut. Consumers should be able to readily determine the calorie and nutrient content of an alcohol beverage before deciding whether to purchase or consume the product.

Accordingly, pursuant to TTB's statutory authority under the FAA Act to require information on labels that will provide consumers with adequate information about the quality and identity of the product, we are proposing to amend the TTB regulations to require a "Serving Facts" panel on alcohol beverage labels, and to require such a panel on any advertisement that makes a calorie or carbohydrate representation. We believe that this information should be presented to consumers in a uniform, standardized format that is prominent on the label, so that consumers may easily avail themselves of this important information. The format and other elements included in the "Serving Facts" panel are discussed later in this document.

C. Comments Concerning Inclusion of a Definition of Moderate Drinking on Alcohol Beverage Labels

In Notice No. 41, TTB sought comments on the feasibility and desirability of an Alcohol Facts panel containing, among other information, the statement: "U.S. Dietary Guidelines advice on moderate drinking: No more than two drinks per day for men, one drink per day for women." Several commenters supported the idea of displaying this definition of moderate drinking on alcohol beverage labels. Specifically, these commenters stated

that this information will help consumers moderate their drinking.

DISCUS cautioned that including the Dietary Guidelines advice regarding moderate drinking may run afoul of the Bureau's rules and current guidance to industry regarding health claims and other health-related statements. The Beer Institute asserted that the Dietary Guidelines statement represented in the Alcohol Facts panel is a health statement; therefore, TTB should prohibit it. Further, the Beer Institute contended that the Dietary Guidelines are detailed and carefully sourced, making the information impractical to disclose in a meaningful manner on a label or in an advertisement.

TTB Response

The Dietary Guidelines recommend that if adults choose to drink alcohol beverages, they should consume them only in moderation. The term "moderation" is defined in the Dietary Guidelines as the consumption of up to one drink per day for women and up to two drinks per day for men. For purposes of illustrating moderation, the Dietary Guidelines explain that 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof (40 percent alcohol by volume) distilled spirits, count as one drink. The Dietary Guidelines further state that this definition of moderation is not intended as an average over several days but rather as the amount consumed on any single day. In addition to the definition of moderate drinking, the Dietary Guidelines provide approximately two pages of additional information about responsible alcohol consumption and what that means.

For example, the Dietary Guidelines caution that even moderate alcohol consumption may have adverse effects in specific situations and on specific individuals. The Dietary Guidelines explain that individuals who plan to drive, operate machinery, or take part in other activities that require attention, skill, or coordination should avoid drinking alcohol beverages. Additionally, the Dietary Guidelines advise that children and adolescents, women of child bearing age who may become pregnant, pregnant and lactating women, individuals taking medications that can interact with alcohol, and individuals with specific medical conditions, should not drink at all. Even moderate drinking during pregnancy may have behavioral or developmental consequences for the baby, the Dietary Guidelines stress. Finally, the Dietary Guidelines also suggest that individuals of any age who cannot restrict their drinking to moderate levels should not

drink at all. This last category is obviously hard to define, and may include many individuals who do not even realize that they fall within it.

Based on our consideration of the comments, TTB believes that labeling alcohol beverage products with information about the definition of moderate drinking could tend to mislead consumers, without more specific cautionary information about those individuals for whom even moderate consumption may create health risks. While many consumers may be concerned about moderate consumption, the Dietary Guidelines also advise many individuals that they should not consume any alcohol at all. We must avoid creating the misleading impression that the Dietary Guidelines condone the consumption of one or two alcohol beverages per day for those who should not consume any alcohol at all. Accordingly, this notice does not propose to include the definition of moderate drinking from the Dietary Guidelines as part of a Serving Facts panel.

D. Comments Regarding Labeling Alcohol Beverages With Standard Drink and Serving Size Information

In Notice No. 41, both the Alcohol Facts and Serving Facts panels introduced the concept of a standard drink or standard serving size based on the Dietary Guidelines advice on alcohol consumption. The Alcohol Facts proposal in the petition suggested labeling that would include a declaration of the number of standard drinks (servings) per container. As noted above, the petitioners suggested that a serving should be defined as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. The petition also suggested that for any alcohol beverages not fitting into one of those categories, a serving should be defined as the amount of fluid containing approximately 0.5 fluid ounces of pure alcohol. The petitioners later submitted comments in response to Notice No. 41 to change that figure to 0.6 fluid ounces of pure alcohol, which aligns their suggested definition with the standard drink definition on the "Serving Facts" panel.

TTB received many comments in support of defining and listing standard drink information on labels and in advertisements. Many commenters suggested that standard drink information on alcohol beverage labels would help consumers measure, moderate, and make more informed decisions about their alcohol consumption. A number of commenters suggested that any information panel

would be more useful to consumers if TTB clearly defines what constitutes a “serving” of the product.

Some commenters asserted that standard drink information listed on products would help consumers compare products across product categories. One commenter, a university professor and licensed clinical psychologist, indicated that a majority of his students have the impression that a beer is less intoxicating than a shot of distilled spirits. Further, he stated, it is essential that consumers understand that the alcohol content of beer and wine is no less significant than the alcohol content of distilled spirits. He explained, “[m]any of my clients, and those of my colleagues, will assert with absolute certainty that they do not have a drinking problem because they ‘only drink beer.’” He concluded that providing information as to what constitutes a standard serving of alcohol would be a more useful method of conveying alcohol content information than the tremendously misleading existing standards using alcohol by volume and proof, he concluded.

TTB also received many comments opposing the listing of standard drink or standard serving size information on alcohol beverage labels and in advertisements. The strongest opposition came from the brewing industry. Specifically, a large brewer and other brewers and brewing industry associations commented that a “standard drink” contradicts the reality of how different types of alcohol beverages are packaged, poured, and consumed. These commenters noted that alcohol beverages vary in alcoholic strength not only among the categories but within each category as well. They also noted that while beer is usually consumed without being mixed, distilled spirits are often used and consumed in mixed drinks, which are measured using shot glasses of various volumes or are free poured. Because of these variations, these commenters asserted that standard servings do not exist.

One commenter, a journalist who has covered alcohol beverages from both a recreational and health perspective for 10 years, argued that using the terms “serving” and “standard drink” synonymously, as in the CSPI petition, is a dangerous and irresponsible move. He made the following points:

- Servings are based strictly on volume both in the FDA regulations and in the consumer’s mind. Standard drinks, which refer to how much alcohol is in one drink as defined by the Dietary Guidelines, must take into account alcohol content.

- Great variations in alcohol strength exist in both the wine and beer categories, with many higher-alcohol wines containing 150 percent or more of the alcohol strength of their lower-alcohol counterparts and with higher-alcohol beers occasionally topping 300 percent of the strength of the average beer.

- The standard drink equivalency is oversimplified and disregards the tremendous variation in alcoholic strength.

CSPI also commented on this issue, stating:

Providing “standard drink” information, though useful in some more general education contexts, might not be helpful on labels of particular products. For example, many over-sized containers, such as 16-ounce beers, are ordinarily sold—and meant to be consumed—as a single serving.

A large brewer noted that FDA has undertaken a fundamental re-examination of its labeling regulations concerning serving size and published an advance notice of proposed rulemaking (ANPRM) on April 4, 2005 (70 FR 17010) seeking comments from consumers on a variety of issues. The FDA ANPRM stated that most consumers in focus groups conducted by FDA “indicated that they incorrectly thought a serving size was a recommended portion size, rather than a standardized unit of measure.” (See 70 FR 17012.) Given FDA’s concern that consumers may perceive a serving size as a recommended portion size, the large brewer suggested that “TTB should not make rules that would involve the display of serving size on labels for alcohol beverages until FDA has decided whether, and if so, how to amend its regulations concerning serving size on food products. Acting prior to the FDA’s decision-making process would be premature and possibly counterproductive.”

TTB Response

As explained above, TTB Ruling 2004–1 set forth the following serving sizes: 1.5 fl. oz. for distilled spirits; 5 fl. oz. for wines; and 12 fl. oz. for malt beverages. These sizes were based on the 2000 Dietary Guidelines, which suggested that the above amounts “count as a drink” for purposes of determining “moderation,” assuming that the distilled spirits are 80-proof and the malt beverages are “regular beer.” It should be noted that the 2005 Dietary Guidelines provide the same guidance with respect to what counts as a drink for purposes of explaining “moderation;” however, in illustrating the calorie content of various alcohol beverages, the 2005 Dietary Guidelines

set forth “example serving volumes” of various products as follows: 12 oz. for regular and light beers; 5 oz. for white and red wines; 3 oz. for sweet dessert wines, and 1.5 oz. for 80 proof distilled spirits (such as gin, rum, vodka, and whiskey). Moreover, the Guidelines go on to note that higher alcohol content and mixing alcohol with other beverages will increase the number of calories in the beverage.

TTB acknowledged in its “Frequently Asked Questions on TTB Ruling 2004–1,” published on the TTB Web site, that there “are some good arguments for setting standardized serving sizes based on the alcohol content of the product; however, we believe that before we set permanent standards, we should engage in rulemaking to solicit comments from the public and the industry.”

As indicated above, commenters varied in their opinions on the standard drink issue. TTB agrees with those commenters who asserted that alcohol beverages are not commonly packaged, poured, served, or consumed in standard drinks with exactly 0.6 fluid ounces of pure alcohol. In fact, rarely would the packaged or consumed quantity of an alcohol beverage product equal a “standard drink” of exactly 0.6 fluid ounces of pure alcohol. Some products will contain less than one standard drink while others will contain multiple standard drinks. Additionally, TTB believes that consumers are likely to be confused about the difference between the terms “standard drink” and “serving size.”

In this proposed rule, we take into account the variations in the way that different commodities are consumed, and the fact that there are significant variations in alcohol content within the different categories of malt beverages, wines, and distilled spirits. We note that the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. 343 (q)(1)(A)(i), defines a serving size as “an amount customarily consumed” [emphasis added]. Serving sizes for all food and beverage products regulated by FDA are based on this definition rather than on the amount recommended by any dietary guidance. TTB believes that serving sizes for alcohol beverage products also should be based on customary consumption and not solely on the broad categories outlined in the Dietary Guidelines advice on moderate drinking. Those categories do not explicitly take into account either what is customarily consumed or what the alcohol content variations are within each respective category.

TTB believes that what is “customarily consumed” should be determined on an individual package

basis according to the way the product is packaged, the alcohol content of that product, and how the product is typically consumed. Since the amount customarily consumed varies widely among and within the three alcohol beverage categories, TTB agrees with those commenters who argue that one standard for calculating the serving size does not fit all alcohol beverage product categories. Not only are there differences among wines, distilled spirits, and malt beverages in how they are packaged, sold, and consumed, there are differences within each category as well. For example, a lower alcohol distilled spirits product, such as a specialty product with an alcohol content of 5 percent by volume, packaged in a 200 ml bottle (about 8 fl. oz.) might reasonably be consumed on one occasion, while higher alcohol distilled spirits in the same size bottle might typically be consumed over more than one occasion. While a 12 fl. oz. (355 ml) bottle of beer is typically considered one serving, this may not be true where the beer has an alcohol content of over 10 percent alcohol by volume. In fact, some specialty malt beverages have alcohol content levels of over 20 percent by volume, making it less likely that such products would be consumed in one setting. Additionally, dessert wines, which have a higher alcohol content, are typically consumed in smaller servings than table wines.

Accordingly, TTB is not proposing to define a standard drink but is instead proposing to adopt specific serving size reference amounts for each alcohol beverage product category based on the amount customarily consumed as a single serving. See Section VII of this notice for a detailed description of the serving size reference amounts for each category. TTB recognizes that these serving size reference amounts do not reflect the multiple servings or "helpings" that may be consumed on a single occasion. Serving size reference amounts are not intended as recommended consumption amounts but rather are intended to be used as a reference amount for the consumer to determine nutrient and calorie intake. We specifically invite comments on these serving size reference amounts including whether each accurately represents the amount of the product category that is customarily consumed. TTB would welcome any data that might enable us to identify a better standard for the amount customarily consumed for a specific product category, including consumer research or studies, or statistical data about consumption patterns.

It should be noted that the proposed serving size reference amounts are largely based on the quantities set forth in TTB Ruling 2004-1 (5 fluid ounces for wines, 1.5 fluid ounces for distilled spirits, and 12 fluid ounces for malt beverages), with some significant differences. Most importantly, any product with an alcohol content outside the range of a typical product within the commodity classification may require a different serving size. For example, under TTB Ruling 2004-1, a 12 fl. oz. (355 mL) can of 8 percent alcohol by volume distilled spirits cocktail would contain approximately 8 servings, while an 8 percent alcohol by volume can of malt beverage would only contain one serving. In contrast, the proposed rule takes into account the alcohol content of the product in determining the serving size. We discuss the proposed serving sizes for wines, distilled spirits, and malt beverages in more detail in Section VII of this document.

E. Comments Concerning the Title of Any Alcohol Beverage Product Information Panel

In response to Notice No. 41, we received several comments concerning the title of any information panel TTB ultimately permits or requires on alcohol beverage labels and in advertisements. These commenters expressed varying opinions as to what such a label should be called. One commenter stated that the caption "Alcohol Facts" does not best reflect the information components that would be set forth in such a panel. This commenter further suggested that the caption "Serving Facts" is more appropriate to describe components in a serving of an alcohol beverage product. On the other hand, several commenters urged TTB to call such a label "Alcohol Facts" to distinguish it from the Nutrition Facts panel, which is present on other food and beverage products. One commenter explained that this approach was used by FDA to distinguish the label on dietary supplements ("Supplement Facts") from the label on foods, and thus serves as a precedent for a similar name for the panel on alcohol beverage products.

TTB Response

TTB agrees with those commenters who believe that the title "Serving Facts," is a better descriptor of the information presented in the panel, as that information will include more than just facts about alcohol content. Therefore, TTB is proposing "Serving Facts" as the title for the mandatory information panel.

F. Comments Concerning the Serving Facts Graphic

TTB did not receive any specific comments in support of the graphic (shot glass, wine glass, and beer mug icons, with equal signs between the icons) depicted on the "Serving Facts" label in Notice No. 41. Many commenters, including brewers, wineries, and various industry associations, were strongly opposed to the graphic. This graphic, the commenters claim, is a political expression of "equalization." Further, the commenters asserted that this image is used commonly by the distilled spirits trade associations in their attempt to achieve parity with wine and beer in various regulated areas, such as taxes, access to markets, advertising, and other forms of regulatory control.

The Wine Institute, a trade association representing California wineries, stated as follows in opposition to the graphic:

The equivalency graphic is an oversimplification of the concept of alcohol exposure. In context, the U.S. Dietary Guidelines' use of serving sizes to define moderation along with their recommendations offers useful information to consumers. It takes two pages for the Dietary Guidelines to explain its recommendation in clear and concise fashion. It is a message that cannot be reduced to a single ambiguous and misleading graphic. The use of the graphic out of the context of qualifying language or balance provides only a partial picture and might be as likely to mislead the consumer as those that are actually false.

The Wine Institute also argued that the graphic is subject to different interpretations and provides little in the way of useful information. This comment stated that most hard liquor is not consumed in a shot glass and most wine is not presented in carefully measured 5-ounce glasses.

TTB Response

The comments show strong opposition to the use of the graphic described above on alcohol beverage labels and in advertisements. TTB believes that very rarely would a glass of beer, wine, or distilled spirits contain exactly 0.6 U.S. fluid ounces of pure alcohol. TTB agrees that such a graphic is subject to interpretation and could mislead consumers. Thus, we are not proposing to include this graphic as part of the Serving Facts panel.

G. Costs Associated With Mandatory Labeling Requirements

We received several comments regarding the costs associated with any type of new mandatory labeling requirements, including new

requirements for the labeling of nutrient information and alcohol content. These comments generally referred to the costs of new labeling in general, rather than breaking down the costs associated with each of these different proposals.

Many of these comments were from small alcohol beverage producers who stated that any new labeling requirements, particularly mandatory ingredient labeling, would be too costly and would place them at a distinct disadvantage because larger producers are better equipped to comply. Small producers described such costs as follows:

- Costs of new labeling equipment or costs to upgrade current equipment.
- Production disruption costs due to installation of new equipment.
- Costs of label redesign and new label stocks.
- Costs of laboratory testing equipment or laboratory services.

The Brewers Association submitted a comment opposing the adoption of any new mandatory labeling requirements in the regulations other than the labeling of major allergens present in levels scientifically proven to be harmful to at-risk individuals and the disclosure of certain nutrient information for products labeled or advertised with calorie or carbohydrate claims. This comment stated that almost any other new mandatory labeling requirement “would dramatically impact nearly every aspect of a small brewer’s business, from its choice in ingredients to its ability to access markets. If TTB moves forward with mandatory labeling requirements, small brewers would face a potentially devastating economic double hit—the first from significantly higher production and administration costs and the second from severe restraints on their brewing creativity.”

The Brewers Association conducted a survey of its members on the impact of new mandatory labeling requirements. Based on the cumulative responses of 97 small packaging brewers (who represent a combined volume of 5,698,924 barrels of the approximately 7 million barrels produced by small brewers), the Brewers Association concluded that “mandatory ingredient and nutrition labeling requirements would significantly increase small brewers’ costs of doing business and deter the creativity and innovation that has made craft brewing both popular and profitable as small businesses.”

The comment from the Brewers Association estimated that the aggregate average costs of new mandatory labeling requirements for respondents by size ranged from \$35,530 per brewer for smaller brewers to \$1.5 million per

brewer for larger brewers. The Brewers Association stated that such mandatory labeling requirements would have a substantial financial impact on all small brewers. The survey also revealed that additional labeling costs would cause about 27 percent of survey respondents to cease bottling operations, and that mandatory ingredient or calorie labeling would force approximately 29 percent of survey respondents to withdraw from interstate sales.

Some small wineries expressed similar concerns. For example, one small winery commented that new mandatory requirements for ingredient and nutrition information would be disastrous, noting that many of its annual lots were less than 100 cases and that the laboratory work required for each lot would be a prohibitive cost for small lots. Another winery stated that it did not have the laboratory equipment to test for carbohydrate and calorie content. Many wineries argued that nutrition is not a concern for consumers when choosing an alcohol beverage, and they questioned whether consumers were interested in either ingredient or nutrition labeling on alcohol beverage products.

Both small winemakers and small brewers expressed their concern that new labeling requirements would negatively affect their market share. One small winemaker commented that such label requirements would make it even more difficult for small family wineries to compete with large wine conglomerates and low cost imports. Another small winemaker stated that any new labeling requirement would be onerous to all but the largest wineries that make 100,000 gallons or larger batches of wine. The commenter further suggested that if TTB imposes any new requirements, wines that are produced in batch quantities of less than 5,000 gallons should be exempt. The Brewers Association also suggested an exemption for small brewers if TTB imposes any new label requirements.

Some consumers who commented on this issue were concerned about the effect any new labeling requirements would have on small alcohol beverage producers. One commenter suggested longer phase-in periods for any mandatory requirements for small alcohol beverage producers. The commenter further suggested the possibility that brewers of small volume beers could be required to post this information on their Web sites, thereby eliminating the cost of printing new labels.

On the other hand, we also received comments suggesting that the cost of additional labeling would not be

excessive, given the benefits to consumers. CSPI and one individual commenter referenced a past cost assessment done by FDA that evaluated relabeling costs for a final rule adding trans fatty acid labeling requirements to foods (see 68 FR 41434, 41477, July 11, 2003). In the study, FDA estimated that the average low relabeling cost per “stock keeping unit” (SKU) would be about \$1,100 and the average high relabeling cost per SKU would be about \$2,600. (An SKU is a specific product sold in a specific size.)

CSPI and the individual commenter applied these FDA relabeling cost estimates to the alcohol beverage labeling changes aired for comment in the Notice No. 41. Applying the estimates to a winery selling 5 types of wine, they computed the average total cost of relabeling to be between \$5,500 and \$13,000 for the winery. They then applied the estimates to a particular brand of wine, stating that if the winery produced 320,000 9-liter cases (3,840,000 750 ml bottles), “[e]ach of those bottles would incur a cost of \$0.000677—less than 7/100ths of a penny—if the cost were \$2,600 per sku.”

TTB Response

A number of the comments discussed above suggested that we exempt small businesses from any new labeling requirement. Alcohol beverage products manufactured by small businesses are typically made in smaller batches, and each batch may be prepared a little differently each time. For example, craft brewers often produce seasonal malt beverages in very small quantities and small wineries often produce wine in batches of less than 5,000 gallons.

Even if a rule is not a significant regulatory action, Executive Order 12866 requires us to design regulations in the most cost-effective manner to achieve the regulatory objective. We seek to tailor our regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities, consistent with the regulatory objective.

We have considered several options to reduce the regulatory burdens and economic costs imposed by the proposed rule. One option would be to exempt small businesses from the requirements of the rule; however, we are not proposing that option for two related reasons. One of the primary purposes of the proposed rule is to enhance consumer protection; this purpose would be defeated by a permanent exemption for small businesses. There is no reason to believe that consumers of alcohol beverages

produced by small producers are less interested in obtaining information about the alcohol, calorie, and nutrient content of the beverages they consume. Moreover, we question whether such a permanent exemption would be consistent with the mandate, in the FAA Act, to ensure that labels provide consumers with adequate information about the identity and quality of the product.

A second option we considered was a delay in the effective date of any final rule in order to provide adequate time for the industry to develop new labeling materials, deplete existing inventories, and coordinate the proposed labeling changes with their already scheduled labeling changes. TTB believes that most alcohol beverage industry members change their labels at least once every three years. This is consistent with FDA's conclusion, in a recent proposed rule relating to the labeling of health claims involving soluble fiber from certain foods, that "firms typically update their label about every 3 years." (See 72 FR 5367 and 5372, February 6, 2007.) For this reason, TTB proposes a delayed effective date of three years from the date any final rule is published in the **Federal Register**. We further propose that manufacturers, bottlers, and importers who wish to label their products with a Serving Facts panel and alcohol content statement before the rule comes into effect may begin to do so as long as they adhere to the requirements of the final rule.

TTB believes that by delaying the implementation date for the new labeling requirements, costs associated with label redesign and new label stocks would be significantly reduced. A three-year implementation period would allow affected industry members to use up existing label stocks and coordinate the redesigning of their labels with an already planned label redesign. We believe this option will minimize costs or burdens associated with the proposed new label information. Again, this is consistent with FDA's conclusion, in its proposed rule involving the labeling of health claims involving soluble fiber from certain foods, that if companies can add new labeling statements at the same time that they would normally update their labels, "the cost of adding the new information on the package approaches zero." (See 72 FR 5372.)

In addition to the proposed delayed effective date, we are proposing regulatory text that allows flexibility on the placement and appearance of the Serving Facts information. TTB also proposes to permit listing Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See

the regulatory text for an illustration of the linear display. In providing such flexibility, TTB believes that industry members would not have to purchase new, or upgrade current, labeling equipment. Instead, existing labeling equipment could be used. TTB is also seeking comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size.

Several commenters mentioned the costs associated with laboratory analysis of products. However, we believe that this will not impose a significant burden on small businesses. According to the FDA Labeling Cost Model Final Report (revised January 2003), the costs associated with analytical testing are the same regardless of how the product is packaged and sold; thus, manufacturers incur costs on a product (or formula) basis. (See 72 FR 5567.) TTB has determined that the costs associated with the analytical testing required for the proposed new labeling requirements would be approximately \$250 per formulation. To develop these cost estimates, we obtained price quotes in the spring of 2007 from four different companies that test alcohol beverage products. Accordingly, TTB believes that the costs associated with this proposal are not significant.

VII. Proposed Regulatory Changes

Based on the above, TTB is proposing to amend parts 4, 5, 7 and 24 of the TTB regulations to set forth requirements for mandatory alcohol content and for the presentation of certain calorie and nutrient information in a mandatory "Serving Facts" panel. These changes involve the addition of a new subpart L in part 4, a new subpart J in part 5, and a new subpart J in part 7, as well as conforming changes elsewhere in parts 4, 5, 7, and 24. We discuss the proposed regulatory amendments in more detail below.

A. Mandatory Alcohol Content Statement

As stated in TTB's response to comments concerning alcohol content, TTB proposes in §§ 4.32(b)(3), 5.32(b)(11), and 7.71(a) to require an alcohol content statement, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products, including table wines and malt beverages.

B. Mandatory Serving Facts Panel

As stated above, TTB proposes a mandatory nutrient information panel that must include the following information: The title "Serving Facts"; serving size; the number of servings per

container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. The Serving Facts label may also bear the mandatory alcohol content statement as a percentage of alcohol by volume. TTB also proposes to allow, on a voluntary basis, the disclosure of the number of U.S. fluid ounces of pure alcohol per serving, as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume.

(1) Serving Size and Servings per Container

TTB is proposing to define the term "serving" or "serving size" as the amount of the alcohol beverage customarily consumed as a single serving, expressed in both U.S. fluid ounces and, in parentheses, in milliliters for wines, distilled spirits, and malt beverages. In new §§ 4.111(b), 5.81(b), and 7.91(b), TTB is proposing the use of serving size reference amounts, specific to each alcohol beverage category, which in each case most closely approximates the amount of the product that a consumer customarily drinks as a single serving. This amount is specified as a reference amount used only as a basis for the consumer to determine nutrient and calorie intake and not as a recommended consumption amount. These rules are intended to ensure as much uniformity as possible in labeling serving sizes within a product category. TTB proposes the following serving size reference amounts for each category:

- *Wine*: For wines with an alcohol content of not more than 14 percent alcohol by volume, the serving size is 5 fluid ounces (about 148 milliliters). For wines with an alcohol content higher than 14 percent alcohol by volume and not more than 24 percent alcohol by volume, the serving size is 2.5 fluid ounces (about 74 milliliters).

- *Distilled spirits*: For distilled spirits products containing not more than 10 percent alcohol by volume, the serving size is 12 fluid ounces (about 355 milliliters). For products containing over 10 percent and not more than 18 percent alcohol by volume, the serving size is 5 fluid ounces (about 148 milliliters). For products containing over 18 percent alcohol by volume, the serving size is 1.5 fluid ounces (about 44 milliliters).

- *Malt beverages*: For malt beverages with an alcohol content of not more than 10 percent alcohol by volume, the serving size is 12 fluid ounces (355 milliliters). For malt beverages with an alcohol content higher than 10 percent

alcohol by volume, the serving size is 5 fluid ounces (148 milliliters).

Since wines and distilled spirits are subject to metric standards of fill under the TTB regulations, the proposed serving sizes for these categories are set forth in both fluid ounces and milliliters. We recognize that consumers may use fluid ounces rather than milliliters when pouring a glass of wine or a shot glass of distilled spirits. For consistency purposes, TTB is proposing to require serving sizes for malt beverages to be set forth in both fluid ounces and milliliters.

(2) Percentage of Alcohol by Volume

In new §§ 4.111(c), 5.81(c), and 7.91(c) for wines, distilled spirits, and malt beverages, respectively, TTB proposes to provide that if Serving Facts panels on labels or in advertisements include any information about alcohol content, the alcohol content must be expressed on those panels as a percentage of alcohol by volume. The Bureau is also proposing to amend §§ 4.32, 5.32, and 7.22 to remove the requirement that an alcohol content statement appear on the brand label, so as to permit its inclusion in a Serving Facts panel or elsewhere on the label. We are also proposing to make conforming changes to §§ 4.36 and 7.71(a). Finally, we are proposing to amend § 24.257(a)(3) to provide that alcohol content, expressed as percent-by-volume, is required on labels for all products meeting the IRC definition of a "wine."

(3) Alcohol Expressed in Fluid Ounces

In new §§ 4.111(d), 5.81(d), and 7.91(d), TTB is proposing to permit the display of the number of U.S. fluid ounces of pure alcohol per serving as long as this statement is as part of a statement that includes alcohol content, expressed as a percentage of alcohol by volume.

(4) Calories

In new §§ 4.111(e), 5.81(e), and 7.91(e), TTB proposes standards for expressing a statement of the calorie content per serving for wines, distilled spirits and malt beverages, respectively.

(5) Carbohydrates

In new §§ 4.111(f), 5.81(f), and 7.91(f), TTB proposes standards for expressing carbohydrate content per serving for wines, distilled spirits, and malt beverages, respectively.

(6) Fat

In new §§ 4.111(g), 5.81(g), and 7.91(g), TTB proposes standards for expressing fat content per serving for

wines, distilled spirits, and malt beverages, respectively.

(7) Protein

In new §§ 4.111(h), 5.81(h), and 7.91(h), TTB proposes standards for expressing protein content per serving for wines, distilled spirits, and malt beverages, respectively.

C. Format and Placement of the Serving Facts Panel

New §§ 4.112, 5.82, and 7.92 set forth proposed formatting specifications for the Serving Facts panel. While TTB would encourage presentation of the Serving Facts information in a horizontal or vertical panel format for all products, TTB proposes to permit listing Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See the regulatory text for an illustration of the linear display. TTB is also seeking comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size. In addition, new §§ 4.113, 5.83, and 7.93 would permit the panel to appear anywhere on the alcohol beverage container or in the advertisement that is visible to the consumer.

D. Tolerance Levels

New §§ 4.114, 5.84, and 7.94 codify the existing tolerance levels specified in TTB Procedure 2004-2, Testing of Calorie, Carbohydrate, Protein, and Fat Content of Alcohol Beverages; Acceptable Tolerance Levels, which apply to label and advertisement statements of calorie, fat, carbohydrate and protein content. These sections also cross reference the tolerance levels for alcohol content as specified in the current regulations.

VIII. Public Participation

A. Comments Sought

We request comments from anyone interested on the regulatory proposals outlined in this notice. All comments must reference Notice No. 73 and include your name and mailing address. They must be legible and written in language acceptable for public disclosure. Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We regard all comments as originals.

TTB specifically solicits comments on the proposed serving size reference amounts for wines, distilled spirits, and malt beverages. Are these figures a reasonably accurate representation of the amount of the product customarily consumed as a single serving? If not,

what data or other information should TTB consider that would give a better estimate of the amount customarily consumed for a specific product category? Are the proposed reference amounts more accurate than the serving sizes set forth in TTB Ruling 2004-1 (1.5 fl. oz. for distilled spirits, 5 fl. oz. for wines, and 12 fl. oz. for malt beverages, regardless of the alcohol content)? Why or why not? Should TTB instead retain the serving sizes set forth in Ruling 2004-1?

We also solicit comments on whether the proposed elements of the Serving Facts panel will provide consumers with adequate information about the identity and quality of the product. For example, should the panel include additional elements? Alternatively, should certain elements (such as protein or fat content) be required only if the levels of these nutrients reach a certain threshold? Why or why not? Would it be confusing to the consumer to see protein and fat content on some labels but not on others? Why or why not?

Additionally, TTB seeks comments on whether the proposed linear display for small containers should be permitted on all containers irrespective of their size. Why or why not? Would allowing the linear display on all containers reduce the costs associated with compliance while providing consumers with adequate information about the products?

Finally, TTB solicits comments on the expected economic impact of the proposed rule, especially the impact on small businesses. Does the proposed delayed effective date suffice to limit the negative impact on small businesses and reduce overall costs of compliance while ensuring that consumers are protected? How many small businesses would be impacted by the proposed rule, and what would be the economic impact of the proposal on these small businesses? Please explain in detail and provide specific cost data.

We welcome comments on all other issues presented in this Notice.

B. Submitting Comments

You may submit comments on this notice by one of the following two methods:

- *Federal e-Rulemaking Portal*: To submit a comment on this notice using the online Federal e-rulemaking portal, visit <http://www.regulations.gov> and select "Alcohol and Tobacco Tax and Trade Bureau" from the agency drop-down menu and click "Submit." In the resulting docket list, click the "Add Comments" icon for the appropriate docket number and complete the resulting comment form. You may

attach supplemental files to your comment.¹ A direct link to the appropriate Regulations.gov docket is also available on the TTB Web site at http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.

• **Mail:** You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

On the Federal e-rulemaking portal, we will post, and you may view, copies of this notice and any electronic or mailed comments we receive about this proposal. To view a posted document or comment, go to <http://www.regulations.gov> and select "Alcohol and Tobacco Tax and Trade Bureau" from the agency drop-down menu and click "Submit." In the resulting docket list, click the appropriate docket number, then click the "View" icon for any document or comment posted under that docket number.

All submitted and posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice and any electronic or mailed comments we receive about this

proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments or other materials.

IX. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

We certify under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities. Based on the comments we received in response to Notice No. 41, we believe that the proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code of 1986, we will submit this notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

As noted in the comment discussion in this proposed rule, several commenters suggested that new labeling requirements would impose significant costs on small businesses. Commenters stated that these costs would include the costs of new labeling equipment or costs to upgrade current equipment to accommodate a back label, production disruption costs due to installation of new equipment, costs of label redesign and new label stocks, and costs of laboratory testing equipment or laboratory services.

In response to these comments, TTB considered options to minimize the regulatory burdens and economic costs imposed by the proposed rule. One option we considered was to exempt small businesses from the requirements of the rule. However, as previously noted, we are not proposing such an exemption because it might be inconsistent with our mandate to ensure that alcohol beverage labels provide consumers with adequate information about the identity and quality of these products.

A second option we considered was a delay in the effective date of any final rule in order to provide adequate time

for the industry to develop new labeling materials, deplete existing inventories, and coordinate the proposed labeling changes with their already scheduled labeling changes. Most alcohol beverage industry members change their labels at least once every three years.

Accordingly, as explained earlier in this document, TTB is proposing a delayed effective date of three years from the date any final rule is published in the **Federal Register**. We further propose that manufacturers, bottlers, and importers who wish to label their products with a Serving Facts panel and alcohol content statement before the final rule comes into effect may begin to do so as long as they adhere to the requirements of the final rule.

TTB believes that by delaying the implementation date for the new labeling requirements, costs associated with label redesign and new label stocks would be significantly reduced. A three-year implementation period would allow affected industry members to use up existing label stocks and coordinate the redesigning of their labels with an already planned label redesign. We believe this option will minimize costs or burdens associated with the proposed new label information.

In addition to the proposed delayed effective date, we are proposing regulatory text that allows flexibility on the placement and appearance of the Serving Facts information. We are also proposing to permit a linear display of the Serving Facts information on containers 50 milliliters or smaller. In providing such flexibility, TTB believes that industry members would not have to purchase new, or upgrade current, labeling equipment. Instead, existing labeling equipment could be used. TTB is also soliciting comments on whether we should also permit the linear display on all labels irrespective of the container size and whether doing so would reduce the costs associated with compliance while adequately informing consumers about the products.

Several commenters mentioned the costs associated with laboratory analysis of products. However, we believe that this will not impose a significant burden on small businesses. As noted earlier in this document, according to the FDA Labeling Cost Model Final Report, the costs associated with analytical testing are the same regardless of how the product is packaged and sold; thus, manufacturers incur costs on a product (or formula) basis. TTB has determined that the costs associated with the analytical testing required for the proposed new labeling requirements would be approximately \$250 per formulation. To develop these cost

¹ More complete information on using Regulations.gov, including instructions for accessing open and closed dockets and for submitting comments, is available through the site's "User Tips" link.

estimates, we obtained price quotes in the spring of 2007 from four different companies that test alcohol beverage products. Accordingly, TTB believes that the costs associated with this proposal are not significant.

We specifically solicit comments on the number of small producers, importers and bottlers that may be affected by this proposed rule and the impact of this proposed rule, if adopted as a final rule, on those small businesses. We ask any small business that believes that it would be significantly affected by this proposed rule to submit a comment telling us how the rule would affect it.

B. Executive Order 12866

We have determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

C. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information may be sent by e-mail to OMB at

Alexander.T.Hunt@omb.eop.gov, or by paper mail to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Alcohol and Tobacco Tax and Trade Bureau at the address previously specified. Because OMB must complete its review of the collections of information between 30 and 60 days after publication, comments on the information collections should be submitted not later than August 30, 2007. Comments are specifically requested concerning:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and

- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in 27 CFR §§ 4.32, 4.62, 4.111, 4.112, 4.113, 4.114, 4.115, 4.116, 5.32, 5.63, 5.81, 5.82, 5.83, 5.84, 5.85, 5.86, 7.22, 7.52, 7.91, 7.92, 7.93, 7.94, 7.95, 7.96, and 24.257(a)(3) and involves disclosures of information on labels and performance standards for statements made on labels and in advertisements of alcohol beverages. This information is required to prevent deception of the consumer and will be used to provide the consumer with adequate information as to the identity and quality of alcohol beverage products. In addition, the collection of information under § 24.257(a)(3) will be used to protect the revenue. These collections of information are mandatory. The likely respondents are businesses or other for-profit institutions, including associations, corporations, partnerships, and small businesses.

This information constitutes only a portion of the labeling and advertising information on alcohol beverages required under authority of the Federal Alcohol Administration Act (FAA Act) and the Internal Revenue Code of 1986, as amended (IRC). OMB has previously approved a collection of information for Labeling and Advertising Requirements Under the FAA Act under control number 1513-0087.

- Estimated total annual reporting and/or recordkeeping burden: 7,071 hours.
- Estimated average annual burden hours per respondent and/or recordkeeper: One hour.
- Estimated number of respondents and/or recordkeepers: 7,071.
- Estimated annual frequency of responses: One.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

X. Drafting Information

The principal authors of this document are Lisa M. Gesser and Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting

and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt Beverages, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 4, 5, 7, and 24, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.32, remove and reserve paragraph (a)(3) and add new paragraphs (b)(3) and (b)(4) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36.

(4) A Serving Facts panel, in accordance with subpart L of this part.

* * * * *

3. Revise § 4.36 to read as follows:

§ 4.36 Alcohol content.

(a) *Mandatory statement.* The alcohol content for wines must be stated on wines as a percentage of alcohol by volume. For example, “Alcohol_% by volume,” or similar appropriate phrase, or in accordance with the requirements set forth in § 4.111(c) of subpart L of this part; *Provided*, that if the word “alcohol” and/or “volume” are

abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively.

(b) *Tolerances.* The following tolerances shall be allowed either above or below the stated percentage:

(1) A tolerance of 1.5 percent for wines containing 14 percent or less of alcohol by volume.

(2) A tolerance of 1 percent for wines containing more than 14 percent of alcohol by volume.

(c) Regardless of the tolerances normally permitted in statements of alcohol content, such statements must definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement that indicates that the alcohol content of the wine is within the prescribed limitations on the alcohol content of any class, type, or taxable grade of wine when in fact it is not.

4. Amend § 4.62 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 4.62 Mandatory statements.

* * * * *

(c) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart L of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

5. Add a new Subpart L to read as follows:

Subpart L—Nutrient Information

Sec.

- 4.111 Serving Facts panels.
- 4.112 Format for Serving Facts panels.
- 4.113 Placement of Serving Facts panels.
- 4.114 Tolerance Levels.

Subpart L—Nutrient Information

§ 4.111 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 4.32(b)(4) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraphs (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container—(1) Definition.* The term "single serving" or "serving size" means

an amount of the wine customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for wines are:

| For products containing: | a single serving or serving size is: |
|--|--------------------------------------|
| At least 7% and not more than 14% alc/vol. | 5 fluid ounces (148 milliliters). |
| Over 14% and not more than 24% alc/vol. | 2.5 fluid ounces (74 milliliters). |

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest ¼ serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 4.36 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 4.32(b)(3).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 4.112(g).

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams

and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 4.112 Format for Serving Facts panels.

The wine label or advertisement must present the Serving Facts panel in, or in a manner that closely follows, the specifications set forth in this section. While TTB encourages presentation of the Serving Facts information in a panel format as specified in paragraph (a) through (l) of this section, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) of this section for an illustration of an appropriate linear display.

(a) The Serving Facts panel information must be set off within a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

- (1) Appear in a single easy-to-read type style;
- (2) Appear in upper and lower case letters;
- (3) Have at least one point leading (that is, space between lines of text); and
- (4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 4.111 must appear in the panel in the following order:

- (1) Serving size;
- (2) Servings per container;
- (3) Percentage of alcohol by volume (if included in the Serving Facts panel);
- (4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);
- (5) Calories;
- (6) Carbohydrates;
- (7) Fat; and
- (8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) "Serving Size", including the numeric figure denoting the size in U.S. fluid ounces and, in parentheses, in milliliters.

(2) "Servings Per Container", including the numeric figure denoting

the correct number (rounded to the nearest ¼ serving); and

(3) Numeric figures denoting alcohol content, calories, and carbohydrate, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) "Serving Facts" (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) "Amount Per Serving" and "Amount Per Bottle" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) "Alcohol by volume", "Calories", "Carbohydrate", "Fat", and "Protein" (type or printing no smaller than 1

millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading "fl oz of alcohol" must be preceded by and indented underneath the heading "Alcohol by volume" and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar must appear under the "Amount Per Serving" heading, and the other inner lines and outside line of the box must be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, "Alcohol by volume", "Alc/vol" or "Alc by vol";

(2) For U.S. fluid ounces, "fl oz";

(3) For grams, "g";

(4) For Carbohydrate, "Carb"

(5) For serving, "Serv.";

(6) For milliliter, "ml"; and

(7) For amount, "Amt."

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 375 milliliter bottle of 14 percent alcohol by volume wine without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

| Serving Facts | |
|------------------------|------------------|
| Serving Size | 5 fl oz (148 ml) |
| Servings Per Container | 2 ½ |
| Amt Per Serv. | |
| Calories | 120 |
| Carbohydrate | 3g |
| Fat | 0g |
| Protein | 0g |

(l) The following sample label illustrates an acceptable display for a 750 milliliter bottle of wine containing

14 percent alcohol by volume. This sample label also includes the display of a statement of alcohol content expressed

as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

| Serving Facts | |
|---------------------------|------------------|
| Serving Size | 5 fl oz (148 ml) |
| Servings Per Container | 5 |
| Amount Per Serving | |
| Alcohol by volume | 14% |
| fl oz of alcohol | 0.7 |
| Calories | 120 |
| Carbohydrate | 3g |
| Fat | 0g |
| Protein | 0g |

(m)(1) The following sample label illustrates the linear display for a 50 milliliter bottle of wine containing 14 percent alcohol by volume. When Serving Facts information is given in a

linear fashion, bolding is required only on the title "Serving Facts" and is optional for the headings "Calories," "Alcohol by volume," "Carbohydrate," "Fat," and "Protein." The formatting

specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 14%; Fl oz of alcohol: 0.2; **Calories:** 41; **Carbohydrates:** 1g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 4.113 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 4.114 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for wines:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or -10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the wine shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram of protein will be acceptable if TTB

analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 4.36 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

6. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

7. In § 5.32, remove and reserve paragraph (a)(3) and add new paragraphs (b)(11) and (b)(12) to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(11) Alcohol content, in accordance with § 5.37.

(12) Serving Facts panel, in accordance with subpart J of this part.

* * * * *

8. Amend § 5.63 by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(e) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart J of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

9. Add a new Subpart J to read as follows:

Subpart J—Nutrient Information

- Sec.
- 5.81 Serving Facts panels.
- 5.82 Format for the Serving Facts panels.
- 5.83 Placement of Serving Facts panels.
- 5.84 Tolerance levels.

Subpart J—Nutrient Information

§ 5.81 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 5.32(b)(12) must

include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraphs (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container—(1) Definition.* The term “single serving” or “serving size” means an amount of the distilled spirits customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for distilled spirits are:

| For products containing: | a single serving or serving size is: |
|--------------------------|--------------------------------------|
| 0.5 to 10% alc/vol | 12 fluid ounces (355 milliliters). |
| over 10% to 18% alc/vol. | 5 fluid ounces (148 milliliters). |
| over 18% alc/vol | 1.5 fluid ounces (44 milliliters). |

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Additionally, products sold in 50 milliliter containers will be considered a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest 1/4 serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 5.37 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 5.32(b)(11).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an

ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 5.82(g).

(e) *Calories*. A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates*. A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat*. A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein*. A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 5.82 Format for the Serving Facts panels.

The distilled spirits label or advertisement must present the Serving Facts panel in, or in a manner that closely resembles, the following format. While TTB encourages presentation of the Serving Facts information in a panel format as specified below, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) of this section for an illustration of the linear display.

(a) The Serving Facts panel information must be set off in a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

(1) Appear in a single easy-to-read type style;

(2) Appear in upper and lower case letters;

(3) Have at least one point leading (that is, space between lines of text); and

(4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 5.81 must appear in the panel in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume (if included in the Serving Facts panel);

(4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);

(5) Calories;

(6) Carbohydrates;

(7) Fat; and

(8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) "Serving Size", including the numeric figure denoting the size in U.S. fluid ounces and, in parentheses, in milliliters;

(2) "Servings Per Container", including the numeric figure denoting the correct number (rounded to the nearest ¼ serving); and

(3) Numeric figures denoting alcohol content, calories, and grams of carbohydrates, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) "Serving Facts" (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) "Amount Per Serving" and "Amount Per Bottle" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) "Alcohol by volume", "Calories", "Carbohydrates", "Fat", and "Protein" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading "fl oz of alcohol" must be preceded by and indented underneath the heading "Alcohol by volume" and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar should appear under the "Amount Per Serving" heading, and the other inner lines and outside line of the box should be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, "Alcohol by volume", "Alc/vol" or "Alc by vol."

(2) For U.S. fluid ounces, "fl. oz.";

(3) For grams, "g";

(4) For Carbohydrate, "Carb";

(5) For serving, "Serv.";

(6) For milliliters, "ml"; and

(7) For amount, "amt".

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 100 milliliter bottle of 40 percent alcohol by volume distilled spirits without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

| Serving Facts | |
|------------------------|-------------------|
| Serving Size | 1.5 fl oz (44 ml) |
| Servings Per Container | 2.25 |
| Amt Per Serv. | |
| Calories | 116 |
| Carbohydrate | 0g |
| Fat | 0g |
| Protein | 0g |

(l) The following sample label illustrates an acceptable display for a 750 milliliter bottle of distilled spirits

containing 40 percent alcohol by volume. This sample label also includes the display of alcohol content expressed

as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

| Serving Facts | |
|--------------------------|-------------------|
| Serving Size | 1.5 fl oz (44 ml) |
| Servings Per Container | 17 |
| Amount Per Serving | |
| Alcohol by volume | 40% |
| fl oz of alcohol | 0.6 |
| Calories | 116 |
| Carbohydrate | 0g |
| Fat | 0g |
| Protein | 0g |

(m)(1) The following sample label illustrates the linear display for a 50 milliliter bottle of distilled spirits containing 40 percent alcohol by volume. When Serving Facts

information is given in a linear fashion, bolding is required only on the title "Serving Facts" and is optional for the headings "Calories," "Alcohol by volume," "Carbohydrate," "Fat," and

"Protein." The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 40%; Fl oz of alcohol: 0.7; **Calories:** 131; **Carbohydrates:** 0g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 5.83 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 5.84 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement

statements of calorie, fat, carbohydrate, protein, and alcohol content for distilled spirits:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or -10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is,

within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the distilled spirits shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and is not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram protein will be acceptable if TTB

analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 5.37 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site, information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

10. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

11. In § 7.22, remove paragraph (a)(5), revise paragraph (b)(3) and add a new paragraph (b)(5) to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 7.71.

(4) * * *

(5) A Serving Facts panel, in accordance with subpart J of this part.

* * * * *

12. Amend § 7.52 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 7.52 Mandatory statements.

* * * * *

(c) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart J of this part and an alcohol content statement disclosing the percentage of alcohol by volume.

* * * * *

13. Revise the heading of Subpart H to read “Subpart H—Alcohol Content Statements”.

14. Amend § 7.71 by revising the section heading and paragraph (a) to read as follows:

§ 7.71 Alcohol content.

(a) *General.* Alcohol content must be stated on the label unless prohibited by State law. When alcohol content is stated, and the manner of statement is not required under State law, it shall be stated as prescribed in paragraph (b) of this section.

* * * * *

15. Add a new Subpart J to read as follows:

Subpart J—Nutrient Information

Sec.

- 7.91 Serving Facts panels.
- 7.92 Format for Serving Facts panels.
- 7.93 Placement of Serving Facts panels.
- 7.94 Tolerance levels.

Subpart J—Nutrient Information

§ 7.91 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 7.22(b)(5) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraph (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container—(1) Definition.* The term “single serving” or “serving size” means an amount of the malt beverage customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for malt beverages are:

| | |
|--------------------------|--------------------------------------|
| For products containing: | a single serving or serving size is: |
| 0.5 to 10% alc/vol | 12 fl oz (355 milliliters). |
| over 10% alc/vol | 5 fl oz (148 milliliters). |

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest ¼ serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 7.71 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 7.22(b)(3).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving, expressed to the nearest tenth of an

ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 7.92(g).

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 7.92 Format for Serving Facts panels.

The malt beverage label or advertisement must present the Serving Facts panel in, or in a manner that closely resembles, the following format. While TTB encourages presentation of the Serving Facts information in a panel format as specified below, TTB will also permit the listing of Serving Facts information in a linear fashion for containers 50 milliliters or smaller. See paragraph (m) below for an illustration of the linear display.

(a) The Serving Facts panel information must be set off within a box by use of hairlines with all black or one color type, printed on a white or other neutral contrasting background.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

- (1) Appear in a single easy-to-read type style;
- (2) Appear in upper and lower case letters;
- (3) Have at least one point leading (that is, space between lines of text); and
- (4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 7.91 must appear in the panel in the following order:

- (1) Serving size;
- (2) Servings per container;
- (3) Percentage of alcohol by volume (if included in the Serving Facts panel);

- (4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);
 (5) Calories;
 (6) Carbohydrates;
 (7) Fat; and
 (8) Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) "Serving Size", including the numeric figure denoting the size in U.S. fluid ounces.

(2) "Servings Per Container", including the numeric figure denoting the correct number (rounded to the nearest 1/4 serving); and

(3) Numeric figures denoting alcohol content, calories, and carbohydrate, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) "Serving Facts" (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and

no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) "Amount Per Serving" and "Amount Per Bottle" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) "Alcohol by volume", "Calories", "Carbohydrate", "Fat", and "Protein" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

(g) If included on the Serving Facts panel, the heading "fl oz of alcohol" must be preceded by and indented underneath the heading "Alcohol by volume" and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.

(h) A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar must appear under the "Amount Per Serving" heading, and the other inner

lines and outside line of the box must be 0.5-point thickness.

(i) The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, "Alcohol by volume", "Alc/vol" or "Alc by vol";

(2) For U.S. fluid ounces, "fl oz";

(3) For grams, "g";

(4) For Carbohydrate, "Carb";

(5) For serving, "Serv.";

(6) For milliliter, "ml"; and

(7) For amount, "Amt."

(j) The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

(k) The following sample label illustrates an acceptable display for a 24- fluid ounce bottle of 4 percent alcohol by volume malt beverage without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

| Serving Facts | |
|------------------------|-------------------|
| Serving Size | 12 fl oz (355 ml) |
| Servings Per Container | 2 |
| Amt Per Serv. | |
| Calories | 90 |
| Carbohydrate | 2g |
| Fat | 0g |
| Protein | 1g |

(l) The following sample label illustrates an acceptable display for a 12 fluid ounce bottle of a malt beverage

containing 4 percent alcohol by volume. This sample label also includes the display of a statement of alcohol content

expressed as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

| Serving Facts | |
|--------------------------|-------------------|
| Serving Size | 12 fl oz (355 ml) |
| Servings Per Container | 1 |
| Amount Per Serving | |
| Alcohol by volume | 4% |
| fl oz of alcohol | 0.5 |
| Calories | 90 |
| Carbohydrate | 2g |
| Fat | 0g |
| Protein | 1g |

(m)(1) The following sample label illustrates the linear display for a 1.7 fluid ounce bottle of a malt beverage containing 12 percent alcohol by volume. When Serving Facts

information is given in a linear fashion, bolding is required only on the title "Serving Facts" and is optional for the headings "Calories," "Alcohol by volume," "Carbohydrate," "Fat," and

"Protein." The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Alcohol by volume:** 12%; Fl oz of alcohol: 0.2; **Calories:** 13; **Carbohydrates:** 0g; **Fat:** 0g; **Protein:** 0g

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 7.93 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 7.94 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for malt beverages:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of +5 or -10 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between 86 and 101 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements

will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the malt beverage shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram protein will be acceptable if TTB analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 7.71 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site, information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

PART 24—WINE

16. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

17. Revise § 24.257(a)(3) to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(3) The alcohol content as percent by volume. For wine with 7 percent or more alcohol by volume, the rules of § 4.36 apply. For wine with less than 7 percent alcohol by volume stated on the label there is allowed an alcohol content tolerance of plus or minus .75 percent by volume; and

* * * * *

Signed: July 17, 2007.

John J. Manfreda,
Administrator.

Approved: July 19, 2007.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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