



February 22, 2019

The Hon. Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

In re: TTB Notice 176, 83 Fed. Reg. 60562 (Nov. 26, 2018)

Dear Secretary Mnuchin:

We write as consumer organizations with a longstanding interest in alcoholic-beverage container labeling. We appreciate recent efforts by the Alcohol and Tobacco Tax and Trade Bureau (TTB) to streamline the labeling of these products through its proposed rule on “Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages” (Notice No. 176).¹ We hope that this rulemaking will bring greater clarity and consistency to alcoholic-beverage regulation. However, the current notice falls dramatically short of what is needed to truly “modernize” alcohol labeling by failing to require uniform disclosure of key information—alcohol content, serving size, calories, ingredients, and allergen information—that consumers need to make informed choices.

Not only do consumers want this information; the TTB needs it to fulfill its statutory obligation under the Federal Alcohol Administration Act (FAA) of 1935, which directs the TTB to ensure that alcohol labeling and advertising “provide the consumer with adequate information as to the identity and quality of the products.”² As the TTB acknowledges in Notice No. 176, the intent of Congress in passing the FAA was that federal alcohol regulations “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.*”³

Yet now, more than eight decades after passage of the FAA, this core part of its mandate has yet to be realized. The public has expressed an overwhelming interest in improved information on the labeling of alcoholic beverages. In 2003, the Center for Science in the Public Interest (CSPI) submitted polling data to the TTB from a nationally representative telephone survey of U.S. adults showing that 94 percent supported alcohol-content labeling on alcoholic beverages, 91 percent supported ingredient labeling, 89 percent supported labeling of calorie content, and 84 percent supported serving size information.⁴

¹ U.S. DEP’T OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU. Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages, 83 Fed. Reg. 60,562 (November 26, 2018). [hereinafter: Notice No. 176] www.govinfo.gov/content/pkg/FR-2018-11-26/pdf/2018-24446.pdf

² 27 U.S.C. § 205 (e) & (f).

³ Notice No. 176 at 60,562 (quoting Hearings on H.R. 8539 before the Committee on Ways and Means, House of Representatives, 74th Cong., 1st Sess. 10 (1935)).

⁴ See Attachment.

These data accompanied a petition from the National Consumers League (NCL), CSPI, and 67 other organizations urging the TTB to require Serving Facts labeling for alcoholic beverages, similar to the nutrition and ingredients labeling that appears on most packaged foods and beverages regulated by the Food and Drug Administration (FDA) and the Department of Agriculture (USDA).⁵ The petitioners proposed an “Alcohol Facts” label like the following one (for a 750 mL 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 need for improved label information has only increased in the years since that petition was filed. Consumers expect—and need—to know what they are drinking in order to make informed choices, including the amount of alcohol, serving size, calories, ingredients, and whether allergens are present. This information is now required on the vast majority of packaged foods and beverages. What’s more, as of May 2018, calorie and key nutrition information also must be provided at chain restaurants, including for alcohol when it appears on the menu.⁶ The need to protect the public health from negative effects of consuming alcoholic beverages has never been more pressing: 70 percent of American adults are now overweight or obese, and alcohol is a leading source of calories in the American diet.⁷ The government’s own *Dietary Guidelines for Americans* has recommended that consumers take into account the calories they get from alcohol in order to avoid excessive calorie intake, but that advice is impossible to follow if calorie content is not readily available.⁸

In spite of this great need, the TTB has continued to shirk its responsibility to require nutrition information on alcoholic beverages. The agency proposed mandatory Serving Facts information through TTB Notice No. 73 in 2007,⁹ but it has since allowed that rulemaking to languish. In 2013, the TTB

⁵ See Attachment.

⁶ U.S. FOOD AND DRUG ADMINISTRATION. Menu Labeling: Supplemental Guidance for Industry. May 2018. www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM583492.pdf.

⁷ U.S. DEP’T OF AGRICULTURE. Scientific Report of the 2015 Dietary Guidelines Advisory Committee. February 2015. (Table D1.12) https://ods.od.nih.gov/pubs/2015_dgac_scientific_report.pdf.

⁸ U.S. DEP’T OF AGRICULTURE. Dietary Guidelines 2015-2020. Appendix 9. Alcohol. <https://health.gov/dietaryguidelines/2015/guidelines/appendix-9/>.

⁹ U.S. DEP’T OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU. Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages, 72 Fed. Reg. 146 (July 31, 2007). www.federalregister.gov/documents/2007/07/31/E7-14774/labeling-and-advertising-of-wines-distilled-spirits-and-malt-beverages.

issued TTB Notice 2013-2,¹⁰ a ruling allowing voluntary placement of Serving Facts labels “pending completion of rulemaking” on the 2007 proposed rule. Such voluntary labeling remains inadequate without further action because it fails to provide for uniform disclosures that will allow consumers to make informed choices between products. Only by completing the mandatory rulemaking can the TTB ensure that manufacturers of alcoholic beverages provide key information consistently and clearly on all alcoholic beverages.

The TTB has similarly failed to follow through on protections for consumers with food allergies. Disclosure of allergen information can have life-and-death consequences for some consumers, a harsh reality that led to passage of the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), which requires allergen labeling for FDA-regulated foods and beverages. Following passage of FALCPA, the TTB issued a proposed rule on mandatory labeling for major food allergens in 2006.¹¹ Yet the TTB rulemaking has failed to progress. This is all the more remarkable considering that, in its rulemaking, the TTB noted that the “major trade associations representing the alcohol beverage industry expressed their support for mandatory labeling of major food allergens.”¹² Yet TTB left consumers with an interim rule, also published in 2006, that provides for only *voluntary* disclosure of major allergens.¹³ The interim rule creates a patchwork system that leaves consumers guessing. It may actually undermine public health to the extent that consumers with allergies may assume that an alcoholic beverage is safe to drink if its label has no allergen content declaration, when in fact the manufacturer simply has not bothered to label allergens that may be present. Mandatory allergen labeling has been available for more than a decade on beverages regulated by the FDA, and it is long overdue for alcoholic beverages.

Rather than finalize these rules, the TTB has proposed a rule to “modernize” advertising and labeling of alcoholic beverages without these key measures. Notice No. 176 purports to modernize TTB regulations so as to “take into account modern business practices and *contemporary consumer understanding*.”¹⁴ Yet while the proposed rule offers some benefits in terms of minor adjustments to labeling rules,¹⁵ it explicitly excludes action in the areas of most concern to consumers, “due to their complexity.”¹⁶ As the TTB indicates, the proposal “does not deal with ‘Serving Facts’ statements” and “[s]ubstantive changes to allergen labeling requirements are not addressed.”¹⁷ While the TTB may believe that the issues are complex, the agency has now had over a decade to consider them, and rulemakings to provide this key

¹⁰ U.S. DEP’T OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU. *Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages No. 2013-12* (May 28, 2013), <https://www.ttb.gov/rulings/2013-2.pdf>.

¹¹ U.S. DEP’T OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU. *Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages*. 71 Fed. Reg. 42329 (July 26, 2006) www.federalregister.gov/documents/2006/07/26/06-6467/major-food-allergen-labeling-for-wines-distilled-spirits-and-malt-beverages.

¹² *Ibid.* at 42332.

¹³ *Ibid.*

¹⁴ Notice No. 176, 83 Fed. Reg. at 60,566.

¹⁵ We support, for example, the requirement that mandatory information appear on opaque packaging of malt beverages, as is already required for distilled spirits and wine. Notice No. 176, 83 Fed. Reg. at 60,567.

¹⁶ *Ibid.* at 60,567.

¹⁷ *Ibid.*

information are already well underway. These rules should be prioritized under any effort to modernize alcohol labeling.

The TTB cannot and should not set aside the most pressing consumer issues on its docket. We urge you to instruct the TTB to withdraw the proposed rule and to issue a new proposal providing a mandatory, standardized declaration covering alcohol content by percentage and amount, serving size, calories, ingredients, allergen information, and other information relevant to consumers. This rule could be based on the prior regulatory dockets already underway and would provide much-needed closure to those considerable efforts. Consumers of alcoholic beverages deserve the clear, consistent labeling that has long been available on other beverages.

Sincerely,

Center for Science in the Public Interest
Consumer Federation of America
National Consumers League

Cc: John Manfreda, TTB Administrator

Cc: Mary Ryan, TTB Deputy Administrator



December 16, 2003

Arthur Libertucci
Administrator
Alcohol and Tobacco Tax and Trade Bureau
U.S. Department of the Treasury
650 Massachusetts Avenue, NW
Washington, DC 20226

Attention: Compliance Operations

Re: **Petition to Improve Mandatory Label Information on Alcoholic Beverages (“Alcohol Facts”)**

Dear Mr. Libertucci:

Pursuant to 27 C.F.R. § 70.701(c), the National Consumers League, Center For Science in the Public Interest, 67 other organizations (Appendix A), and eight individuals, including four deans of schools of public health (Appendix B) submit this petition to the Tax and Trade Bureau (TTB), seeking rulemaking to improve labeling on all alcoholic-beverage containers sold in the United States. Specifically, petitioners request issuance of a final rule amending 27 C.F.R. §§ 4.30, 4.32, 4.36, 5.31, 5.32, 5.37, 7.20, 7.22, and 7.71 to require that labels of all alcoholic beverages regulated by TTB include the following information in a standardized format: (a) the beverage’s alcohol content expressed as a percentage of volume; (b) the serving size; (c) the amount of alcohol per serving; (d) number of calories per serving; (e) the ingredients (including additives) from which the beverage is made; (f) the number of standard drinks per container; and (g) the *U.S. Dietary Guidelines*’ advice on moderate drinking for men and women [collectively, “Alcohol Facts”].

Such modifications are necessary to provide the American public with “adequate information as to the identity and quality” and alcohol content of such beverages as required by 27 U.S.C. § 205(e)(2) and to prevent such labels from being false or misleading pursuant to 27 U.S.C. § 205(e)(4). Providing information on alcohol, calories, and ingredients will help consumers make more informed choices about their consumption of alcohol and help protect those Americans who can suffer serious, sometimes fatal, reactions to the myriad of additives or allergens that may be used in beer, wine, and liquor. Such information would also help consumers adhere to the *Dietary Guidelines for Americans*’ recommendations regarding consumption of alcohol and maintenance of a healthy weight.

In addition, such labeling would help reduce consumer confusion about the different types of alcoholic beverages and the amount/concentration of alcohol in each. Wines, beers, and distilled spirits are sold in an increasingly wide variety of formulations, container sizes and alcohol concentrations. Providing per-serving label information about alcohol and calories, as well as the number of drinks per container, would allow consumers to quickly and easily determine the alcohol content and other important characteristics of a particular product.

Introduction

Federal law requires that labels of alcoholic beverages convey adequate information on the identity, quality, and alcohol content (except for malt beverages) of such products and prohibits label statements that are false or misleading.¹ The Bureau of Alcohol, Tobacco, and Firearms (now TTB) has issued regulations implementing those statutory requirements for alcoholic-beverage labeling.² The regulations provide, in part, that alcoholic beverages introduced into interstate or foreign commerce (other than malt beverages) must have labels that include alcohol content expressed in terms of percentage of alcohol by volume, as well as truthful and adequate statements of product identity.

Beyond those general requirements, there are substantial disparities in the labeling requirements applicable to different kinds of alcoholic beverages. Current labels for wine and distilled spirits are required, by law, to reveal the beverages' alcohol concentration – expressed as a percentage of alcohol by volume (additional proof-level statements are optional) – but labeling alcohol content on beer and other malt beverages is entirely optional. Only those alcoholic beverages that make nutritional claims, such as “light” or “lite” beers, must disclose calorie content and certain nutrition information.³

Disparities in the labeling of alcoholic beverages make no sense and are confusing to consumers. There is no reason why alcohol content should be required on the label of a wine that is 7 percent alcohol by volume, but not on the label of a malt liquor that is 8 percent alcohol by volume. Similarly, there is no reason why an ingredients list should be required on a wine that is 6 percent alcohol, but not on a beer that is 8 percent alcohol.⁴ Today, consumers are virtually in the dark when it comes to assessing the difference in alcohol content between a beer, a glass of wine, and shot of liquor. Consumers have no easy way to determine that a 40-ounce bottle of malt liquor might contain as much as six times the alcohol of a single regular beer.

¹ 27 U.S.C. § 205(e)(2), (4).

² 27 C.F.R. §§ 4.30-4.39, 5.31-5.42, 7.20-7.29, 7.71.

³ Wines and hard ciders containing less than 7 percent alcohol by volume are not subject to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.) and TTB's regulations. Rather, these products are subject to the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, and to Food and Drug Administration (FDA) regulations.

⁴ FDA regulations, which require ingredient information, govern the labeling of wine only if it contains less than 7% alcohol by volume.

This petition requests that the TTB modernize its regulations to require that labels of alcoholic beverages containing more than one-half of one percent alcohol by volume include the following information⁵:

- Alcohol content, expressed as a percentage of volume;
- Serving size for a standard drink that contains 0.50 ounce of ethyl alcohol (*e.g.*, approximately 12 fluid ounces (fl oz) for beer and other malt beverages (except higher-alcohol malt liquors), 5 fl oz for table wine, and 1.5 fl oz for 80-proof distilled spirits);
- The amount of alcohol in ounces and number of calories per serving;
- The number of standard drinks (using 0.50 ounce of ethyl alcohol as a standard drink) per container;
- An ingredients declaration, listing each ingredient (including food and color additives and flavors) by its common or usual name, and;
- Current *U.S. Dietary Guidelines* definitions of moderate drinking for men and women.

That information should be provided in the form of an “Alcohol Facts” panel on the labels of alcoholic beverages, similar to the “Nutrition Facts” on labels of foods and “Supplement Facts” on labels of dietary supplements. We believe that information is necessary to provide consumers with “adequate information” as to the identity, quality, and alcohol content of alcoholic beverages, as required by the statute, 27 U.S.C. § 205(e)(2). For any alcoholic-beverage product that consumers ingest, the product’s ingredients (including the amount of the characterizing alcohol ingredient) and its calorie content are essential elements of its quality and are likely to directly affect purchasing decisions. Moreover, given the current blurring of the lines separating the three traditional categories of alcoholic beverages, the requested information is needed for consumers to know how particular products compare to others.

Consumers Need Information on the Number of Drinks per Container

The undersigned propose that the labels of alcoholic beverages include a declaration of the number of drinks per container, based on the *Dietary Guidelines*’ definition of a standard drink. The Petitioners believe it is essential that consumers be able to immediately determine from the label of an alcoholic beverage how many “standard drinks” they are consuming. Excessive consumption of alcohol is related to a number of public health problems. A tremendous body of research, reflected in the *Dietary Guidelines for Americans*, shows that heavy consumption of alcohol is unhealthy, while moderate consumption of alcohol may offer certain health benefits for some consumers. The *Dietary Guidelines* therefore advises that women who drink limit their alcohol intake to one drink a day, and men to two drinks a day. Yet, labels of alcoholic beverages provide no information that offers that advice or allows consumers to know how many “standard drinks” they are consuming.

⁵ TTB should work with FDA to require that the requested label refinements also apply to alcoholic beverages regulated by FDA.

Consumers Need Additional Information Regarding the Alcohol Content of Alcoholic Beverages

The current regulatory requirement that labels of certain alcoholic beverages provide the percent alcohol by volume is inadequate. A statement that a bottle of wine is 12% alcohol by volume, or that a distilled spirit is 80 proof (optional), does not provide meaningful information to most consumers.⁶ At best, such a statement gives the consumer a general idea of how “strong” or “concentrated” the labeled beverage is in relation to certain other alcoholic beverages that disclose the percentage or proof level. Even that requires that the consumer possess knowledge not provided on the label. Consumers of alcoholic beverages are forced to guess how much alcohol they are consuming. Americans are generally unaware that standard servings or drinks of beer, wine, and a shot of distilled spirits contain the same amount of alcohol. 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.⁷

Not only is current percent alcohol information inadequate, it is also arguably misleading in violation of 27 U.S.C. § 205(e)(4). Currently, beers are not required to list alcohol content on their labels. Such labeling is permissive. In some states, however, beer labels list alcohol content as a percentage of alcohol by weight, making beer appear deceptively less intoxicating than wine and spirits. Given the very different serving sizes for beer, wine, and spirits, percent alcohol content labeling alone can create a very misleading impression.

Information on Serving Size and Servings per Container would Help Consumers Gauge Alcohol Intake

Consumers need to be able to look at the label of an alcoholic beverage and quickly determine the size (in ounces) of a serving and the number of servings per container, based on alcohol content. Consistent with the *U.S. Dietary Guidelines*, a serving should be defined as 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of 80-proof distilled spirits. For alcoholic beverages that do not fit into one of those standard categories, a serving should be defined as an amount of fluid containing approximately 0.5 ounce of ethyl alcohol. For example, a malt-liquor product containing 8% alcohol by volume might have a serving size of seven (7) ounces, and a 12-ounce container of the product would be labeled as containing 1 ³/₄ servings. Serving size designations would be rounded to the nearest ¹/₄ drink.

⁶ As previously noted, malt beverage labels (including all beer labels) are not required to state alcohol content at all.

⁷ The marketing of flavored malt beverages by distilled spirits manufacturers under their brand names has also confused consumers regarding the alcohol content of these products. Shelly Branch, “About What Is in Malt Beverages,” *The Wall Street Journal*, April 9, 2002, p. B4 (“William Perociello, an analyst with Morgan Stanley.... said his research found that ambiguity about what is in the bottles was a point of confusion among consumers and may have helped boost sales of these ‘malternatives,’ as the drinks are known.”).

In addition to providing the amount of alcohol per serving (0.5 ounce), labels of alcoholic beverages should include a statement of the number of drinks (to the nearest one-quarter) in the container. This statement should be accompanied by a consistent graphic, such as a beer mug or glass of wine, to alert consumers to the statement. That would enable a consumer to quickly know how many drinks the beverage container in his or her hand holds. That information would be especially helpful to younger adult consumers who generally do not know the alcohol content of beer, wine, and spirits.⁸

That combination of information about a beverage's alcohol content and serving size is important for a number of reasons. First, it would help consumers who choose to drink make responsible decisions about drinking by informing them, in understandable terms, how much alcohol and how many drinks they are consuming. That information would be useful on all products, but would be especially useful on labels of non-standard alcoholic beverages (*e.g.*, malt liquors, fortified wines, hard lemonades) where the consumer may not have a clear idea how the alcohol content of the product relates to the alcohol content of more familiar alcoholic beverages. By helping consumers make responsible drinking decisions, we hope that information may help reduce alcohol abuse and drunk driving.

The "Alcohol Facts" label should also include the *U.S. Dietary Guidelines'* definition of moderate drinking: no more than 2 drinks per day for men, 1 for women. Label information stating the number of drinks per container would also help consumers who drink to follow those recommendations. Excessive consumption of alcohol produces a range of serious adverse health effects, including liver disease, acute pancreatitis, cardiomyopathy, reproductive disorders, diabetes, nutritional disorders, and some cancers. At the same time, *moderate* alcohol consumption may have a protective effect against coronary heart disease for some consumers.⁹ Those consumers who wish to take advantage of the health benefits of moderate alcohol consumption while avoiding the harm of excessive consumption should have clear information about the amount of alcohol per serving and the number of drinks per container so that they can measure their intake and ensure that they remain within the daily intake limits recommended by the *Dietary Guidelines*. Given what we know today about the risks and potential benefits of

⁸ Researchers in one study found that a substantial proportion of young adults either overestimated or underestimated the alcohol content of beer, wine, and spirits; none of the study subjects reported correct alcohol content values for all of the beverage types. Martin CS, Liepman MR, Nirenberg TD, Young CM. Young adults' knowledge of the strength of different alcoholic beverages. *J Drug Educ* 1991; 21(2): 149-57.

⁹ "Drinking in moderation may lower the risk for coronary heart disease, mainly among men over age 45 and women over age 55." *Dietary Guidelines*, p. 45. *See also*, Yang T, Doherty T, Wong N, et al. Alcohol consumption, coronary calcium, and coronary heart disease events. *Am J Cardiol* 1999;84:802-806; Rimm EB, Williams P, Fosher K, et al. Moderate alcohol intake and lower risk of coronary heart disease: meta-analysis of effects on lipids and haemostatic factors. *British Medical Journal* 1999;319:1523-1528; Mukamal K et al., Prior alcohol consumption and mortality following acute myocardial infarction. *JAMA* 2001;285:1965-1970.

alcohol at different levels of intake, it is very important that consumers be able to know precisely how many drinks they are consuming.

Consumers Do Not Know The Calorie Content of Alcoholic Beverages

In September, 2003, the Center for Science in the Public Interest commissioned Global Strategies, Inc. to conduct a nationally representative poll of 550 Americans 18 years and older. That poll (a portion of which is attached as Appendix D) provides important insights into Americans' knowledge and attitudes regarding the labeling of alcoholic beverages. The principle findings include:

1. Only 10% of respondents correctly identified the approximate number of calories in a regular beer.
2. 58% either didn't know (46%) or thought that a beer has fewer calories than it actually has (12%).
3. 79% either didn't know (47%) the calorie content of flavored malt beverages ["alcopops"] or thought they have fewer calories than they actually have (32%).
4. 41% incorrectly thought that alcopops (flavored malt beverages) have the same number or fewer calories than beer.

Consumers Want to Know the Calorie Content of Alcoholic Beverages

Most alcoholic-beverage labels contain no information whatsoever about the calorie content of the product.¹⁰ Consumers are forced to guess how many calories an alcoholic beverage contains. In a society plagued by obesity, a product's calorie content is information that should, and often does, affect consumers' purchasing decisions, and therefore relates to a product's "quality" under 27 U.S.C. § 205(e)(2). Though many drinkers wish it were not the case, alcoholic beverages provide calories.¹¹ Those calories may contribute to weight gain if consumed as part of a diet that provides more calories than a consumer expends.¹² In addition,

¹⁰ There are two exceptions to this rule. Light beers make a nutrition claim and are required to provide an "average analysis statement" declaring calories, carbohydrates, protein, and fat content per 12 fluid ounce serving. BATF Ruling 80-3. In addition, wines and hard ciders containing less than 7 percent alcohol by volume are regulated by FDA and therefore must bear a Nutrition Facts panel.

¹¹ U.S. Department of Agriculture Handbook No. 74 provides a specific food factor of 7.07 calories per gram of alcohol. This compares to 4 calories per gram for carbohydrate and protein, and 9 calories per gram for fat. Thus, the wine cooler in Attachment C declares 160 calories per 8 fluid ounces, more calories than a leading brand of cola which has 140 calories per 12 fluid ounces.

¹² "Weight Management, State of the Science and Opportunities for Military Programs," Subcommittee on Military Weight Management... Food and Nutrition Board, Institute of Medicine, pp. 3-16 (2003).

individuals who consume too many calories in the form of alcohol are at risk of malnutrition, because they may be substituting alcohol for more nutritious foods.¹³

Alcoholic-beverage labels should be required to declare the number of calories per serving. Providing this information would help consumers watch their calories and adhere to the *Dietary Guidelines*' recommendation to "aim for a healthy weight."¹⁴ It may also make heavy drinkers more aware of how much of their caloric intake is derived from alcoholic beverages.

Providing calorie information on labels of alcoholic beverages, as on foods and non-alcoholic beverages, is all the more important today, when obesity has become a national epidemic, contributing to an enormous health burden of heart disease, stroke, diabetes, cancer and other diseases.

Consumers Need Additional Information on Ingredients in Alcoholic Beverages

Current TTB regulations require that a handful of ingredients be declared on labels of alcoholic beverages. For example, the presence of sulfites or sulfiting agents must be indicated on labels of all alcoholic beverages, and the artificial color FD&C Yellow No. 5 must be declared if present in a malt beverage or distilled spirits. However, there is no requirement that other ingredients, including other potential allergens such as dairy, eggs, gluten, or nuts, be declared on the label.

Almost all foods and dietary supplements are required to list nearly all ingredients used to make a product.¹⁵ That should also be true for alcoholic beverages. It is especially important that all of the eight common food allergens identified by the Food and Drug Administration (FDA) be declared on the label.¹⁶ Roughly seven million Americans suffer from food allergies.¹⁷ Those individuals look to a product's ingredients list to see whether the product contains the allergens they must avoid. In addition to sulfites and FD&C Yellow No. 5, alcoholic beverages may contain other common allergens, such as nuts, gluten, milk and eggs. Without ingredient

¹³ "Heavy drinkers also are at risk of malnutrition because alcohol contains calories that may substitute for those in nutritious foods." *Dietary Guidelines*, p. 45.

¹⁴ *Dietary Guidelines*, p. 7.

¹⁵ 21 U.S.C. Sec. 343

¹⁶ Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens, FDA Compliance Policy Guides Sec. 555.250 (April 19, 2001)

¹⁷ Greg Winter, "F.D.A. finds faulty listings of possible food allergens," *The New York Times*, April 3, 2001. The eight common food allergens are peanuts, tree nuts, milk, eggs, wheat, soybeans, fish, and shellfish.

labeling, the presence of these allergens may not be obvious to some allergic consumers.¹⁸ We note that the FDA is paying increasing attention to food allergens and that the European Commission recently proposed a directive to require ingredient labeling of alcoholic beverages sold in the European Union.¹⁹

Besides the obvious health reasons for labeling ingredients, consumers are entitled to know what they're getting. Ingredient information would assist them in gauging the quality of products. Additionally, even if the FDA deemed an ingredient safe, consumers might have other concerns about ingredients in alcoholic beverages, based on health, safety, or religious reasons.

The declaration of flavors and colors used in alcoholic beverages should be consistent with FDA regulations, but should be printed in upper and lower case letters, with a serif and not "condensed" font. See 21 C.F.R. §§ 101.22. Producer concerns about recipe confidentiality and trade secrets should be allayed by following the FDA rules that have been applied to the food industry without controversy for decades.

Proposed "Alcohol Facts" Label and Ingredient Statement

We propose that all alcoholic-beverage containers bear an "Alcohol Facts" label, such as the following (for a 750 ml 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 words "Alcohol Facts" should be immediately followed by a declaration of the number of standard drinks (servings) per container. A consistent graphic symbol (*e.g.*, a beer mug, wine glass, or shot glass) should appear first, followed by the number of drinks in the container (*e.g.*, "Contains **5** Servings"). This information should be required on labels of all malt beverages, wines, and distilled spirits products regulated by TTB that contain more than 1/2 of one

¹⁸ The need for ingredient labeling is heightened by the increased marketing and availability of flavored alcoholic beverages, because these products may include ingredients not found in standard alcoholic beverages.

¹⁹ Sebastian Romero Melchor, "EC proposes extending full ingredient labeling to alcoholic drinks," *Food Chemical News*, January 29, 2001.

percent alcohol by volume. Ingredient information should appear on the label immediately below, but segregated from, the “Alcohol Facts” box.

On a container that is 750 ml or larger, “Alcohol Facts” would appear much as nutrition labels appear pursuant to the Nutrition Labeling Education Act (NLEA): enclosed in a box, “Alcohol Facts” in bold letters no less than ¼-inch high; number of servings expressed in a bold number (using fractions where appropriate) to the nearest ¼ serving. All information would appear in easy to read, conspicuous, upper and lower case type face that is consistent with graphics and type-face requirements in the NLEA and its implementing regulations.²⁰ The statement relating to the U.S. Dietary Guidelines would be in bold upper and lower case characters. On smaller containers, the required information would be of proportional size, as long as it is clear, legible and conspicuous. In formulating precise requirements for label appearance, TTB should follow NLEA standards – for graphics and type size – set out at 21 CFR Sec. 101.9 (d).

TTB Should Implement its Statutory Mandate to Protect Consumer Health and End Misleading Labeling of Alcoholic Beverages

TTB’s statutory mandate, the Federal Alcohol Administration Act, 27 U.S.C. § 201 *et seq.* (“FAA Act”) provides a comprehensive scheme for federal regulation of the alcoholic- beverage industry. One of Congress’ goals in enacting the FAA Act was to require that alcoholic-beverage manufacturers provide consumers with information that would inform them about the identity and quality of alcoholic beverages. Consequently, Section 205(e)(2) of the Act assigned the Administrator (now the Director of TTB) responsibility to issue regulations for alcoholic beverages “as will provide the consumer with adequate information as to the identity of the products.” Information about calorie content, ingredients, serving size, and alcohol content is precisely the kind of helpful information that consumers want and support.

Currently, consumers are largely ignorant about the calories and ingredients in the drinks they consume. Also, they’re often confused about the source of the alcohol in some of those drinks (e.g., flavored malt beverages). Because of inconsistent requirements regarding the labeling of alcohol content, they may be unaware of the different “serving sizes” for different drinks, for example, a regular beer versus a malt liquor product. Today’s alcoholic-beverage labels help perpetuate this ignorance and can only help fuel the obesity epidemic and other serious health and safety problems related to alcohol consumption.

Regulations under the Federal Alcohol Administration Act (27 CFR §§ 4.39, 5.65, 7.29) prohibit label statements on alcoholic-beverage containers that “irrespective of falsity, directly, **or by ambiguity, omission, or inference**, ... tend[s] to create a misleading impression.” (emphasis added). The absence of required alcohol content labeling of beers helps mislead consumers about the products’ potential to intoxicate. The labeling of some, but not all, beers with calorie information leaves consumers ignorant about the actual number of calories they are consuming. The labeling of some, but not all, wines with calorie and ingredient information certainly does not inform consumers about the actual content of most of the wine they consume.

²⁰ 21 CFR Ch 1, Subchapter B -- General Labeling Requirements

The legislative history of Section 205(e)(2) makes it clear that Congress' chief concern was to provide consumers with complete label information about the content of alcoholic beverages. The following statement by the then director of the Federal Alcohol Control Administration is of particular relevance to the purpose of Section 205(e)(2):

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 straightforward and truthful. They should not be 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.* (emphasis added) Hearings on H.R. 8539 Before the House Comm. On Ways and Means, 74th Congress, 1st Sess. (1935).

BATF's (now TTB) statutory mandate to protect consumer health by requiring that specific information (ingredients) appear on wine, beer and liquor labels has been recognized by the courts. In *Center for Science in the Public Interest v. Dept. of the Treasury* (C.A.D.C. 1986, 797 F.2d 995, 1000 n. 4, 254 U.S.App.D.C. 328, 333) the court stated that the clear purpose of the FAA Act, 27 U.S.C. §205(e) was to provide consumers with information to allow them to make decisions that might affect their health. Similarly, in *Wawszkiewicz v. Dept of the Treasury*, 480 F. Supp.739 (D.D.C. 1979), *rev'd in part, on other grounds*, 670 F. 2d 296 (D.C. Cir. 1981), the court stated that the FAA Act called for regulatory provisions that would provide adequate information as to the identity and quality of alcoholic beverages, 480 F. Supp. At 745.

The public overwhelmingly supports improved labeling of alcoholic beverages: Polling done by the Global Strategies Group for the Center for Science in the Public Interest [see Appendix D] found that 65% *strongly* favor labeling of calorie content (89% overall support); 66% *strongly* support ingredient labeling (91% overall support); 62% *strongly* back serving size information on labels (84% overall support), and 77% *strongly* support alcohol content labeling of alcoholic beverages (94% overall support).

Conclusion

Current labeling requirements for alcoholic beverages are outdated. They do not reflect current scientific knowledge about health and safety matters or consumer expectations regarding what information is necessary to help consumers make informed decisions about alcohol consumption. The current labeling requirements for alcoholic beverages are also inconsistent. There is no rationale that can explain why only certain products must declare alcohol content.

Accordingly, the Petitioners request that the TTB require that labels of alcoholic beverages be required to include an “Alcohol Facts” statement and other information, as described above.

Respectfully submitted,

Linda F. Golodner
President
National Consumers League
1701 K Street, NW, Suite 1200
Washington, D.C. 20006
202-835-3323

George A. Hacker
Director, Alcohol Policies Project
Center for Science in the Public Interest
1875 Connecticut Avenue, NW, Suite 300
Washington, D.C. 20009
202-332-9110

On behalf of the following individuals and organizations:
(Appendices A and B)

Appendix A

Alcohol & Drug Abuse Prevention Association of Ohio
Alcohol-Drug Information Center, Indiana University Bloomington
Alcohol Policy Network
Alcohol Research Information Service (ARIS)
Alcohol/Drug Council of North Carolina
American College of Nurse-Midwives
American School Health Association
American Society of Addiction Medicine (National Office)
American Society of Addiction Medicine - Georgia
American Society of Addiction Medicine - Michigan
Binghamton University Alcohol and Other Drug Program
Blue Sky Strategic Group
Bungalow Club Online - AA Newsletter
Center for Behavioral Epidemiology and Community Health, San Diego State University
Center for Communications, Health & the Environment (CECHE)
Chester County Commission on Alcohol & Drug Abuse
Citizens' Outcry
CommPre - A Program of Horizon Services Inc.
Community Partnership of the Ozarks
Consumer Federation of America
Council on Substance Abuse-NCADD
DC Community Prevention Partnership, Inc.
Dole Nutrition Institute
Drug Abuse Comprehensive Coordinating Office, Inc.
Drug & Alcohol Svc Providers Organization of PA
Duluth School District #709 Denfield High School
FACE-Truth & Clarity on Alcohol
Faces and Voices of Recovery
General Board of Church & Society of the United Methodist Church
Greenville Family Partnerships (GFP)
Greenville Safe Communities Drug Free Alliance (GSCDFA)
Hastings College BACCHUS
Illinois Alcoholism and Drug Dependence Association
Join Together
Louisiana Highway Safety Commission
Maine Association of Prevention Programs
Maine Association of Substance Abuse Problems
Max A. Schneider, M.D., Inc. Education Division
Michigan Interfaith Council on Alcohol Problems
Montana Food Bank Network
National Association for Children of Alcoholics
National Association of Black Substance Abuse Workers
National Association of Pediatric Nurse Practitioners
National Council on Alcoholism and Drug Dependence of the San Fernando Valley
National Crime Prevention Council

National Institute on Media and the Family
National Latino Council on Alcohol and Tobacco Prevention
National Woman's Christian Temperance Union
New Jersey Governor's Council on Alcoholism & Drug Abuse
North City Prevention Coalition
Office of Substance Abuse Prevention
Phase: Piggy Back, Inc.
Per Serving
Red Ribbon Works (RRW)
RID-USA Inc. (Remove Intoxicated Drivers)
San Antonio Fighting Back
Security On Campus, Inc.
Shape Up America!
Sober Living Network Inc.
Somerset Council on Alcoholism & Drug Dependency
STEPS at Liberty Center
Substance Abuse Prevention Services of the Carolinas, Inc.
The Arc of the District of Columbia, Inc.
The Salvation Army National Headquarters
The Trauma Foundation California Alcohol Policy Reform Initiative
Walk & Roll Berkeley
Webb St Blockwatch

Appendix B

Jeanine Atkinson, Director, Vanderbilt University Alcohol, Tobacco & Other Drug Prevention

Kenneth Bart, Dean/Director, San Diego State University Graduate School of Public Health

Martin Colucci, York College – CUNY Division for Student Development/Counseling

Bernard Goldstein, Dean, University of Pittsburgh Graduate School of Public Health

Suzanne Hobbs, Director, University of North Carolina at Chapel Hill, Department of Health and Administration

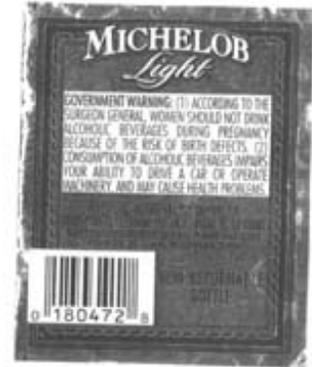
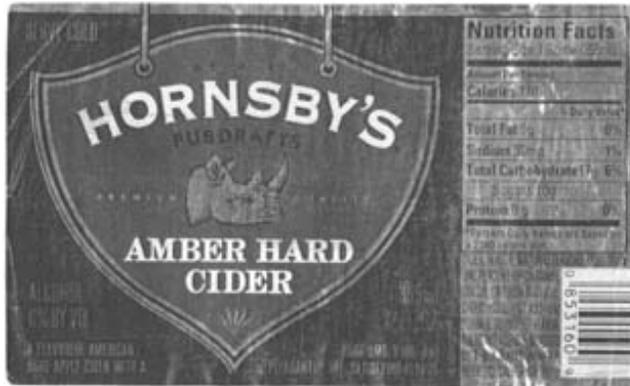
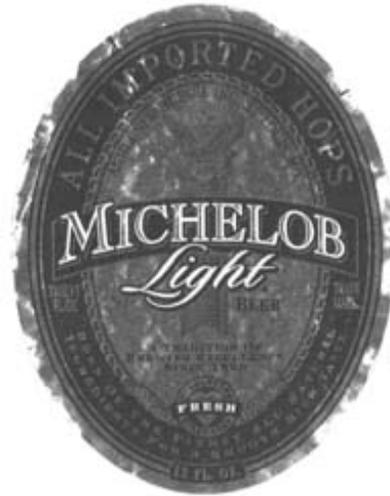
William L. Roper, Dean, University of North Carolina at Chapel Hill School of Public Health

Linda Rosenstock, Dean, University of California, Los Angeles, Center for Health Sciences

School of Public Health

Richard Scribner, Associate Professor, Department of Public Health & Preventive Medicine,
Louisiana State University Medical School

Appendix C



Appendix D

Public Attitudes on Consumer Labeling of Alcoholic Beverages

This summary highlights findings of a census-balanced, nationally representative telephone study conducted in late September, 2003 among 600 Americans ages 18 years and older. This study of public attitudes on the labeling of alcoholic beverages was conducted by Global Strategy Group (GSG), an independent, Washington, D.C.-based polling and market research firm, in late September 2003.

RESPONDENTS READ: Currently labels on some alcoholic beverages are not required to provide consumer information, such as alcohol content, serving size, ingredients and calorie content. I am going to read a list of things that could be included on labels of alcoholic cans and bottles. Please tell me if you would strongly support, somewhat support, somewhat oppose or strongly oppose requiring producers to include each on the labels of alcoholic beverages.

Level of Support for Labeling on Alcoholic Beverages	ALL %	M %	F %	18-29 %	M 18-29 %	F 18-29 %	DRINK %
1 st #: % STRONGLY SUPPORT 2 nd #: % SUPPORT (strongly + somewhat)							
Serving size	62/84	54/74	70/94	56/86	53/78	58/94	64/85
Calorie content	65/89	61/82	69/95	59/90	55/88	63/92	68/88
Alcohol content	77/94	73/93	82/95	78/92	75/89	80/94	77/96
Ingredients	66/91	57/87	75/95	68/86	65/81	71/92	69/91