

TTB Updates

RECENT DEVELOPMENTS

- **Expanded Tolerances for Voluntary Calorie Statements in 2020 Ruling:** Previous nutrition labeling guidelines were onerous and costly for wineries because they involved expensive testing of multiple batches of wine close to the time of bottling. In September 2020, and consistent with Wine Institute’s position, TTB issued [Ruling 2020-1](#) which:
 - Allows for the use of databases and “typical values.”
 - Allows a tolerance of 20% for understatement of calories and carbohydrates. Overstatements of the calorie and carb value are acceptable if the actual content is “within a reasonable range of the labeled or advertised amount (within good manufacturing practice limitations).”
 - Aligns with FDA’s menu labeling requirements.
 - Now wineries can easily and more cost-effectively provide the information.
- **TTB Guidance on Misleading Health-Related Statements:** On March 4, 2022, Wine Institute met with TTB to discuss industry concerns and seek guidance regarding health-related statements on labels and in advertising. In response, TTB issued a series of five regulatory reminders that it prohibits misleading and unsubstantiated health-related statements. TTB provided specific examples of unsubstantiated statements suggesting that consuming a particular alcohol beverage will mitigate certain health consequences. TTB also stated that use of the term “clean” constitutes a misleading health-related statement in phrases like “X malt beverage is clean and healthy” or “Y vodka’s clean production methods mean no headaches for you.”

PENDING RULEMAKINGS

- [NPRM No. 164](#) – **Wine Treating Materials:** This proposed rule was published in November 2016 and addresses materials authorized for the treatment of wine and juice under 27 CFR § 24.246. We understand that the final rule is currently under review with the Office of Chief Counsel and expect it to issue soon.
- [NPRM No. 176](#) – **Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages:** This proposed rule was published in November 2018 and would amend regulations for labeling and advertising of wine, spirits, and beer. In February 2022, however, TTB issued a partial final rule as to spirits and beer only. In doing so, TTB indicated that reorganizing the wine labeling and advertising regulations “would be accomplished in future rulemaking” but did not suggest when that might occur.
- [NPRM No. 210](#) – **Standards of Fill for Wine and Distilled Spirits:** This proposed rule is open for comment until July 25, 2022. TTB proposes to add 10 additional authorized

standards of fill for wine or, as an alternative, eliminate all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits containers. TTB already reviewed standards of fill in a formal rulemaking in 2019 and left standards unchanged, while adding several additional sizes. Wine Institute supported TTB's determination and continues to oppose the elimination of federal regulations on standards of fill. These standards are critical to the wine industry. The standards were enacted to reduce consumer confusion and deception; eliminating them would contribute to consumer confusion, disrupt federal uniformity, and cause issues at the state level with respect to taxation, shelf space and placement, and consumer sales limits.

ANTICIPATED RULEMAKINGS

- **Mandatory Allergen, Nutrition, and Ingredient Labeling:** Pursuant to a 2021 Executive Order, the Treasury Department issued a "Competition Report" in February 2022 assessing the American markets for beer, wine, and spirits. Among other things, the report recommended that TTB "revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes." In addition, new EU regulations will impose mandatory calorie and allergen information on-label, and ingredient and nutrition information off-label "by electronic means" for wines produced and labeled after December 8, 2023. For these reasons, Wine Institute reasonably anticipates that TTB may soon issue advanced or regular notices of proposed rulemaking for mandatory allergen, nutrition, and ingredient labeling. A summary of the most recent status for each category is as follows:
 - **Allergen Labeling.** In 2006, TTB published a notice of proposed rulemaking regarding the mandatory labeling of major food allergens used in production. The rule was not finalized. TTB instead published an interim rule allowing voluntary labeling of major food allergens on labels. Industry members may voluntarily declare the presence of milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, soybeans, and ingredients that contain protein derived from these foods.
 - **Nutrition Labeling.** In 2007, TTB proposed mandatory "serving facts" labels. The serving facts label would include information about the number of servings per container, size of the serving, calories, and the number of grams of carbohydrates, fat, and protein per serving. The rule was not finalized but in 2013 TTB announced that producers could include serving facts on labels on a voluntary basis while TTB continued to consider the rule.
 - **Ingredient Labeling.** TTB has considered ingredient labeling requirements since at least 1972 but there are no recently proposed rules or current requirements other than mandatory disclosure of FD&C Yellow No. 5 when used and sulfites at 10 or more parts per million.

- **Slotting Fees and Other Prohibited Trade Practices:** In response to the Biden’s Administration’s request for information re anti-competitive practices in the alcohol beverage industry, Wine Institute submitted comments which stressed the need for enhanced, consistent, and even-handed trade practice enforcement, particularly in areas of direct and indirect slotting fees. The Competition Report agreed and recommended that TTB consider rulemaking to update its trade practice regulations with “an eye towards clarity and simplicity” to promote compliance and ensure a level playing field. The report also noted that a major area of complaints to TTB were about slotting fees.

ADDITIONAL AREAS OF INTEREST

- **TTB Operating Budget:** Wine Institute continues to advocate for adequate funding increases to ensure TTB is able to meet the regulatory needs of the alcohol sector as the number of permittees it is responsible for overseeing has exploded in the last decade. TTB received a 3% increase in funding to \$128 million in FY2022. The administration has requested a 17% increase to \$150 million for FY2023 to accommodate new responsibilities administering the Craft Beverage Modernization Act tax credits for imports. TTB has estimated that these new responsibilities will require forty new full-time positions within TTB. Wine Institute is working with a broad coalition of alcohol sector groups to support this new funding level.
- **Federal Cannabis Legalization:** As Congress continues to work on comprehensive legislation to federally legalize cannabis, it is becoming increasingly likely that TTB will take on some level of responsibility for regulating the cannabis marketplace in the future. If and when this occurs, TTB will need significant additional resources to ensure its regulation of the alcohol marketplace is not negatively impacted. In addition to adequate resources, Wine Institute is also advocating that any new cannabis regulatory responsibilities be handled by separate and distinct staff in a new division within TTB so as not to impact current staff overseeing alcohol related functions.
- **Permit Approvals and Operational Reporting Requirements:** TTB continues to work on making improvements to its technology infrastructure to improve the permits online process and reduce the delays in permit applications and amendments. TTB is also working to reform and streamline current operational reporting requirements to reduce the administrative burden and time required to comply with ongoing reporting requirements and tax filings.