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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, 24, 25, and 27

[Docket No. TTB-2025-0002; Notice No. 237]

RIN 1513-AC93

Alcohol Facts Statements in the Labeling 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 require disclosure of per-serving alcohol, calorie, and nutrient content information in an “Alcohol Facts” statement on all alcohol beverage labels subject to TTB’s regulatory authority under the Federal Alcohol Administration Act (FAA Act). This rulemaking responds to the Department of the Treasury’s February 2022 report on “Competition in the Markets for Beer, Wine, and Spirits,” which recommended that TTB revive or initiate rulemaking on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage labels. Pursuant to its authorities under both the FAA Act and the Internal Revenue Code of 1986, TTB is also proposing mandatory alcohol content statements for certain types of malt beverages, beer, and wine that are not currently required to be labeled with an alcohol content statement. TTB proposes a compliance date of 5 years from the date that a final rule resulting from this proposal is published in the **Federal Register**.

DATES: Comments must be received on or before [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2025–0002 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/laws-and-regulations/all-rulemaking> under Notice No. 237. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW. Box 12, Washington, DC 20005. Please see the **Public Participation** section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Curtis Eilers, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 041.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov/docket/TTB-2025-0002>.

I. Background

On July 31, 2007, TTB published Notice No. 73, a proposed rule entitled “Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages” in the **Federal Register** (72 FR 41860). In that document, TTB proposed to amend the TTB regulations to set forth requirements for mandatory alcohol content labeling and for the presentation of certain calorie and nutrient information in a mandatory “Serving Facts” panel. The proposed Serving Facts panel would also have included information about the number of servings per container and the serving size. TTB did not finalize the rulemaking; however, on May 28, 2013, TTB

published TTB Ruling 2013–2, Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages. The ruling announced that alcohol beverage labels could include Serving Facts statements on a voluntary basis while the Bureau continued to consider the proposed rule. TTB withdrew the Serving Facts rulemaking from the Unified Agenda of Federal Regulatory and Deregulatory Actions in the fall of 2017.

In 2021, TTB received a letter, dated February 24, 2021, from several consumer groups and public health advocates, urging TTB to finalize the Serving Facts rulemaking. The letter was submitted on behalf of the Center for Science in the Public Interest (CSPI), Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, the Consumer Federation of America, the National Consumers League, and the U.S. Alcohol Policy Alliance. This rulemaking document will refer to the letter as the “2021 CSPI letter.”

On February 9, 2022, the Department of the Treasury, in consultation with the Department of Justice and the Federal Trade Commission, released a report entitled "Competition in the Markets for Beer, Wine, and Spirits" (Competition Report). The Competition Report was requested by Executive Order 14036, "Promoting Competition in the American Economy." One of the Competition Report's findings was that “[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.”¹ The Competition Report contains several recommendations, including that "TTB should revive or initiate rulemaking proposing ingredient

¹ See page 3 of the report, available at <https://home.treasury.gov/system/files/136/Competition-Report.pdf>.

labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.²

Consistent with the Competition Report's recommendations, and considering the February 2021 letter referenced above, TTB decided to revisit the issue of mandatory nutritional information and expanded alcohol content information for alcohol beverages. Because it has been almost 20 years since TTB solicited comments on this issue, TTB published Notice No. 232, which announced two virtual listening sessions, on February 28 and 29, 2024, and the opening of a docket to receive public input on labeling of wine, distilled spirits, and malt beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. TTB received over 5,000 written comments in response to Notice No. 232 and heard from 47 speakers during the listening sessions.

TTB is now publishing for public comment a new proposal that would require "Alcohol Facts" labeling for wines, distilled spirits, and malt beverages that provides alcohol and nutritional information, per serving, for these products on labels. TTB is addressing the Competition Report's recommendations and Notice No. 232 comments from the listening sessions on mandatory allergen and ingredient labeling in separate rulemaking projects.

II. TTB's Authority to Regulate Alcohol Beverage Labeling

As set forth below, TTB has broad authority to regulate the labeling of alcohol beverages under Chapter 51 of the Internal Revenue Code of 1986 (IRC) and under the labeling provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e). TTB administers these IRC and FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at

² Id. at page 61.

6 U.S.C. 531(d). In addition, the Secretary of the Treasury (the Secretary) has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

A. TTB's Authority Under the IRC

Chapter 51 of the IRC (26 U.S.C. 5001 *et seq.*) imposes taxes on distilled spirits, wines, and beer, and provides the Secretary authority to regulate the marking and labeling of containers of these alcohol beverages, to protect the revenue associated with those taxes. The tax rates differ depending on the classification of the product, and the marking and labeling requirements support the proper determination of tax liability based on the identity of the product. Thus, this authority is based, in part, on the Secretary's responsibility to classify, and collect taxes on, alcohol beverages under the IRC.

For example, 26 U.S.C. 5301 authorizes the Secretary to regulate the branding and marking of distilled spirits containers whenever in his or her judgment such action is necessary to protect the revenue. Other provisions authorize the Secretary to regulate the marking, branding, and labeling of wine and beer. See 26 U.S.C. 5368 and 5412.

Section 5555 requires every person liable for any tax imposed by Chapter 51 of the IRC to comply with such rules and regulations as the Secretary may prescribe. Finally, 26 U.S.C. 7805(a) provides the Secretary with the authority to prescribe all needful rules and regulations for the enforcement of the IRC.

B. TTB's Authority Under the FAA Act

Section 105(e) of the FAA Act, 27 U.S.C. 205(e), sets forth standards for the regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages that will be sold or otherwise

introduced in interstate or foreign commerce. This document generally refers to these products as “alcohol beverages” or “alcohol beverage products.”

This section gives the Secretary the authority to issue labeling regulations to prevent deception of the consumer, to provide the consumer with “adequate information” as to the identity, quality, and alcohol content of the product, and to prohibit false or misleading statements. Additionally, the FAA Act authorizes the Secretary to prohibit, irrespective of falsity, labeling 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 provisions of the FAA Act apply only if the laws or regulations of the State into which the malt beverages are to be shipped impose similar requirements.

The FAA Act generally requires bottlers and importers to obtain a certificate of label approval (COLA) from TTB prior to bottling wine, distilled spirits, or malt beverages for introduction into interstate commerce, or removing alcohol beverages from customs custody, in bottles, for sale or any other commercial purpose. The law provides that COLAs are to be issued in such manner and form as the Secretary shall prescribe by regulations.

C. Legislative History of the FAA Act

The legislative history of the FAA Act provides some insight concerning the general purpose of the FAA Act’s labeling provisions. In hearings before the House Committee on Ways and Means in 1935, Joseph Choate from the Federal Alcohol Control Administration noted that the purpose of the bill 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.” Mr. Choate also noted that those regulations were intended to ensure that

the purchaser should get what he thought he was getting 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.* [Emphasis added.]

See Hearings on H.R. 8539 Before the H. Comm. on Ways and Means, 74th Cong., 1st Sess. 10 (1935) (statement of Joseph H. Choate, Jr., Federal Alcohol Control Administration).

D. Calorie and Nutrient Labeling

The FAA Act expressly conveys broad discretion to the agency and leaves it with the flexibility to prescribe such labeling regulations “as will provide the consumer with adequate information” as to, among other things, the products’ “identity and quality” and “net contents.” 27 U.S.C. 205(e). In 1986, in the context of ingredient labeling, the D.C. Circuit recognized that the obligation under the FAA Act “to ensure that disclosure is adequate squarely implicates discretionary judgment on the part of the Secretary.” *Center for Science in the Public Interest v. Department of the Treasury*, 797 F.2d 995, 999 n.2 (D.C. Cir. 1986), citing *Wawszkiewicz v. Department of the Treasury*, 670 F.2d 296, 300 (D.C. Cir. 1981) (footnote omitted)).

Accordingly, the D.C. Circuit upheld the actions of TTB’s predecessor, the Bureau of Alcohol, Tobacco and Firearms (ATF), in issuing a final rule, T.D. ATF-150 (48 FR 45549, October 6, 1983), which rescinded ingredient labeling regulations that had not yet taken effect. The court held that there was no “plain meaning of the phrase ‘adequate information’ which indicates Congress’ intent as to whether the FAA Act either requires or prohibits ingredient disclosure regulations.” *Ctr. for Sci. in the Pub. Int.*, 797 F.2d at 999 n.2. The court upheld

ATF's conclusion that the FAA Act "vests it with a zone of discretion within which it can choose to require or not require ingredient disclosure, as necessary to provide consumers with adequate information." *Id.* It is TTB's view that rulemaking on calorie and nutrient labeling similarly falls within the Secretary's discretion to determine whether such information is necessary to provide consumers with "adequate information" about the product.

E. Alcohol Content Labeling

The statutory requirements with respect to disclosure of alcohol content on labels differ among the three alcohol beverage categories. The FAA Act authorizes the Secretary to issue regulations that require alcohol content statements on labels of distilled spirits products. 27 U.S.C. 205(e)(2). The FAA Act also authorizes the Secretary to require alcohol content statements only for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content at or below 14 percent. Finally, the FAA Act contains language that specifically prohibits placement of alcohol content statements on malt beverage labels, unless required by State law, but in 1995 the Supreme Court struck that ban on First Amendment grounds in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

F. Alcohol Beverages Subject to FDA Labeling Regulations

Alcohol beverages that fall under the definitions of distilled spirits, wine, or malt beverages in the FAA Act are not subject to the Nutrition Facts regulations promulgated by the U.S. Food and Drug Administration (FDA) under 21 U.S.C. 343(q). In 1987, TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the FDA entered into a Memorandum of Understanding (MOU), which continues in effect. See Notice No. 648 (52 FR 45502, November 30, 1987). In the MOU, both agencies recognized that "ATF will be responsible

for the promulgation and enforcement of regulations with respect to the labeling of distilled spirits, wine, and malt beverages pursuant to the FAA Act.” The MOU also stated that “ATF and FDA will consult on a regular basis concerning the propriety of promulgating regulations concerning the labeling of other ingredients and substances for alcoholic beverages.”

Thus, alcohol beverages that are not distilled spirits, wines, or malt beverages, as defined in the FAA Act, 27 U.S.C. 211, are subject to the ingredient labeling, nutrition labeling, and allergen labeling regulations administered by the FDA. However, these products remain subject to the regulations enforced by TTB under the IRC.³ Therefore, to the extent that this NPRM addresses the labeling regulations under the FAA Act, which are found in 27 CFR parts 4, 5, and 7, it does not apply to alcohol beverages subject to FDA labeling regulations. However, to the extent that this NPRM proposes to amend the IRC regulations regarding alcohol content statements for certain beers and wines, those amendments would also affect alcohol beverages subject to FDA labeling regulations.

III. Background on “Alcohol Facts” Statements

A. 2003 Petition for Alcohol Facts Label and Ingredient Labeling

On December 16, 2003, CSPI, the National Consumers League, 67 other organizations, and 8 individuals, including 4 deans of schools of public health, filed a petition (the “2003 petition”) requesting that TTB amend the alcohol beverage labeling regulations.⁴ After receipt of the 2003 petition, additional

³ Alcohol beverages intended for human consumption that contain at least 0.5 percent alcohol by volume are also subject to the health warning statement requirements of the Alcoholic Beverage Labeling Act of 1988 (ABLA). See 27 U.S.C. 215. However, this document does not propose changes to the regulations implementing ABLA.

⁴ ATF previously considered the issue of requiring calorie and nutrient information on alcohol beverage labels but did not implement rules on this issue. On August 10, 1993, ATF published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** soliciting comments

individuals wrote to TTB requesting the addition of their names to the petition.

The petition requested that TTB require that labels of all TTB-regulated alcohol beverages include the following information in a standardized format:

- The beverage's alcohol content expressed as a percentage of alcohol by 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);
- 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*, issued jointly by the Department of Health and Human Services and the Department of Agriculture.

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 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.

from the public on whether the regulations should be amended to require nutrition labeling for alcohol beverages. See Notice No. 776 (58 FR 42517). The ANPRM was issued in response to a petition that cited, among other things, the Nutrition Labeling and Education Act of 1990, which mandates nutrition labeling for most FDA-regulated foods. 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 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, consistent with the then-current version of the *Dietary Guidelines for Americans*, that a serving should be defined as 12 fluid ounces of beer, 5 fluid ounces of wine, and 1.5 fluid ounces of 80-proof distilled spirits. The petitioners further recommended that for alcohol beverages not fitting into one of those standard categories (for example, a malt liquor containing eight percent alcohol by volume), a serving should be defined as an amount of fluid containing approximately 0.5 fluid 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 beverage, wine, and distilled spirits products under TTB jurisdiction, and that the graphics and type size for the Alcohol Facts label should follow the Nutrition Labeling and Education Act of 1990 standards set out in the FDA regulations at 21 CFR 101.9(d). Further, the petitioners stated that ingredient information should appear on the label immediately below, but segregated from, the Alcohol Facts panel, and that ingredient statements should include information about allergens.

According to the petitioners, current TTB regulatory requirements forced consumers to guess about the number of calories in alcohol beverages and their alcohol content. The petitioners summarized the results of a September 2003 telephone study of 600 Americans, ages 18 and older, which they stated was nationally representative. According to the study, 91 percent of respondents supported requiring ingredient labeling on alcohol beverages; 94 percent supported requiring alcohol content on alcohol beverage labels; 89 percent

supported requiring calorie content on alcohol beverage labels; and 84 percent supported requiring serving size information on alcohol beverage labels.

B. 2004 Informal Request for Comments

Following the 2003 petition, an alcohol beverage industry member contacted TTB about voluntarily labeling products with nutrient and other information on a “Serving Facts” panel. Subsequently, TTB received other requests from industry members to include similar information on product labels.

In response to these requests, in 2004, TTB twice posted on its website a request for comments on voluntary Serving Facts panels. In response to the two postings, TTB received several comments reflecting 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 a Serving Facts panel would tend to confuse or mislead consumers about alcohol beverage products. In light of the issues that the commenters raised, TTB decided to publish an advance notice of proposed rulemaking in 2005, as discussed further below.

C. Statements of Average Analysis (TTB Ruling 2004-1)

On April 7, 2004, TTB published guidance to the industry on ways that calorie and carbohydrate references could be provided in a non-misleading way in the labeling and advertising of alcohol beverages. Ruling 2004-1, Caloric and Carbohydrate Representations in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages clarified TTB’s position with respect to statements about calorie and carbohydrate content on labels and in advertisements of wines, distilled spirits, and malt beverages and set forth TTB’s policy on the use of

truthful and non-misleading nutrient statements in the labeling and advertising of alcohol beverages.⁵

TTB Ruling 2004–1 provided, in part, that calorie or carbohydrate representations on product labels or in advertisements would be considered misleading unless they include a “statement of average analysis” that lists the number of calories and the number of grams of carbohydrates, protein, and fat contained in the product based on a single serving. In Frequently Asked Questions published on TTB’s website shortly after the ruling, TTB clarified that this policy did not apply to advertisements where the only caloric or carbohydrate representation appearing in the advertising materials is a brand name incorporating the term “light” or “lite.” However, if the brand or product name, or the advertising material in general, included any additional caloric or carbohydrate representations such as “low carb” or “low calorie,” any specific calorie or carbohydrate claims, or similar representations, the provisions of the ruling regarding a statement of average analysis would apply.

For purposes of inclusion in the statement of average analysis, TTB Ruling 2004–1 defined a single serving as 12 fluid ounces for malt beverages, 5 fluid ounces for wine, and 1.5 fluid ounces for distilled spirits, regardless of the alcohol content of the product. The ruling allowed the statement of average analysis to be stated per container size only if the container is equal to or less

⁵ References to alcohol beverage products as being low in calories or carbohydrates were considered misleading by TTB’s predecessor agency in 1955. See Revenue Ruling 55–404, 1955–1, C.B. 615. In the 1960s, after consultations with FDA, the Alcohol and Tobacco Tax Division determined that products labeled as low calorie or low carbohydrate could include statements of average analysis, as well as truthful comparisons between a low-calorie product and that of an equal volume of the brewer’s regular beer. See ATF Ruling 76–1. In subsequent rulings, ATF modified certain policies with respect to malt beverage labeling statements and announced its intention to engage in rulemaking on the use of the terms “light” and “lite” on malt beverage labels. See ATF Ruling 79–17, ATF Q.B. 1979–3, 3, and ATF Ruling 80–3, ATF Q.B. 1980–2, 13.

than a single serving size. The ruling did not authorize the appearance of additional information in the statement of average analysis.

D. 2005 Advance Notice of Proposed Rulemaking

On April 29, 2005, TTB published an advance notice of proposed rulemaking, Notice No. 41, in the **Federal Register** (70 FR 22274), 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 TTB 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 2003 petition’s request for Alcohol Facts panels 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, such as “light” and “low-carbohydrate.”

TTB received more than 19,000 comments in response to Notice No. 41 from consumers, consumer advocacy groups, government officials, alcohol beverage industry members and associations, health organizations, and other concerned individuals. This included over 18,500 consumers who responded to Notice No. 41 indicating that they would like to see additional information on alcohol beverage labels.

IV. 2007 Notice of Proposed Rulemaking

Following a review of the comments submitted in response to Notice No. 41, TTB published Notice No. 73, a proposed rule entitled “Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages” in the **Federal Register** (72 FR 41860) on July 31, 2007. TTB proposed to amend parts 4, 5, 7,

and 24 of the TTB regulations to set forth requirements for mandatory alcohol content labeling and for the presentation of certain calorie and nutrient information in a mandatory Serving Facts panel. The proposed Serving Facts panel would have included information about the number of servings per container and the serving size as well as the number of calories and the number of grams of carbohydrate, fat, and protein per serving. It would also have allowed the mandatory alcohol content statements to appear in the panel as a percentage of alcohol by volume, with or without an additional statement of the fluid ounces of alcohol per serving.

TTB received more than 700 comments on the various issues presented in Notice No. 73. Commenters included consumers, consumer advocacy groups, health professionals, health organizations, State and Federal agencies, and industry members and associations. The comments on the proposals outlined in Notice No. 73 expressed various points of view. A number of comments opposed, or suggested modifications of, the various elements proposed to appear in the Serving Facts panels. TTB received several comments about the costs associated with the mandatory proposals, particularly with regard to mandatory nutrient labeling requirements. TTB also received several comments on regulatory amendments that were not specifically proposed in that document, such as using the title "Alcohol Facts" instead of the title "Serving Facts," and requiring a statement of fluid ounces of alcohol per serving as part of the mandatory alcohol content statement. TTB did not finalize the rulemaking and, following guidance in 2013 allowing voluntary depictions of Serving Facts information (discussed below), withdrew it from the Unified Agenda of Federal Regulatory and Deregulatory Actions in the fall of 2017.

V. TTB Public Guidance on Optional Serving Facts Statements

A. Optional Serving Facts Statements (TTB Ruling 2013–2)

On May 28, 2013, TTB issued Ruling 2013–2 to permit the use of Serving Facts statements on labels and in advertisements. The ruling provided that statements of average analysis that complied with the requirements of TTB Ruling 2004–1 may continue to be used on labels and in advertisements.

In TTB Ruling 2013–2, TTB further stated that it would allow the use of optional Serving Facts statements on labels and in advertisements on an interim basis pending the completion of rulemaking. TTB explained that it was making this change to allow industry members to provide truthful, accurate, and specific information to consumers about the nutrient content of their products on a per-serving basis. Although TTB already allowed nutrient content information to appear on labels and in advertisements in the form of a statement of average analysis, TTB was aware that some alcohol beverage industry members were interested in voluntarily labeling their products with this information in a Serving Facts statement such as the one proposed in Notice No. 73. TTB reminded industry members that the issuance of final regulations on Serving Facts statements might impact their labels.

TTB also noted that the serving sizes recognized by TTB Ruling 2004–1 for wines, distilled spirits, and malt beverages may not always be representative of how all products are typically consumed. For example, a 355 mL (12 fl oz) can containing a distilled spirits specialty product with 5 percent alcohol by volume would not generally be consumed in 1.5 fl oz servings. Although the serving size found in a nutrient content statement is not intended as a recommended serving amount, TTB believed it was appropriate to consider alternative serving sizes for products depending on their alcohol content. The

serving size chart provided in the ruling (reproduced below) applies to all voluntary Serving Facts statements.

Serving Size	Alcohol Percent by Volume		
	Wine	Distilled Spirits	Malt Beverages
1.5 fl oz (44 ml), or 50 ml for 50 ml containers of distilled spirits		Above 24%	Above 24%
2.5 fl oz (74 ml)	Above 16 to 24%	Above 16 to 24%	Above 16 to 24%
5 fl oz (148 ml)	7 to 16%	Above 7 to 16%	Above 7 to 16%
12 fl oz (355 ml)		Not more than 7%	Not more than 7%

TTB Ruling 2013–2 reiterated that statements or representations of calorie or carbohydrate content that are made on labels or in advertisements must be truthful, accurate, specific, and non-misleading. TTB stated that such statements are misleading within the meaning of the applicable regulations when not accompanied by a statement of average analysis in accordance with Ruling 2004–1 or a Serving Facts statement in accordance with TTB Ruling 2013–2. The other elements of Ruling 2004–1 continued in force, and statements of average analysis without an accompanying Serving Facts statement may continue to be used.

TTB Ruling 2013–2 also permitted the listing of the number of U.S. fluid ounces of pure ethyl alcohol per serving as part of a Serving Facts statement, as long as the statement also includes the percentage of alcohol by volume. Under this guidance, industry members may also include a Serving Facts statement that provides no alcohol content information, or alcohol content only as a percentage of alcohol by volume. The ruling also noted that the distilled spirits regulations authorize the inclusion of an optional statement of alcohol content in degrees of proof if it appears in direct conjunction with the percent of alcohol by volume

statement. As noted above, industry members may also continue to use a statement of average analysis, which does not contain any alcohol content information. Finally, industry members who do not make nutrient content claims on labels or in advertisements are not required to include a Serving Facts statement or a statement of average analysis.

Pursuant to TTB Ruling 2013–2, a Serving Facts statement appearing on a label or advertisement must be stated per serving and specify the serving size as part of the statement (unless the container is equal to or less than a single serving size, in which case the Serving Fact statement may be stated per container size). If a container holds more than a single serving size, the Serving Facts statement may appear in a dual-column format, which provides information both per serving and per container.

The ruling provided that certain Serving Facts statements would not require a new COLA application if the only label change was to provide the voluntary Serving Facts statement, and provided examples of formats for which that exception would apply. Additionally, the ruling did not specify required fonts or type sizes, although it did provide the following graphics to illustrate an acceptable panel display for a 750 mL bottle of wine containing 14 percent alcohol by volume, with and without optional alcohol content information.

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

Serving Facts	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
Amount Per Serving	
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

The following Serving Facts statement is an example from TTB Ruling 2013-2 that illustrates an acceptable linear display for a 50 mL bottle of distilled spirits containing 40 percent alcohol by volume and includes all three optional alcohol content statements.

Serving Facts: Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 40%; (80 proof); Fl oz of alcohol: 0.7; Calories: 131; Carbohydrates: 0g; Fat: 0g; Protein: 0g

The following graphic illustrates an acceptable Serving Facts statement for a 23.5 fluid ounce malt beverage can containing 12 percent alcohol by volume and includes the optional alcohol content statements.

Serving Facts	
Serving Size	5 fl oz (148 ml)
Servings Per Container	4 3/4
Amount Per Serving	
Alcohol by volume	12%
fl oz of alcohol	0.6
Calories	140
Carbohydrate	14g
Fat	0g
Protein	0g

Finally, the ruling provided the following panel to illustrate an acceptable dual-column display for a 24 fluid ounce malt beverage containing 12 percent alcohol by volume and including the optional percent-by-volume alcohol content declaration as well as the optional declaration of alcohol in fluid ounces.

Serving Facts		
Serving Size	5 fl oz (148 ml)	
Servings Per Container	4 3/4	
	Amt Per Serv.	Amt Per Bottle
Alcohol by volume	12%	12%
fl oz of alcohol	0.6	2.9
Calories	139	660
Carbohydrate	14g	67g
Fat	0g	0g
Protein	0g	0g

B. Frequently Asked Questions on TTB's Website

In Frequently Asked Questions (FAQs) published on the TTB website after publication of TTB Ruling 2013–2, TTB provided further guidance on acceptable formats for Serving Facts statements. Subsequently, TTB also issued FAQs that permitted the use of an optional “Alcohol Facts” statement for industry members who wish to provide per-serving alcohol content information without including any nutrient content statements or claims. The FAQs state that this information should be provided under the heading “Alcohol Facts,” to distinguish it from a “Serving Facts” statement, and must include the serving size (in accordance with TTB Ruling 2013–2), the number of servings per container, and the percentage of alcohol by volume together with a numerical statement of the number of fluid ounces of pure ethyl alcohol per serving (rounded to the nearest tenth). The FAQs note that industry members who wish to make any type of nutrient content statement or claim on the label or advertisement, along with optional per-serving alcohol content information, should use a Serving Facts statement in accordance with TTB Ruling 2013–2.

In 2014, TTB issued FAQs on the use of sugar content statements on labels. The FAQs set forth TTB’s policy that truthful, accurate, and non-misleading numerical statements about the sugar content of a product are

permitted on alcohol beverage labels and in advertisements.⁶ Sugar is a type of carbohydrate; accordingly, a sugar content statement is not considered misleading if the label bears either a statement of average analysis in accordance with TTB Ruling 2004–1, or a Serving Facts statement in accordance with TTB Ruling 2013–2, and the serving size on which the sugar content statement is based is consistent with the applicable serving size under those rulings. If a serving contains less than 0.5 g of sugar, the label may include a claim such as “Zero Sugar,” “No Sugar,” or “Sugar Free.”

C. Tolerances and Other Laboratory Procedures

1. TTB Procedure 2004–1

TTB Procedure 2004–1 set forth the methods that TTB used to test the calorie, carbohydrate, protein, and fat content of wine, distilled spirits, and malt beverages in order to verify labeling and advertising claims. This procedure also addressed tolerance ranges with regard to statements of calorie, carbohydrate, protein, and fat content. TTB Procedure 2004–1 applied to statements of average analysis, as well as Serving Facts statements. As described further below, this procedure was superseded by TTB Procedure 2020–1, which updated the lab testing methods as well as the tolerance for calorie statements.

2. 2020 Revisions of Tolerances

In 2020, TTB reviewed its calorie tolerance standards in response to a request from industry members. The industry members suggested that broader tolerances for calorie content would facilitate the increased use of voluntary nutrient content statements in the labeling and advertising of alcohol beverages, both by allowing for expanded variations in calorie content between batches of a

⁶ See FAQs SUG1-SUG5, available at www.ttb/faqs/alcohol.

product and by facilitating the use of databases and “typical value” charts in lieu of laboratory analysis as a basis for nutrient content statements.

TTB decided to expand the tolerances for calories to achieve greater consistency with FDA tolerances for calorie statements on food package labels under FDA’s jurisdiction and to facilitate industry members’ ability to provide truthful, accurate, and non-misleading voluntary nutrient content information to consumers. However, TTB noted that TTB tolerances and policies will still differ in some ways from FDA labeling regulations, as well as FDA’s menu labeling requirements, due to differences in statutory and regulatory authorities.

Accordingly, TTB published TTB Ruling 2020–1 and TTB Procedure 2020–1 (which superseded TTB Procedure 2004–1 in its entirety). Under the new guidance, a calorie statement on a label or in an advertisement is acceptable as long as the calorie content, as determined by TTB analysis, is within a reasonable range below the labeled or advertised amount (within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a labeling or advertising statement of 100 calories per serving will be considered an acceptable understatement if TTB analysis of the product shows a calorie content of not more than 120 calories per serving.

Industry members also asked if they may express calories to the nearest 10-calorie increment for per-serving amounts above 50 calories (and to the nearest 5-calorie increment for per-serving amounts up to and including 50 calories) to be more consistent with FDA requirements. In response to this request, TTB Ruling 2020–1 provides that calorie statements on labels and in advertisements may, but are not required to, be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-

calorie increment (for per-serving amounts up to 50 calories), as long as the labeled or advertised calorie content falls within the tolerances described in this ruling. Thus, for example, regardless of whether the calories per serving for a particular product are expressed as 98 calories or 100 calories, the labeled or advertised calorie statement must be within the prescribed tolerance for the value that is expressed. TTB continued to allow amounts less than 5 calories to be expressed as zero.

The 2020 guidance did not change the tolerances for other nutrients. Under TTB Procedure 2004–1, TTB already allowed a 20 percent tolerance for understatements of carbohydrate and fat content, and a 20 percent tolerance for overstatements of protein content. Overstatements of carbohydrate and fat content, and understatements of protein content, are acceptable as long as the actual content, as determined by TTB analysis, is within a reasonable range of the labeled or advertised amount (within good manufacturing practice limitations). TTB Procedure 2020–1 maintained those tolerances. Similarly, the 2020 update did not affect the regulatory tolerances for alcohol content statements, expressed as a percentage of alcohol by volume, which are set forth in the regulations at 27 CFR 4.36, 5.65, and 7.65.

TTB noted that the 2020 guidance would not require any changes to approved labels but would instead allow greater flexibility for industry members who choose to use voluntary nutrient content statements on labels or in advertisements.

At the time TTB was asked to review its calorie tolerance standard in 2020, industry members also asked TTB about the use of databases or typical value charts (rather than laboratory analysis) as a basis for nutrient content statements in the labeling and advertising of alcohol beverages. Although

industry members may conduct laboratory analyses to determine nutrient content, they may also choose to rely on an appropriate combination of analyses and other sources to accurately label their products, including databases and typical value charts. TTB's regulations do not require industry members to analyze each batch of a product prior to making voluntary nutrient content statements. Regardless of what approach industry members take, it is their responsibility to ensure that the labeling and advertising statements are reliable and accurate and fall within the tolerances set forth in TTB guidance documents. TTB determines compliance with the tolerances as described in Procedure 2020-1.

VI. Other Developments Since Issuance of the 2007 NPRM

A. Voluntary Use of Serving Facts Statements

Since the issuance of the Serving Facts guidance, the optional use of such statements on labels has increased in the marketplace. For example, in 2016, the Beer Institute announced the Brewers' Voluntary Disclosure Initiative, a coordinated effort by the beer industry to meet consumer demand for increased nutritional transparency. In August 2021,⁷ the Beer Institute released the results of an independent survey showing that 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA now voluntarily provides nutritional information in the form of a Serving Facts statement. A press release by the Beer Institute also stated that according to July 2021 polling conducted by

⁷ Available at <https://www.beerinstitute.org/policy-responsibility/policy/voluntary-disclosure/>, accessed on November 4, 2024.

Quadrant Strategies, 75 percent of Americans aged 21 and older said they believe alcohol beverages should have nutrition labels.⁸

B. Dietary Guidelines for Americans, 2020–2025

Since 1990, the Secretaries of Agriculture and Health and Human Services have been required by law to publish the *Dietary Guidelines for Americans* every five years.⁹ The most recent version is the *Dietary Guidelines for Americans, 2020–2025*, 9th Edition, published December 2020.¹⁰ There have been some changes to the recommendations in the guidelines since CSPI submitted its petition in 2003, but the guidelines still provide general information relating to alcohol beverage consumption.

The *Dietary Guidelines* "do[] not recommend that individuals who do not drink alcohol start drinking for any reason" and note that there are some people who should not drink at all, such as those who are pregnant or under the legal age for drinking.¹¹ For individuals who do drink, the guidelines state that "drinking less is better for health than drinking more."¹² The guidelines point to evidence that indicates higher average alcohol consumption is associated with an increased risk of death from all causes compared with lower alcohol consumption and state that "[a]lcohol misuse or consuming alcohol in excess of recommendations increases risk for several other conditions such as liver disease, cardiovascular disease, injuries, and alcohol use disorders."¹³

⁸ Available at <https://www.beerinstitute.org/press-releases/new-report-shows-beer-leads-all-alcohol-categories-in-providing-nutritional-information-to-consumers/>.

⁹ See <https://www.dietaryguidelines.gov/about-dietary-guidelines>, accessed on November 4, 2024.

¹⁰ Available at https://www.DietaryGuidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.

¹¹ Id. at page 62.

¹² Id. at page 49.

¹³ Id.

For purposes of evaluating amounts of alcohol that may be consumed, the *Dietary Guidelines* define an “alcoholic drink equivalent” as containing 14 grams (0.6 fl oz) of pure alcohol and consider the following as one alcoholic drink equivalent: 12 fluid ounces of beer (at 5 percent alcohol), 5 fluid ounces of wine (at 12 percent alcohol), or 1.5 fluid ounces of distilled spirits (at 40 percent alcohol).

The *Dietary Guidelines* stated that adults of legal drinking age could choose not to drink or to drink in moderation by limiting consumption to two drinks or less per day for men and one drink or less in a day for women. These amounts were not intended to be an average over several days, but rather the amount consumed on any single day. The *Dietary Guidelines* also advised that binge drinking, defined as five or more drinks for the typical adult male or four or more drinks for the typical adult female consumed in about two hours, should be avoided.

The guidelines also note that, according to emerging evidence, even drinking within the limits recommended above may increase overall risk of death from various causes, including several types of cancer and cardiovascular disease. The guidelines state that alcohol has been found to increase the risk for cancer, and for some types of cancer, even low levels of alcohol consumption (less than 1 drink in a day) can increase the risk.

With regard to the calories that come from alcohol consumption, the *Dietary Guidelines* state that alcohol beverages supply calories but few nutrients, and calories from alcohol beverages should be counted for the purpose of keeping total calorie intake at an appropriate level. The guidelines note that alcohol beverages may contain calories from both alcohol and other ingredients,

such as soda, juice, and added sugars, and it is important to consider ingredients and portion size.

The guidelines also state that approximately 60 percent of adults report consuming alcohol beverages in the past month, and on days when men and women consume alcohol, their consumption typically exceeds the guidance for daily alcohol consumption. The guidelines state that, among adults who drink, alcohol contributes on average approximately 9 percent of calories consumed. The guidelines stipulate that 85 percent of an individual's total calories per day are needed to meet food group recommendations healthfully with nutrient rich foods, and that the remaining calories are available for other uses (including added sugars, saturated fat, and alcohol). As such, among adults who drink, calories from alcohol account for most of the calories that remain after consuming recommended amounts of nutrient-dense foods in each recommended food group. Accordingly, the *Dietary Guidelines* recommend that “[a]dults who choose to drink and are not among the individuals listed above who should not drink, are encouraged to limit daily intakes to align with the *Dietary Guidelines*—and to consider calories from alcoholic beverages so as not to exceed daily calorie limits.”

C. 2019 Comments in Response to Notice No. 176

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), “Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.” TTB explained that the proposed rule would not address Serving Facts statements, which would be addressed in separate rulemaking proceedings. Although one trade association supported TTB’s decision to wait to address other complicated regulatory issues such as Serving Facts until the labeling modernization rule was finalized, TTB

also received some comments critical of that decision. These commenters suggested that that the labeling modernization rulemaking focused on issues that were not of concern to consumers, while not addressing issues in which consumers were interested, such as Serving Facts.

CSPI, the Consumer Federation of America, and the National Consumers League commented on Notice No. 176 in a letter dated February 22, 2019, which was directed to the Secretary of the Treasury (the 2019 CSPI comment).¹⁴ This comment stated that while the consumer organizations supported the modernization of the labeling regulations, Notice No. 176 “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.” The comment stated that the public had expressed “an overwhelming interest in improved information on the labeling of alcoholic beverages,” and that TTB should fulfill its statutory obligation under the FAA Act to ensure that labels and advertisements provide the consumer with “adequate information as to the identity and quality of the products.”

The 2019 CSPI comment referenced the 2003 petition (discussed in Section III.A above) and suggested that the need for this information was even greater today. The comment noted that this “information is now required on the vast majority of packaged foods and beverages” and that, 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.” The comment stated that the “need to protect the public health from negative effects of consuming alcoholic beverages has never been more pressing” and noted that 70 percent of

¹⁴ Available at <https://www.regulations.gov/comment/TTB-2018-0007-0074>.

American adults are now overweight or obese, and alcohol is a “leading source of calories in the American diet.” [Citations omitted.]

The 2019 CSPI comment stated that the optional nutrient content labeling allowed by TTB Ruling 2013–2 is “inadequate” because it “fails to provide for uniform disclosures that will allow consumers to make informed choices between products.” The comment urged the Secretary to instruct TTB 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.” The comment suggested that the rule could be based on the prior regulatory dockets and would “provide much-needed closure to those considerable efforts.” The comment noted that “[c]onsumers of alcoholic beverages deserve the clear, consistent labeling that has long been available on other beverages.”

In response to Notice No. 176, TTB also received some comments in favor of expanding mandatory alcohol content requirements. For example, the Wine Institute commented in favor of requiring a numerical alcohol content statement for wines containing up to 14 percent alcohol by volume in lieu of allowing such wines to be simply labeled as “table wine.” The Brewers Association commented in favor of requiring alcohol content statements on malt beverage labels, as long as the tolerance for such statements was increased to one percentage point, and a three-year implementation period is allowed.

D. Letter from Public Health Advocates (2021 CSPI letter)

On February 24, 2021, a letter was submitted on behalf of CSPI, Alcohol Justice, the American Institute for Cancer Research, Breast Cancer Prevention Partners, the Consumer Federation of America, the National Consumers League, and the U.S. Alcohol Policy Alliance, urging the Secretary to adopt regulations to

mandate alcohol content statements and a standardized Serving Facts label on all wine, distilled spirits, and malt beverage products regulated under the FAA Act. The letter stated that such labeling requirements fell under the Secretary's authority to ensure that labels provide consumers with adequate information on the identity, quality, and alcohol content of alcohol beverages.

The 2021 CSPI letter noted that in response to the 2003 petition on these issues, TTB had requested public comments, issued proposed regulations, and published a ruling on voluntary nutrition and calorie labeling. However, the 2021 CSPI letter stated that “the draft specifications were never finalized, and most alcoholic beverages still are not labeled with critical information.” Accordingly, the 2021 CSPI letter urged Treasury and TTB to issue a final rule mandating a standardized label that would include:

- Information about the “Drink Size” and alcohol by volume, as well as the number of “drinks” per container,
- The calories and fluid ounces of alcohol per drink,
- An ingredient declaration listing each ingredient by its common or usual name and identifying any major food allergens present in the product, and
- The *Dietary Guidelines for Americans*’ advice on moderate drinking (to be updated based on any changes in the guidelines over time).

The letter also stated that TTB should include in its rule specific requirements for font, minimum size, and color contrast to ensure the readability of the label. The letter included the following example of a potential format for the standardized Serving Facts label:

Serving Facts	
Drink Size	12 fl oz (35 ml)
Alcohol by Volume	5%

Contains 2 Drinks	Amount per Drink		Amount per Container
	Calories	150	
	fl oz of alcohol	0.6	300 1.25
The Dietary Guidelines for Americans recommend that if you drink, limit to no more than 1 drink in a day for women, 2 for men.			
Ingredients: Water, barley malt, rice, hops			

E. Treasury Report on Competition in the Markets for Beer, Wine, and Spirits

On July 9, 2021, President Biden issued an Executive Order entitled “Promoting Competition in the American Economy.” See E.O. 14036 (86 FR 36987, July 14, 2021). Section 5(j) directed the Secretary, in consultation with the Attorney General and the Chair of the Federal Trade Commission (FTC), to submit a report “assessing the current market structure and conditions of competition [for beer, wine, and spirits], including an assessment of any threats to competition and barriers to new entrants....” 86 FR at 36994. Among other things, the order provided that the report should address any “unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling” that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose. *Id.*

On July 28, 2021, the Department of the Treasury issued a Request for Information (RFI) soliciting input from the public, consumer groups, public interest groups, industry members, and other interested parties regarding the current market structure and conditions of competition in the American markets for beer, wine, and spirits, including an assessment of any threats to competition and barriers to new entrants. See Notice No. 204 (86 FR 40678, July 28, 2021).

Treasury received 827 public comments in response to this RFI. While the RFI did not specifically solicit comments on calorie or nutritional labeling, Treasury received over 100 comments stating that consumers are “ill-served” by the lack of ingredient, calorie, or nutritional labeling on alcohol beverages, and asking that the regulations be amended to require this information on alcohol beverage labels.

As noted above, on February 9, 2022, Treasury, in consultation with the Department of Justice and the FTC, released a report on competition in the markets for alcohol beverages. One of the Competition Report’s findings was that “[r]egulatory proposals that could serve public health and foster competition by providing information to consumers, such as mandatory allergen, nutrition, and ingredient labeling proposals, have not been implemented.”¹⁵ The Competition Report made some labeling recommendations, including a recommendation that TTB “should revive or initiate rulemaking proposing ingredient labeling and mandatory information on alcohol content, nutritional content, and appropriate serving sizes.”¹⁶

F. 2024 Virtual Public Listening Sessions

In light of the Competition Report, TTB announced in the Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions that it would publish an NPRM on possible changes to its regulations related to statements of alcohol and nutritional content. Executive Order 14094, “Modernizing Regulatory Review,” was subsequently published on April 6, 2023, directing agencies, to the extent practicable and consistent with applicable laws, to provide opportunities for public participation designed to promote equitable and meaningful

¹⁵ See page 3 of the Competition Report, available at <https://home.treasury.gov/system/files/136/Competition-Report.pdf>.

¹⁶ Id. at page 61.

participation by a range of interested or affected parties, to inform regulatory actions.

On January 31, 2024, TTB issued Notice No. 232, which announced two virtual listening sessions and the opening of a public docket to receive written comment on the labeling of alcohol beverages with per-serving alcohol and nutritional information, major food allergens, and/or ingredients. Consistent with Executive Order 14094, TTB sought input from a wide range of stakeholders, including those who may not usually comment on its proposals, to inform rulemaking, particularly given the broad implications of these issues. TTB posed the following questions in Notice No. 232:

1. Do consumers believe that they are adequately informed by the information currently provided on alcohol beverage labels?
2. Is alcohol content per serving, and nutritional information (such as calories, carbohydrates, protein, and fat) per serving important for consumers in deciding whether to purchase or consume a particular alcohol beverage? Would a full list of ingredients, and/or major food allergens, be important information for consumers in making their purchasing or consumption decisions? In what ways would this information be useful, and in what ways could it be misleading? Is some of this information more important than others?
3. What types of per-serving nutritional information, such as calories, carbohydrates, protein, and fat, should be included?
4. Would requiring this information on labels be expected to increase the cost of the products and, if so, by how much? To what extent are businesses already following voluntary guidelines for this information? Are there alternative ways of providing the information, for example by allowing information to be

provided through a website using a quick response code (QR code) or website address on the label?

5. How would any new mandatory labeling requirements particularly affect small businesses and new businesses entering the marketplace?

The listening sessions, held on February 28 and 29, 2024, engaged consumers, public health stakeholders, and industry members representing businesses of different sizes. Approximately 700 registrants attended the two virtual sessions, including 47 different speakers. In addition to the oral comments received during the listening sessions, TTB received 5,159 written comments in response to Notice No. 232.

TTB has reviewed the comments that were submitted both orally and in writing on alcohol and nutritional content information disclosures and has used those comments to inform this proposed rule.

VII. New Proposed Rule

A. Reasons for Issuing a New Notice of Proposed Rulemaking

In this proposed rule, TTB is initiating new rulemaking on mandatory alcohol content and nutrient information in alcohol beverage labeling. More than 17 years have elapsed since the publication of Notice No. 73 in the **Federal Register**, and TTB believes that the comments received in response to that proposal may no longer fully and accurately reflect the opinions of consumers, public health advocates, industry members, trade associations, and other interested parties. TTB also received thousands of comments in response to Notice No. 232 that reflect new perspectives and provide updated information on the costs and benefits of mandatory alcohol content and nutrient information disclosure.

TTB thus believes it is appropriate to publish a new proposed rule on these issues, which takes into account interim changes in labeling policy, the comments on Notice No. 232, and the experience TTB and the regulated alcohol-beverage community have gained with optional statements of average analysis, Serving Facts statements, and Alcohol Facts statements, and which solicits current comments on the proposed regulatory changes. As was shown through comments on Notice No. 232, some industry members have new perspectives that reflect their own experience with voluntary labeling disclosures and the consumer reaction to labels that include per-serving nutrient or alcohol content information.

TTB received many comments about potential costs associated with the mandatory proposals set forth in Notice No. 73, particularly the nutrient labeling requirements. Many of those comments were echoed in comments on Notice No. 232, with a large number of commenters discussing the costs associated with testing product samples for nutritional information. In light of those comments, TTB conducted a more thorough cost analysis in this proposed rule (see Section IX, Cost Analysis, below) that addresses concerns that were raised in the comments on Notices No. 73 and 232. As described further below, TTB is seeking comment on this analysis as it considers adopting the mandatory labeling requirements proposed in this document as well as the length of the implementation period.

Furthermore, in response to Notice No. 73, TTB received several comments suggesting that TTB require alcohol content (as both a percentage of alcohol by volume and as fluid ounces of alcohol per serving) to appear in the mandatory labeling statement, and to use the title “Alcohol Facts” instead of the title “Serving Facts.” TTB has incorporated both of those suggestions into this

proposed rule and is soliciting comment on whether this information would assist in ensuring that labels provide adequate information to consumers about the identity, quality, and alcohol content of the product.

On a related issue, as explained in more detail below in Section VII.B.4, TTB is proposing to require alcohol content labeling statements for all malt beverages under its FAA Act authority, and for all beers (whether regulated under the FAA Act or not) under its IRC authority. TTB is also proposing to rely on its authority under the IRC to propose mandatory numerical alcohol content statements for “table wines” (wines containing at least 7 percent and not more than 14 percent alcohol by volume), instead of allowing wines the option of being labeled as “table wine” without a numerical alcohol content statement on the label. TTB believes that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in ensuring appropriate Federal excise tax payment and collection. TTB is seeking additional comments on these proposals in this notice of proposed rulemaking.

B. Summary and Solicitation of Comments on Proposal

TTB proposes to amend its regulations to require an Alcohol Facts statement on all alcohol beverage labels TTB regulates under the FAA Act. As proposed, the mandatory Alcohol Facts statement would include information about the alcohol content expressed both as a percentage of alcohol by volume and in fluid ounces of pure ethyl alcohol per serving, the number of calories, and the number, in grams, of carbohydrates, fat, and protein, per serving. The serving sizes are based on the amount of the beverage customarily consumed as a single serving, as explained in Section VII.B.9 below. The proposed Alcohol Facts statement may be presented in either a panel or a linear format.

1. Title of the Alcohol Beverage Information Statement

TTB is proposing “Alcohol Facts” as the title of the informational statement, instead of “Serving Facts,” which was proposed in 2007. While Notice No. 73 did not specifically solicit comments on alternative titles, TTB received comments that supported “Alcohol Facts” or titles other than “Serving Facts” for the information panel. Some commenters suggested that “Serving Facts” could confuse consumers because it is too similar to the “Nutrition Facts” title of panels for food products under FDA’s labeling jurisdiction. Many commenters suggested alternative titles that they believed would help differentiate alcohol beverage products from other FDA-regulated products. Several commenters, including health professionals and organizations, consumers, and consumer advocacy groups, supported the title “Alcohol Facts,” as originally proposed by the petitioners in 2003.¹⁷

TTB finds merit in the argument that the title “Alcohol Facts” provides a better description of the information presented in the statement. This is especially true since TTB is now proposing to require alcohol content information as part of the information statement.

Under its current policy, TTB guidance allows for optional “Alcohol Facts” statements that contain only alcohol content information, while “Serving Facts” statements contain nutrient information and may contain alcohol content information as an option. In TTB’s experience, relatively few industry members have chosen to label their products with an “Alcohol Facts” statement; thus, TTB does not believe the proposed change will cause consumer confusion.

¹⁷ TTB did not receive any comments on Notice 232 on what TTB should title the information statement. While a few commenters referred to the information statement as “Serving Facts” in their comments, none provided commentary supporting or opposing any particular title.

Nonetheless, TTB is considering both “Serving Facts” and “Alcohol Facts” as options for the final rule, and thus seeks comments on both titles, as well as any alternative titles that may be more informative. TTB specifically seeks comments on the following issues:

1. Which title, “Serving Facts” or “Alcohol Facts,” would be more informative to consumers? Does the title “Alcohol Facts” better describe the information provided in the proposed statement, which includes per-serving alcohol content information?
2. Would the use of the title “Alcohol Facts” affect compliance costs or regulatory burdens by requiring a title change for products already voluntarily labeled with a “Serving Facts” statement?
3. Are consumers accustomed to finding nutrient content information in a Serving Facts statement? Would changing the title to “Alcohol Facts” cause confusion?
4. Alternatively, does the title “Alcohol Facts” make it easier for consumers to readily distinguish alcohol beverages from other food items?

2. Mandatory Calorie and Nutrient Information

In Notice No. 232, TTB asked consumers if nutritional information (such as calories, carbohydrates, protein, and fat) per serving is important in deciding whether to purchase or consume a particular alcohol beverage, and what types of per-serving nutritional information should be included. TTB received well over 100 individual comments expressing a variety of viewpoints on nutritional labeling, and thousands of substantially identical comments from consumers expressing support for mandatory nutritional labeling, as well as other disclosures for alcohol content, allergens, and ingredients.

Commenters in favor of mandating nutritional labeling stated that this information is necessary for consumers to make informed purchasing and consumption decisions. Several commenters, including CSPI, cited to a March 2024 survey by Big Village, in which 78 percent of over 1,000 surveyed consumers stated that nutritional content was at least somewhat important in helping decide whether to purchase a particular alcoholic beverage.¹⁸ Most commenters in favor of mandatory nutritional disclosures also discussed the health-related reasons why nutrient labeling is important to consumers. These reasons included the ability to monitor caloric intake and manage or prevent diet-related conditions.

The comments opposed to mandatory nutritional labeling largely came from industry members who identified themselves as small businesses. These commenters cited their perception of a lack of interest in nutritional information by their customers and their concern that the cost of nutritional labeling, due to redesigning existing labels and testing product samples, would place small businesses at a competitive disadvantage.

Several commenters stated that, while consumers may find nutritional information on the label to be useful, TTB should not mandate that the information appear on the label, since the government already provides nutritional information about alcohol beverages through USDA's FoodData Central website. As an example, Bozzo Family Vineyards stated that the nutritional information provided by USDA is "representative of commercially available [alcohol beverages] and should permit consumers, who are interested in such information for purchase or consumption decisions, to make an informed choice of whether to buy or consume."

¹⁸ According to CPSI's comment, CPSI commissioned Big Village to conduct the survey.

Some commenters stated that producers should only be required to list calories, particularly for distilled spirits. The Distilled Spirits Council of the United States (DISCUS) commented that most distilled spirits do not contain any carbohydrates, fat, or proteins, and TTB should allow producers to list only calories, as calories are the only nutritional information pertinent to most distilled spirits consumers. The American Craft Spirits Association commented that nutrition labeling is inappropriate for distilled spirits products, which are non-nutritive, and that requiring nutritional labeling for distilled spirits products could mislead or confuse consumers by implying that distilled spirits have nutritive value. The Mexican Commission for the Wine and Liquor Industry expressed that nutritional information is not appropriate on alcohol beverage labels for the same reason.

After careful consideration of the diverging viewpoints provided by the commenters to Notice No. 232, TTB is proposing to mandate nutritional information on alcohol beverage labels. Comments revealed significant consumer interest in nutritional information on labels. While certain alcohol beverages are unlikely to contain certain nutrients, such as fat or protein, even the absence of these components provides information and may be of interest to consumers. Additionally, the USDA database cited above contains information on only a limited number of specific products, and other listings only represent general information about certain types of alcohol beverages. For these reasons, TTB is proposing nutritional requirements as described below and welcomes both general comments and feedback on each specific proposal.¹⁹ In line with

¹⁹ TTB received many comments on the potential costs of mandatory calorie and nutrient information disclosure and suggestions for mitigating those costs. TTB addresses those comments, including comments requesting the option to electronically disclose Alcohol Facts information, in sections VII.A.3 and A.8 and in the cost analysis in Section IX. TTB is also soliciting further comments on the costs of this proposed rule, how those costs impact businesses, and how TTB might mitigate those impacts, particularly for small businesses.

the nutritional elements allowed in current TTB guidance on voluntary label disclosures, TTB is proposing to require per-serving calorie, carbohydrate, fat, and protein content to be included on product labels.

TTB is also proposing to allow sugar content statements as an optional element in the Alcohol Facts statement. Under current policy, sugar content statements may appear on a label provided certain conditions are met, but they are not permitted in statements of average analysis or Serving Facts statements. TTB has received numerous requests from industry members to allow sugar content statements to appear in the optional Serving Facts statements for alcohol beverages in a manner that is consistent with the FDA Nutrition Facts Label. In addition, TTB received comments on Notice No. 232 from consumers and public health organizations stating that sugar content should appear on alcohol labels, including a joint comment from 27 public health groups and public health officials stating that "[s]ugar-sweetened beverages contribute to weight gain, type 2 diabetes, and heart disease,[*] and sugary ready-to-drink cocktails are increasing in popularity.[*]" [*Internal footnotes omitted.] Thus, based on industry interest and the support expressed in comments on Notice No. 232, TTB proposes to allow sugar content statements in the Alcohol Facts statement, which is the same place consumers are viewing other nutrient information.

TTB is also seeking comments on whether other elements of the Alcohol Facts statement should be optional rather than mandatory, and whether additional elements should be added to the statement on a mandatory or optional basis. TTB specifically seeks comments on whether TTB should harmonize its nutrient labeling requirements with regulations issued by FDA, as updated in

2016. The following graphic shows the current format for the FDA Nutrition Facts label.²⁰



TTB is not currently proposing to allow other micronutrients, such as sodium, that appear on the FDA Nutrition Facts label as mandatory or optional elements of the Alcohol Facts statement. Several individual commenters to Notice No. 232, and thousands of substantially identical comments from submitters identifying themselves as consumers of alcohol beverages, stated that sodium should be a mandatory element of the Alcohol Facts statement. A few commenters stated that alcohol beverages should be labeled with all micronutrients required on food labels by the FDA. However, other commenters stated most alcohol beverages do not contain sufficient quantities of micronutrients to merit disclosure on the label, and some, including the Brewers Association, commented that requiring the disclosure of nutrients in line with FDA could confuse consumers into viewing alcohol beverages like any other food component when alcohol beverages are not, and should not, be positioned as dietary staples.

²⁰ Available at <https://www.fda.gov/food/food-labeling-nutrition/changes-nutrition-facts-label>.

At this time, TTB does not believe most alcohol beverages contain sufficient quantities of sodium or other micronutrients to merit inclusion in the Alcohol Facts statement. However, TTB seeks further comments, and specifically comments with market data, on whether any micronutrients, such as sodium, are present in alcohol beverages in sufficient quantities that their disclosure would affect purchasing or consumption decisions, and if yes, whether TTB should require, or permit optional, inclusion of those nutrients on alcohol beverage labels.

TTB also seeks comments on whether certain nutrients should be listed only if present at specific levels. TTB is proposing to require the listing of calorie, carbohydrate, fat, and protein content on alcohol beverages, even if the product does not contain, or contains only a de minimis amount of, these components. However, TTB specifically seeks comments on whether fat and protein, which are not typically found in certain alcohol beverages, should be listed only if present at specific levels. If so, what levels should trigger these requirements? TTB also seek comments on whether any other nutrients, such as sodium, caffeine, or sugar, should be required to be listed if present at a specific level, even if they do not otherwise have to be disclosed.

In addition to the above, TTB is seeking comment on the following issues related to mandatory calorie and nutrient statements:

1. Should TTB's proposed nutrient content labeling statement be more consistent with the Nutrition Facts Label found on foods that are under FDA's labeling jurisdiction? Alternatively, do the differences between alcohol beverages and other foods make it unnecessary, or even misleading, to adopt the type of nutrient labeling required on food labels that are under FDA's labeling jurisdiction? For example, would information on the percentage of the daily value

of the listed nutrients provided by alcohol beverages be useful information for consumers? Alternatively, could such statements mislead consumers by implying that they may rely on alcohol beverage consumption to satisfy part of their daily nutrient requirements?

2. For greater consistency with the FDA Nutrition Facts Label, should Alcohol Facts statements be allowed or required to include other elements (such as sodium and cholesterol) or a further breakdown of fat (to include saturated fat and trans-fat)?
3. Would the inclusion of elements not ordinarily expected to be found in alcohol beverages (such as trans-fat and dietary fiber) be useful or potentially misleading?
4. Should TTB allow numerical statements of the vitamin and mineral content of alcohol beverages, assuming the product contains vitamins or minerals, or could such a statement create an erroneous impression that consumption of the alcohol beverage has nutritional value or other health-related benefits?
5. How many industry members already provide nutrient content information on labels, in advertisements (such as websites), or upon request (for example, to consumers or restaurants)?
6. Do consumers want to see Alcohol Facts labeling on alcohol beverage products? How might consumers benefit from such a label? Do consumers have adequate information about the identity and quality of alcohol beverages if alcohol beverage containers do not include Alcohol Facts labeling? How do those benefits compare to the costs and regulatory burdens associated with such revisions?

7. How, if at all, would the new mandatory labeling requirements affect competition in the alcohol beverage market?

8. How would the new mandatory labeling requirements affect small businesses and, in particular, new businesses entering into the alcohol beverage marketplace?

9. How, if at all, would the new mandatory labeling requirements affect international trade of alcohol beverages? Is there any information that should, or should not, be included to align the proposed labeling requirements with those of other countries?

3. Calculating Panel Elements and Tolerance Levels

As previously noted in this document, TTB expanded the tolerance levels for calories in 2020, with the issuance of TTB Ruling 2020-1 and TTB Procedure 2020-1. TTB Procedure 2020-1 states that the calorie, carbohydrate, or fat content, as determined by TTB analysis, must be within a reasonable range below the labeled or advertised amount (within good manufacturing practice limitations), and the protein content must be within a reasonable range above the labeled amount (within good manufacturing practice limitations). TTB Ruling 2020-1 also permits industry members to rely on databases or "typical value" charts, rather than laboratory analysis, to determine nutrient content values for the labeling and advertising of alcohol beverages provided the values are within the "reasonable range" prescribed in Procedure 2020-1.

TTB is proposing to modify the tolerances set out in the 2020 guidance by eliminating references to "reasonable ranges" based on "good manufacturing practice limitations." Instead, TTB is proposing an objective standard, which allows a tolerance of 20 percent either above or below the labeled amount for calories, carbohydrates, protein, and fat. TTB believes that this change would

promote compliance by eliminating subjective standards. Importantly, the proposed revisions would facilitate the use of “typical values” charts and other methodologies to calculate the level of calories, carbohydrates, fat, and protein in alcohol beverage products. Because of variations between batches of the same alcohol beverage product, one purpose of the tolerances is to facilitate reliance on databases, such as the U.S. Department of Agriculture's FoodData Central, and other methodologies to calculate calorie and nutrient levels, without having to change the label for minor variations in those values.

In response to Notice No. 232, small businesses stated that broad tolerances that allow for the use of tables and other means to calculate calories and nutrient levels are important to reducing costs and maintaining their businesses' competitiveness in the market. These commenters were particularly concerned about any regulatory change that would require them to either buy expensive equipment to conduct in-house nutritional analysis testing or, more likely, send their products to third-party laboratories for analysis because they would not be able to afford the equipment to conduct in-house testing. Commenters stated that small producers often create small batches of products, and, as such, costs for testing cannot be easily absorbed over the sale of a large number of units. Other commenters expressed concern about the time third-party testing could add between the production of a product and its release to the market.

TTB seeks comments on whether the proposed tolerances are broad enough to facilitate reliance on databases for standard products, among other methods for calculating calorie and nutrient content, but still specific enough to provide accurate information to consumers. Specifically, TTB seeks comments

on whether it should instead propose the same tolerances set forth in TTB Procedure 2020-1 or whether another approach should be considered.

4. Mandatory Listing of Alcohol by Volume on all Alcohol Beverage Products

Consistent with Notice No. 73, TTB is proposing to require an alcohol content statement, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products. This would be a new requirement for table wines (wines containing at least 7 percent and no more than 14 percent alcohol by volume) and most malt beverages and beers. TTB believes that uniform labeling of alcohol content on all alcohol beverage products will assist taxpayers in complying with their obligations under the IRC and will assist TTB in identifying alcohol beverage products that pose compliance risks. TTB has authority under the IRC to require alcohol content statements on all wines and beer, pursuant to TTB's authority to classify, collect taxes on, and ensure the appropriate labeling of, such products. As noted in the preamble to Notice No. 73, TTB concluded that the alcohol content of a beverage is one of the most important pieces of information about that product.

Both the FAA Act and the IRC provide the Secretary of the Treasury with broad authority to regulate the labeling of alcohol beverages. The FAA Act and IRC, and their implementing regulations regarding the labeling of alcohol content, differ by commodity. For example, all distilled spirits must be labeled with alcohol content statements under the FAA Act, as well as under the implementing FAA Act and IRC regulations. See 27 U.S.C. 205(e) and 27 CFR 5.63, 5.65, 19.516, and 19.517. However, the FAA Act requires alcohol content for wines only if they contain more than 14 percent alcohol by volume. See 27 U.S.C. 205(e). Pursuant to TTB regulations, wines with an alcohol content of at least 7 percent but no more than 14 percent alcohol by volume may be labeled with the type

designation “table wine” or “light wine” on the brand label in lieu of a percent-by-volume alcohol content declaration. Additionally, all wines may be labeled with a range of alcohol content levels. See 27 CFR 4.36.

The FAA Act, as enacted in 1935, also originally prohibited the placement of alcohol content statements on malt beverage labels, unless required by State law. However, the Supreme Court found this provision was unconstitutional in *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995). As TTB explained in Notice No. 73, this decision leaves TTB with authority to either allow or require alcohol content statements on malt beverage labels.

With the exception of certain flavored malt beverages that contain alcohol derived from added nonbeverage flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol (see 27 CFR 7.63(a)(3)), malt beverages are not currently required to bear an alcohol content statement. However, many consumers have become used to seeing optional alcohol content statements on many malt beverage labels, which are permitted under TTB regulations at 27 CFR 7.65 and may be required under State law.

a. Proposal to Require Alcohol Content Statements for Malt Beverages

In Notice No. 176, TTB did not propose mandatory alcohol content statements for malt beverages but did propose to increase the alcohol content tolerance for malt beverages from 0.3 percent to 1 percent above or below the labeled alcohol content. TTB made this proposal with the understanding that some brewers, especially small brewers, avoid putting optional alcohol content statements on malt beverage labels because of the difficulty in maintaining precise alcohol content levels from batch to batch.

In response to Notice No. 176, the Beer Institute opposed the proposed increase of the alcohol content tolerance for malt beverages, stating that the

increase could confuse, mislead, and possibly endanger consumers due to higher than labeled alcohol content. On the other hand, the Brewers Association supported mandatory alcohol content statements for malt beverages, if the tolerance was increased to one percentage point above or below the labeled amount, and if a three-year compliance period was provided to allow for label changes.²¹ Because the issue of mandatory alcohol content statements for malt beverages was outside of the scope of that proposed rule, TTB did not adopt an increase in the tolerance for alcohol content statements in response to Notice No. 176; instead, TTB stated that it was treating the comment in favor of this amendment as a request for further rulemaking. TTB is now proposing both to require alcohol content statements for all malt beverages under the FAA Act and to increase the labeling tolerance to one percentage point above or below the stated amount. TTB is also proposing conforming amendments to the IRC labeling regulations, in parts 25 and 27, to cover domestic and imported beer.

For beers that are not defined as “malt beverages” under the FAA Act, TTB is proposing to mandate an alcohol content statement on the label of the products under TTB’s IRC authority. However, these beers would not be subject to the proposed Alcohol Facts labeling requirements, including the requirement for a statement of the number of fluid ounces of pure ethyl alcohol per serving, because the Alcohol Facts labeling requirements are being proposed under TTB’s FAA Act authority, which does not apply to these products. Instead, these products are subject to FDA labeling requirements. TTB believes that requiring an alcohol content statement on these products would facilitate revenue

²¹ The Beer Institute and the Brewers Association made substantially similar comments in response to Notice No. 232.

protection by, among other things, making it readily apparent that the products are subject to tax under the IRC. TTB seeks comments on this issue.

TTB also seeks comment on the proposal to increase the labeling tolerance to one percentage point above or below the stated amount for all malt beverages and beers. In response to Notice No. 232, brewers commented that the cost of the equipment needed to test for alcohol content to a sufficient degree of certainty to meet the current tolerance standards costs tens of thousands of dollars. Small brewers reported that this cost was unaffordable, would push them out of the market, and would discourage new entrants to market. Increasing the tolerance to one percentage point above or below the stated alcohol content would allow brewers to calculate the alcohol content through a formula based on hydrometer readings, which commenters to Notice No. 232 stated would drastically lower the costs of compliance. TTB seeks comment on whether increasing the tolerance for alcohol content to one percent would lower the cost of compliance for a mandatory alcohol content disclosure and thereby promote competition in the marketplace if such disclosure is required. TTB also seeks comment on whether consumers would receive adequate information about the alcohol content of malt beverages if the tolerance is increased.

Non-alcoholic malt beverages that are the product of alcoholic fermentation are subject to the labeling requirements of the FAA Act but are not subject to the health warning requirements of the Alcoholic Beverage Labeling Act of 1988 because their alcohol content is less than 0.5 percent alcohol by volume.²² See 27 CFR 7.65(e), 16.10, and 16.21. The IRC regulations in 27

²² While this proposed rule would generally allow for a tolerance of one percentage point above or below the labeled alcohol content for malt beverages, for malt beverages containing less than 0.5 percent alcohol by volume, the actual alcohol content may be less than, but may not exceed, the labeled alcohol content.

CFR 25.242 require marking such products as a “cereal beverage,” “malt beverage,” or “near beer,” along with a statement that the product is “Nontaxable under section 5051 I.R.C.” on bottles, kegs, and barrels.

TTB is proposing to require an Alcohol Facts statement for non-alcoholic malt beverages, but TTB does not see any reason to require a specific statement of the percentage of alcohol by volume, as long as the statement adequately informs the consumer that the product contains less than 0.5 percent alcohol by volume. TTB is thus proposing to allow the alcohol content statement for these products to be expressed either as a percentage of alcohol by volume or with the terms “non-alcoholic” or “alcohol free,” provided the product meets the current definitions of those terms in 27 CFR 7.65(e)–(f). The term “non-alcoholic” means the product contains less than one half of one percent alcohol by volume, while the term “alcohol free” is reserved for those products that contain no alcohol. Additionally, if the term “non-alcoholic” is used, the phrase “contains less than 0.5 percent (or .5%) alcohol by volume” must appear immediately adjacent to it, although it may be abbreviated as provided in proposed § 7.212(e)(1). Similarly, for non-alcoholic malt beverages, there is no need to specify the number of fluid ounces of alcohol per serving, given that, by definition, a serving size would be 12 fl oz, so the fluid ounces of alcohol per serving would be less than 0.06, which is one-tenth of an alcoholic drink equivalent as defined by the *Dietary Guidelines*.

TTB seeks comment on this issue, and specifically invites comments on whether an Alcohol Facts statement should be required for non-alcoholic malt beverages. TTB notes that other non-alcoholic products are not subject to the FAA Act’s labeling requirements. For example, a non-alcoholic wine does not fall under the definition of a “wine” under the FAA Act because the minimum alcohol content for wine under that definition is 7 percent alcohol by volume. See 27

U.S.C. 211. Similarly, the definition of the term “distilled spirits” in 27 CFR 5.1 does not include products containing less than 0.5 percent alcohol by volume.

b. Proposal to Require Alcohol Content Statements for Wine

The current wine regulations under the IRC require alcohol content to be labeled on all containers, either as a percentage of alcohol by volume or in accordance with 27 CFR part 4. Accordingly, wines with less than 7 percent alcohol by volume must be labeled with a numerical statement of alcohol content. However, because the IRC regulations allow wines as defined under the FAA Act to be labeled with an alcohol content statement in accordance with the regulations in part 4, they do not require the listing of a percentage of alcohol by volume for wines with an alcohol content of at least 7 percent and up to 14 percent, which are instead entitled to the exemptions under part 4.²³ As previously noted, the regulations in section 4.36 do not require numerical alcohol content statements for wines labeled with the designation “table wine” on the brand label.

As explained in Notice No. 73, TTB believes that the listing of alcohol content should be consistent for wines regardless of whether they contain more than 14 percent alcohol by volume. Accordingly, in that document, TTB proposed amending § 24.257(a)(3) to require alcohol content expressed in terms of a percentage of alcohol by volume on all wine labels. TTB stated that this amendment would serve an important revenue purpose, as the alcohol content of a wine is a key factor in determining its tax classification. See 26 U.S.C. 5041(b).

²³ See 27 CFR 24.257(a)(3). The regulation incorporates the rules under part 4, which results in a somewhat inconsistent effect. The IRC regulations require wines under 7 percent alcohol by volume (which are not “wines” under the FAA Act and thus fall under FDA’s labeling jurisdiction) to bear a percent-by-volume alcohol content statement; however, they do not require the same statement on wines with an alcohol content of 7 to 14 percent alcohol by volume.

While there were many supportive comments on this issue in response to Notice No. 73, some wine industry members and associations opposed the proposed amendment, urging TTB to retain the provisions in the regulations that permit the use of the designation “table wine” or “light wine” for wines with alcohol content levels of at least 7 percent and no more than 14 percent alcohol by volume. On the other hand, as previously mentioned, the Wine Institute commented in response to Notice No. 176 in favor of requiring numerical alcohol content statements on the labels of all wines, including table wines. TTB recognizes the views of some industry members may have changed since Notice No. 73 was issued in 2007.

Thus, this proposed rule provides for mandatory alcohol content statements under the IRC regulations for all wines and removes the option for a “table wine” or “light wine” designation to be used in lieu of a numerical statement of alcohol content. See proposed §§ 4.36(b), 24.257(a)(3), and 27.59(a)(3). “Table wine,” “light wine,” and related terms may still be included as optional information under the definitions in § 4.21.

Wines subject to the FAA Act (i.e., wines containing at least 7 percent alcohol by volume) would also be subject to the proposed rules in part 4 with regard to the formatting of alcohol content statements, as well as the inclusion of a statement of fluid ounces of alcohol per serving, under TTB’s authority under the FAA Act to ensure consistency in the presentation of information on labels. See 27 U.S.C. 205(e).

The proposed rule also removes the option to list the alcohol content for wines in terms of ranges. Instead, TTB is proposing to require the proposed mandatory alcohol content statements to be within the tolerances set forth in current § 4.36 for wines with at least 7 percent alcohol by volume and within a

tolerance of plus or minus 0.75 percentage points for wines with less than 7 percent alcohol by volume.

c. Comments Sought

TTB is soliciting comments on the proposed expansion of alcohol content labeling for malt beverages and wines, including on the below topics:

1. What are the potential benefits to consumers and industry members from a requirement for alcohol content statements, expressed as a percentage of alcohol by volume, on the labels of all alcohol beverage products?
2. Will the proposed requirement for alcohol content labeling for all beer and malt beverages result in additional costs and burdens for brewers and importers, particularly small businesses? Will the increase in alcohol content tolerances mitigate or reduce those costs and burdens?
3. Will the proposed increase in alcohol content tolerances for malt beverages mislead consumers? If so, does the same argument apply to wines, which currently have a 1.5 percentage point tolerance for wines up to 14 percent alcohol by volume, and a 1 percentage point tolerance for wines with an alcohol content of over 14 percent alcohol by volume?
4. Do the proposed labeling requirements for non-alcoholic malt beverages adequately advise the consumer that the products contain less than 0.5 percent alcohol by volume? Should non-alcoholic malt beverages be exempted from calorie and nutrient labeling requirements?
5. What, if any, additional costs or burdens would requiring numerical alcohol content statements for table wines impose on wineries and importers, particularly small businesses?
6. Would an alternative that allowed table wines to indicate alcohol content as a range (e.g., 7–14 percent alcohol by volume) place less of a burden

on small wineries and importers? Would this approach provide sufficient information to consumers?

5. Placement of Alcohol Content Statements as Part of the Alcohol Facts Statement

TTB is proposing to amend the FAA Act labeling regulations in parts 4, 5, and 7 to require that alcohol content statements that are already required under the FAA Act, or that are proposed in this document to be required under either the FAA Act (for malt beverages) or under the IRC (for table wines), be placed on the label as part of the mandatory Alcohol Facts statement. The alcohol content of an alcohol beverage is one of the most important pieces of information about the product for the consumer and thus should be highlighted and easy to locate on the label. TTB believes that providing this information as part of the panel facilitates consumers' evaluation of the alcohol content in context with the nutritional information.

Over the past 17 years, TTB has amended the regulations to remove the brand label concept for distilled spirits and malt beverages, which had required certain information to appear together, such as the brand name, class and type designation, and if applicable, the alcohol content. For distilled spirits, the mandatory alcohol content statement currently must appear in the same field of vision as the brand name and the class/type designation. See 27 CFR 5.63(a) and 7.63(a), as amended by T.D. TTB-158 and T.D. TTB-176. With regard to wine, it bears noting that the World Wine Trade Group (WWTG) Agreement on Requirements for Wine Labeling provides that wines may be imported bearing certain common mandatory information (CMI), including alcohol content, on any label on the wine container, and that this information may be placed within a single field of vision, meaning any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container. Under

this Agreement, as long as all of the CMI elements are visible at the same time, they will meet the placement requirements (if any) of each member country. Accordingly, in 2013, TTB amended the wine labeling regulations to allow alcohol content to appear on labels other than the brand label. See T.D. TTB-114 (78 FR 34565, June 10, 2013). The 2013 amendment provided greater flexibility in wine labeling and conformed the TTB wine labeling regulations to the WWTG agreement.

Nothing in this proposal prevents an alcohol content statement from also appearing on the single field of vision label(s) with the other elements of CMI, provided that it is also included on the Alcohol Facts statement. Likewise, this proposal does not preclude the placement of the Alcohol Facts statement (as prescribed in this document) together with the other elements of CMI on the single field of vision label. TTB encourages U.S. trading partners, including other WWTG members, and all interested persons, to submit comments in response to this specific issue in the proposal.

Specifically, TTB seeks comments on the following questions:

1. Would it be easier for consumers to locate alcohol content information on a label if it is required to be included in the Alcohol Facts statement and if so, why?
2. Alternatively, should TTB allow alcohol content labeling as an optional element of the Alcohol Facts statement?
3. Does the placement of alcohol content information affect costs of compliance and regulatory burdens? If so, how?
4. Does the proposal to require alcohol content information as part of the Alcohol Facts statement affect competition or issues addressed by international trade agreements or international standards?

6. Mandatory Statement of Alcohol in Fluid Ounces of Pure Alcohol per Serving

TTB is proposing to require a statement of alcohol content in fluid ounces of pure alcohol per serving as part of the mandatory Alcohol Facts statement.

TTB received numerous comments in response to Notice Nos. 73 and 232 stating that per-serving alcohol content is critically important information to consumers. Thousands of consumers commented on Notice No. 232 that per-serving alcohol content is important to help people understand how much alcohol they are consuming. The National Center for Health Research, a non-profit think tank focused on health issues, stated that alcohol beverage packaging should "provide information on the total amount of alcohol in the container (not just alcohol by volume) so that consumers can make informed choices and avoid excessive consumption." The American Public Health Association, an advocacy organization for public health, commented that alcohol beverage containers should provide the "total amount of alcohol in the container (not alcohol by volume)" along with other information like nutrients and ingredients because "[m]ost heavy drinkers are not alcohol dependent, and additional information . . . could influence individual decisions about alcohol use." Commenters also indicated that many governmental and health agencies provide consumption and moderation advice to consumers that is based on the amount of pure ethyl alcohol in each serving or drink, so information about the quantity of pure ethyl alcohol per serving is needed to allow consumers to follow this advice.

TTB believes that listing alcohol content in fluid ounces per serving on the alcohol beverage container could help consumers understand how much alcohol they are consuming and follow consumption and moderation advice from government and public health organizations, if they wish to do so. TTB further

believes that requiring this information on labels would further its mandate to ensure that labels provide consumers with adequate information as to the alcohol content of the product.

Accordingly, TTB proposes to amend the regulations to require the listing of the number of U.S. fluid ounces of pure ethyl alcohol per serving, expressed to the nearest tenth of a fluid ounce, on the mandatory Alcohol Facts statement. In a panel, the information would be required to be indented under the alcohol-by-volume statement.

For wines with an alcohol content of no more than 14 percent alcohol by volume, TTB recognizes that the FAA Act does not require numerical alcohol content statements on labels. As explained earlier, however, TTB is proposing to amend the IRC regulations in parts 24 and 27 to require alcohol content statements on all wine labels. TTB believes its authority under the FAA Act extends to ensuring consistency in the format and presentation of all alcohol content statements appearing on wines subject to part 4, even if such statements are not required by the FAA Act. Accordingly, proposed § 4.36 provides that where an alcohol statement, as a percentage of alcohol by volume, appears on a wine label subject to the requirements of part 4, it must conform to the requirements of § 4.36 and must appear in an Alcohol Facts statement in accordance with the requirements of new subpart L of 27 CFR part 4.

This proposal includes all distilled spirits and includes malt beverages with at least one half of one percent alcohol by volume. However, as explained above in Section VII.B.4, for malt beverages with less than one half of one percent alcohol by volume, TTB believes that the designation “non-alcoholic” (along with the required statement that such products contain less than 0.5 percent alcohol by volume) or “alcohol-free” (for products containing no alcohol) is sufficient, and

that there is no need to specify the percentage of alcohol by volume as part of the Alcohol Facts statement. Similarly, TTB is not proposing to require the disclosure of the number of fluid ounces of alcohol per serving for such products.

The 2003 petition from CSPI and other consumer organizations (discussed in Section III.A) proposed that, in addition to presenting pure ethyl alcohol content in fluid ounces per serving, Alcohol Facts labels should disclose the number of "standard drinks" per serving and per container.²⁴ CSPI proposed that a "standard drink" be defined identically to the *Dietary Guidelines for Americans* "alcoholic drink equivalent" as containing 14 grams, or .6 fluid ounces, of pure ethyl alcohol. CSPI further proposed that labels should include a statement that "A standard drink contains .6 fl oz of pure alcohol" and consumption advice provided by the *Dietary Guidelines for Americans*. In response to Notice No. 232, TTB received a large number of comments from consumers supporting CSPI's proposal to include "standard drink" information on alcohol beverage labels. The Centers for Disease Control also provided a comment that cited a study that found including the recommended alcohol guidelines as well as standard drink sizes were more effective than only including percent of alcohol by volume for improving estimates of alcohol consumption.²⁵

TTB did not propose to define a "standard drink" or to mandate inclusion of the consumption advice provided by the *Dietary Guidelines for Americans* in the 2007 proposed rule, Notice No. 73. The preamble to Notice No. 73 presents, in detail, TTB's explanation for why it was not including those elements, and TTB believes that the rationale set forth in Notice No. 73 on these issues still applies.

²⁴ In their comment to Notice No. 232, CSPI stated that they are no longer calling for the pure alcohol content in fluid ounces per serving because they believe this would serve the same purpose as standard drink labeling and thus would be duplicative.

²⁵ Edmunds, C.E.R., Gold, N., Burton, R. et al., The effectiveness of alcohol label information for increasing knowledge and awareness: a rapid evidence review, BMC Public Health 23, 1458 (2023), available at <https://doi.org/10.1186/s12889-023-16327-x>.

Alcohol beverages are rarely packaged as products equaling a “standard drink” of exactly 0.6 fluid ounces of pure alcohol. Products will therefore almost always contain less than one standard drink or multiple standard drinks, potentially leading to consumer confusion. TTB believes that consumers would also be confused about the difference between the terms “standard drink” and “serving size.” Accordingly, TTB is not proposing to adopt CSPI’s suggestions about use of the term “standard drink” or mandating inclusion of the *Dietary Guidelines for Americans*’ advice on moderate drinking (which may be updated based on any changes in the guidelines over time).

TTB is soliciting comments from all interested persons on these issues. Specifically, TTB solicits comments on the following:

1. Would including information about the fluid ounces of pure ethyl alcohol per serving in the proposed Alcohol Facts statement improve the ability of consumers to follow the consumption and moderation advice provided by governmental and health agencies, if they so choose?
2. Would requiring information about the fluid ounces of pure ethyl alcohol per serving in the proposed Alcohol Facts statement impose additional costs or burdens for alcohol beverage manufacturers and importers, particularly for small businesses?
3. Is there a better way of presenting the volume of alcohol content per serving? Specifically, should the term “standard drink” be defined and used in place of or in addition to fluid ounces of pure ethyl alcohol per serving?
4. TTB notes that the *Dietary Guidelines for Americans, 2020-2025*, use the terms “drink,” and “alcoholic drink equivalent,” and seeks comments on whether any of those terms should be used or defined for use on labels.

5. Should the proposed mandatory Alcohol Facts statement include a summary of the *Dietary Guidelines*' advice on moderate drinking (to be updated based on any changes in the guidelines over time)?

TTB also specifically seeks comments on whether these proposals would provide useful information to consumers or would instead be confusing or misleading, and whether inclusion of these elements would affect the costs of compliance and regulatory burdens.

7. Statements of Average Analysis and Serving Facts Statements

Under this proposed rule, the mandatory Alcohol Facts statement would replace the current voluntary statements of average analysis and Serving Facts statements on alcohol beverage labels. Thus, as of the compliance date, those statements would no longer satisfy the proposed mandatory Alcohol Facts labeling requirements.

8. Linear Display, Type Size, and Electronic Display of Alcohol Facts Information

a. *Linear Display*

TTB proposes to allow the option of a linear display placed on the container (including a keg), as long as it is set apart from other information and is placed inside a box with the title “Alcohol Facts” in bold-faced type. TTB received comments in response to Notice No. 232 expressing concern about label space on certain containers, such as 50 mL bottles, and/or whether new information requirements would require a back label, which would increase the cost of compliance. TTB believes the linear display will allow information to fit on labels of most containers without the need for a back label, while requiring the linear display to be in a box will make it more noticeable to consumers. TTB is also proposing to liberalize the format and size requirements for the panel

display, as compared to the Notice No. 73 proposal, to encourage industry members to use the panel format rather than the linear format.

TTB believes that these changes would reduce the burden on industry members and are consistent with TTB's mandate to issue regulations to ensure that labels provide consumers with adequate information about the identity, quality, and alcohol content of alcohol beverages. Examples of Alcohol Facts panels in a linear display appear in the proposed regulations at §§ 4.112(h), 5.212(h) and 7.212(j).

b. Type Size

TTB is proposing that the minimum type size requirements for Alcohol Facts statements mirror existing type size requirements for mandatory information in the wine, distilled spirits, and malt beverage regulations in parts 4, 5, and 7, respectively. See 27 CFR 4.38, 5.53, and 7.53. TTB is also proposing to remove the existing maximum type size requirement for alcohol content statements appearing in the proposed mandatory Alcohol Facts statements for wine and malt beverages subject to the FAA Act. Currently, the maximum type size for alcohol content statements is 3 millimeters for all wine containers. See § 4.38(b)(3). For malt beverages, the limit is 3 millimeters for containers of 40 fluid ounces or less and 4 millimeters for containers of more than 40 fluid ounces. See § 7.53(b). TTB believes that the maximum type size requirement may no longer serve a purpose, and that a maximum type size requirement for any one element of an Alcohol Facts statement is likely to either lead to differences in type sizes among the elements or create a de facto limitation on the size of the overall panel, which might be unnecessarily limiting to industry members in designing their labels.

Regarding malt beverages, TTB is also seeking public comment on whether to remove the maximum type size for optional alcohol content statements. TTB received a comment requesting removal of this limitation in the context of its label modernization rulemaking. See T.D. TTB-176 (87 FR 7526, February 9, 2022). In response, TTB stated that such a regulatory change should not be adopted without providing more specific notice (and an opportunity to comment) to interested parties. TTB is now seeking public comment on this issue.

c. Electronic Display of Alcohol Facts Information

TTB considered, but is not proposing, to allow the proposed Alcohol Facts panel to be distributed by electronic means via a link, code, or other marking on the physical label rather than requiring the full panel to appear on the physical label itself. TTB believes that allowing mandatory information to appear somewhere other than the physical label would decrease consumer accessibility to information that informs decisions about purchasing and consuming alcohol beverages. As detailed below, TTB seeks comment on this assumption.

TTB's current policy, articulated in Industry Circular 2022-2, "Use of Social Media in the Advertising of Alcohol Beverages," allows the use of links, including QR codes, on labels, and treats the linked website as advertising material if such use falls within the FAA Act's definition of an advertisement. Thus, industry members may currently include QR codes that link to websites with additional information about their products, including optional calorie and nutrient information. However, TTB currently does not allow mandatory labeling requirements to be satisfied solely by including the information on a website with a link or code on the physical label; instead, the mandatory information must appear on the label itself.

In Notice No. 232, TTB asked if there are alternative ways of providing the Alcohol Facts information, for example, by allowing information to be provided through a website that could be accessed by consumers via a quick response code (QR code) or website address on the label. In response to this request, individual commenters and public health and consumer advocacy groups largely opposed the use of QR codes for mandatory label information. On the other hand, the vast majority of trade organizations representing industry members commented that they support disclosure via QR code for at least some of the information disclosures proposed in this rulemaking. However, there were exceptions. The Beer Institute commented that nutritional and alcohol content information should appear on the physical label. TTB also received comments from small producers and a few consumers supporting the use of QR codes or websites to disclose nutritional information.

The comments supporting the use of disclosure via electronic means cited three primary points. First, web-based disclosure is a cost-efficient means to provide information to consumers that provides producers with flexibility and reduces time to market. Second, commenters cited to the broad implementation of digital labels in Europe and the benefits electronic information disclosure could have for international trade. Multiple commenters also touted the benefits of electronic disclosure for tailoring product information to country-specific regulations and providing information in a language appropriate to the point of sale. Finally, several commenters stated that web-based disclosure is consumer-friendly, particularly for products sold in smaller containers. These commenters argued that QR codes prevent labels from becoming cluttered, which can distract consumers from the most relevant information, make labels difficult to read, and contribute to consumer confusion.

These points were countered by comments from public health and consumer advocacy organizations, academics, and consumers. These commenters argued that disclosing the information electronically would create an unreasonable burden on consumers both because many consumers do not have access to a smart phone, or to the internet, as they shop for alcoholic beverages and because consumers do not want to have to go to a website to access the information.

CSPI commented that the barriers to information created by electronic disclosure would disproportionately affect consumers who are older or have lower incomes, and those living in rural areas and on tribal lands. CSPI cited a 2023 survey conducted by the Pew Research Center that found that 79 percent of adults with annual incomes less than \$30,000 owned smartphones compared to 90-98 percent of higher income groups and found similar sized gaps by age, with only 76 percent of adults aged 65 and older owning smartphones compared with 89-97 percent of adults in younger age groups.²⁶ Data from the Federal Communications Commission also shows a rural-urban gap for access to high speed mobile 4G LTE and lower access to "fixed terrestrial services" (i.e., satellite or wireless internet/broadband). The gap in access to high speed fixed terrestrial services is even larger between tribal lands and urban areas.²⁷

Regarding consumer preferences on the location of information, several commenters cited a survey that found 76 percent of consumers would prefer to learn about alcohol and nutritional content of alcoholic beverages by reading the information on the label of the container, as opposed to scanning a QR code or

²⁶ Pew Research Center, Mobile Fact Sheet, available at <https://www.pewresearch.org/internet/fact-sheet/mobile> (accessed May 9, 2024).

²⁷ Federal Communications Commission, Fourteenth Broadband Deployment Report, 2021, available at *FCC-21-18A1.pdf*.

visiting a website.²⁸ And the Consumer Federation of America cited a review of consumer behavior experiments by the European Union's Joint Research Centre that found "the spontaneous use of QR codes by consumers is very low."²⁹

TTB also received thousands of nearly identical comments from consumers that oppose QR codes as an alternative to on-container labeling. The commenters stated that "[f]or nutrition and alcohol content to be accessible to all, it is vital that it be mandated to appear on each container."

As previously stated, TTB currently requires all mandatory information disclosures to appear on the physical label of an alcohol beverage container. At this time, TTB has decided not to propose allowing this information to be disclosed electronically via a link or code on the physical label (e.g., a QR code) rather than on the physical label itself. TTB is persuaded by the comments from public health and consumer advocacy organizations and consumers that allowing the disclosure of information via electronic means would create barriers for consumer access, particularly for consumers in certain demographics and those living in rural areas. However, TTB recognizes that access to technology and cultural norms surrounding the provision of information via electronic means are rapidly advancing and seeks comment on whether any final rule should allow the proposed Alcohol Facts information to be disclosed via electronic means.

TTB is soliciting comments from all interested persons on these issues, including on the following specific topics:

²⁸ Big Village's CARAVAN U.S. Online Omnibus Survey, administered March 15-20, 2024. The survey question asked: "How would you prefer to learn about the ingredients, alcohol content, allergens, calories, and nutritional content of an alcoholic beverage? [Select one answer] 1. Read this information on the label of the container; 2. Scan a QR code on the label; 3. Visit a website address provided on the label; 4. I do not want to learn this information."

²⁹ Werle, C. O. C., et al, *Literature review on means of food information provision other than packaging labels*, JRC Technical Report, 2022, available at https://publications.jrc.ec.europa.eu/repository/bitstream/JRC128410/JRC128410_01.pdf.

1. Would consumers have trouble locating Alcohol Facts information if that information is presented in a linear display?
2. Does the proposal to require the linear display to appear in a box with the title “Alcohol Facts” in bold-face type allow consumers to better locate the information? Alternatively, should industry members be allowed the flexibility to include a linear display that is not surrounded by a box?
3. Do consumers, industry members, or other interested parties have comments on the type size and general formatting requirements proposed for both linear displays and panels?
4. How would the proposed formatting requirements, including the linear display option, affect the costs and other regulatory burdens? What are the benefits of the proposed formatting requirements?
5. Should TTB remove the maximum type size limitation for mandatory statements of alcohol content for wine and malt beverages that appear in an Alcohol Facts statement? For malt beverages, should TTB remove the maximum type size limitation for alcohol content statements that may appear elsewhere on the label as well?
6. What alternatives exist to convey Alcohol Facts information to consumers? How, if at all, would the alternatives affect competition in the marketplace as compared to displaying the information as proposed on the physical label? What are the costs and benefits of aligning Alcohol Facts information to requirements of other countries?
7. If TTB adopts mandatory Alcohol Facts labeling for alcohol beverages, should it include the option of satisfying the requirement by making the information available electronically, for example by including a QR code or website address on the label to allow consumers to view mandatory Alcohol

Facts statements on their mobile devices instead of on the product label? Would this option provide consumers with sufficient access to Alcohol Facts information at the retail store so that they can make informed decisions, given issues such as the need to use a smartphone, potential issues regarding the adequacy of cellular or Wi-Fi coverage at some retail stores, and other potential technological challenges? Would the provision of mandatory information disclosures via electronic means create disproportional barriers to access for particular communities?

8. How would the option of disclosing the proposed Alcohol Facts information via electronic means affect the costs and other regulatory burdens? What are the benefits of disclosure via electronic means?

9. If TTB were to allow mandatory information to be disclosed electronically, should TTB allow all of the proposed Alcohol Facts information to be disclosed electronically or should some of the information be required to appear on the physical label?

10. If TTB allowed multiple options to convey Alcohol Facts information to consumers, could the lack of uniformity create consumer confusion?

9. Serving Size Reference Amounts

Consistent with the serving sizes found in TTB Ruling 2013–2, TTB proposes the following reference serving sizes in new §§ 4.111(b), 5.211(b), and 7.211(b), for wines, distilled spirits, and malt beverages, respectively:

Serving Size	Alcohol Percent by Volume		
	Wine	Distilled Spirits	Malt Beverages
1.5 fl oz (44 mL), or 50 mL for 50 mL containers of distilled spirits		Above 24%	Above 24%
2.5 fl oz (74 mL)	Above 16 to 24%	Above 16 to 24%	Above 16 to 24%

5 fl oz (148 mL)	7 to 16%	Above 7 to 16%	Above 7 to 16%
12 fl oz (355 mL)		Not more than 7%	Not more than 7%

TTB recognizes that these serving size reference amounts do not reflect the multiple servings 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 alcohol, nutrient, and calorie intake. TTB seeks comments on whether the proposed serving size reference amounts should be adopted, and if not, what other serving sizes should be used.

TTB specifically seeks comments on the following issues:

1. Are the proposed reference amounts 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?
2. 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?
3. Should TTB allow greater flexibility in serving sizes?
4. Should the serving size reference amounts be exactly equal to an alcoholic drink equivalent of 0.6 fluid ounces of alcohol, or would this mislead consumers by not recognizing the way in which alcohol beverages are typically consumed?

10. Dual-Column Alcohol Facts Panel Display

TTB proposes to allow for the optional presentation of Alcohol Facts panels in a dual-column format. The first column would provide the information for the standard reference serving size, while the second column would provide information about the contents of the entire container. TTB is proposing to allow the dual-column format on alcohol beverages sold in containers holding at least 200 percent and less than 500 percent of the serving size reference amount. See proposed §§ 4.112, 5.212, and 7.212 below. CSPI suggested that TTB could model its regulations after FDA's policy, which requires dual column nutrition labeling for products containing more than 2 and up to 3 servings per container. See 21 CFR 101.9(b)(12)(i). TTB, however, is proposing to allow dual-column labeling on containers up to 5 servings because TTB is aware of products in the marketplace that are sold in larger containers for which there may be a valid reason to include a dual-column label.

TTB is also proposing that alcohol beverages packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount must be labeled as containing a single serving, and a single serving size is the net content of the container. This means that, for example, a malt beverage sold in a can that contains 150 percent of a single serving size reference amount would be labeled with the entire net contents being considered as one serving.

TTB seeks comments on the following specific issues, and may consider different rules for dual-column labeling and single-serving containers based on the comments:

1. Does dual-column labeling create the impression that consumption of multiple servings of an alcohol beverage at one time is expected or recommended?

2. Should dual-column displays be limited to containers with three or fewer servings, consistent with the FDA regulations? Or is a limit of less than five servings better suited to the way in which alcohol beverages may be bottled and labeled?

3. Should dual-column displays be allowed on any container, regardless of the number of servings in that container, consistent with TTB Ruling 2013–2?

4. The proposed rule would require containers with a net content of more than 100 percent but less than 200 percent of a single serving size reference amount to be labeled as containing a single serving. TTB solicits comments on whether this is the best way to convey the alcohol and nutrient content of these products to consumers.

11. Implementation Period

TTB is proposing a compliance date of 5 years from the date that a final rule resulting from this document is published in the **Federal Register** to minimize the costs and burdens associated with the proposed new labeling information. TTB solicits comments on whether the proposed compliance date would suffice to limit the impact on small businesses and to reduce overall costs of compliance while ensuring that consumers are adequately informed.

TTB received a number of comments in response to Notice No. 232 requesting a sufficiently long transition period between publication of a final rule and implementation of the rule to allow businesses, and particularly small businesses, ample time to exhaust existing label stocks and to bring labels and websites into compliance with the new regulations. One commenter emphasized that a longer implementation period is needed to allow TTB time to educate regulated industry members on new requirements, create resources for small businesses, and publish clarifying guidance.

While most commenters did not suggest a specific time period, the Brewers Association recommended an implementation period of at least 3 years and the American Distilled Spirits Alliance requested at least 5 years. The Brewers Association said, "a quicker implementation schedule would risk placing financial burdens on brewers and other producers, particularly small ones." CSPI recommended that, to minimize costs, TTB provide an implementation long enough that many producers would make updates to their labels even absent the regulation. CSPI cited to an FDA regulatory impact analysis for a food labeling rule that found food and beverage products tend to be voluntarily relabeled on a 2- to 5-year cycle.³⁰

TTB believes that a 5-year period would provide both small and large industry members with sufficient time to phase in the requirements of the proposed mandatory Alcohol Facts labeling in a cost-effective manner. As discussed later in this document, TTB estimates that industry members change their labels at least once every 42 months; therefore, a 5-year compliance period would allow all affected industry members to make the changes required by this proposal at the same time as a regularly scheduled label change. See Section IX, Cost Analysis, below, for additional information on the estimated costs of this proposed rule, which are affected by the length of the implementation period and estimates of the frequency of changes to alcohol beverage labels.

Under this proposal, TTB will not require industry members to submit new COLA applications when the only change being made to a label is the inclusion, or alteration, of a required Alcohol Facts panel or statement containing alcohol

³⁰ U.S. Food and Drug Administration, Regulatory Impact Analysis for Final Rules On: "Food Labeling: Revision of the Nutrition and Supplement Facts Labels" and "Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments," 2016, available at <https://www.fda.gov/media/98712/download>.

content information. Therefore, this proposal would not require the submission of a new application for label approval simply to cover revisions to the calorie, nutrient, and alcohol content labeling of the product in accordance with the new requirements.

Under current guidance, industry members have been allowed to label their products voluntarily with either a statement of average analysis or a Serving Facts statement. See TTB Rulings 2004–1 and 2013–2. TTB has also allowed, via FAQs published on TTB’s website, “Alcohol Facts” panels that contain information about alcohol content, but not nutrient content. All of these voluntary statements differ in several respects from the mandatory Alcohol Facts statement proposed in this document. During the implementation period, industry members may continue to use approved COLAs that contain these statements, as long as they comply with current guidance.

TTB further believes that consumers will begin to benefit from this rulemaking well in advance of the 5-year implementation date because TTB expects that many industry members will come into early compliance with the rule. As previously discussed, 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA already contains nutritional information in the form of a voluntary Serving Facts Statement, and the Distilled Spirits Council of the United States (DISCUS) announced that all spirits products distributed in the United States by DISCUS Director Members will include nutrition information by June 2024.³¹ Given rising industry participation in voluntary disclosure of

³¹ See September 28, 2022, statement by Distilled Spirits Council of the United States, available at <https://www.distilledspirits.org/news/distilled-spirits-council-director-members-to-provide-serving-facts-information-for-spirits-products-as-part-of-white-house-conference-on-hunger-nutrition-and-health/>.

nutrition information, TTB expects that if a final rule on Alcohol Facts is issued, many industry members will move to include Alcohol Facts statements on labels in advance of the 5-year implementation period.

Accordingly, effective after a 5-year implementation period, TTB proposes in amended §§ 4.32, 5.63 and 7.63 to mandate an Alcohol Facts labeling statement on all wines, distilled spirits, and malt beverages that contains both alcohol and nutrient content information, as described above. The implementation period does not appear in the proposed regulatory text but will be incorporated in any final rule resulting from this rulemaking.

TTB seeks comments on whether the length of the implementation period is adequate. In particular, TTB seeks comments on the following issues:

1. How frequently do bottlers and importers of alcohol beverages typically change labels?
2. How long do industry members need to comply with the requirements of the proposed rule?
3. Will 5 years provide enough time for small businesses to coordinate labeling changes required by regulatory changes with labeling changes that are planned in the ordinary course of business?
4. Is 5 years too long a compliance period? Should the compliance period instead be 2 years, 3 years, or another length of time?
5. If a final rule is issued, will industry members begin implementation of the labeling changes in advance of the compliance date?

VIII. Summary of Proposed Regulatory Changes

Based on the above, TTB proposes to amend parts 4, 5, 7, 24, 25, and 27 of the TTB regulations to set forth requirements for the presentation of certain alcohol content, calorie, and nutrient information in a mandatory Alcohol Facts

statement. These proposed changes involve the addition of a new subpart L in each of parts 4, 5, and 7, as well as conforming changes elsewhere in parts 4, 5, and 7 of the TTB regulations. TTB also proposes amendments to parts 24, 25, and 27 of the TTB regulations with respect to the labeling of beers and wines under the IRC. The proposed regulatory amendments discussed in more detail earlier in this document are summarized below for ease of reading.

A. Mandatory Alcohol Facts Statement

TTB proposes a mandatory nutrient information statement on labels that must include the following information: the title “Alcohol Facts”; the serving size; the number of servings per container; alcohol content as a percentage of alcohol by volume, the number of fluid ounces of pure ethyl alcohol per serving, the number of calories per serving; and the number, in grams per serving, of carbohydrates, fat, and protein.

1. Serving Size and Servings per Container

TTB proposes 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), 5.211(b), and 7.211(b), TTB proposes the use of serving size reference amounts, specific to each alcohol beverage category, which in each case most closely approximate 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 alcohol, calorie, and nutrient 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. Consistent with the

serving sizes in TTB Ruling 2013–2, TTB proposes the following serving size reference amounts for each category:

- *Wine*: For wines with an alcohol content of at least 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For wines with an alcohol content of more than 16 percent alcohol by volume and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL).
- *Distilled spirits*: For distilled spirits products containing not more than 7 percent alcohol by volume, the serving size would be 12 fluid ounces (about 355 mL). For products containing over 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For products containing over 16 percent and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL). For products containing over 24 percent alcohol by volume, the serving size would be 1.5 fluid ounces (about 44 mL) or 50 mL if bottled in a 50 mL container.
- *Malt beverages*: For malt beverages containing not more than 7 percent alcohol by volume, the serving size would be 12 fluid ounces (about 355 mL). For products containing over 7 percent and not more than 16 percent alcohol by volume, the serving size would be 5 fluid ounces (about 148 mL). For products containing over 16 percent and not more than 24 percent alcohol by volume, the serving size would be 2.5 fluid ounces (about 74 mL). For products containing over 24 percent alcohol by volume, the serving size would be 1.5 fluid ounces (about 44 mL).

Since wines and distilled spirits are subject to metric standards of fill under the TTB regulations, the serving sizes for these categories would be set forth in both fluid ounces and milliliters. TTB recognizes 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 proposes to require serving sizes for malt beverages also to be set forth in both fluid ounces and milliliters.

2. Percentage of Alcohol by Volume

In new §§ 4.111(c), 5.211(c), and 7.211(c) for wines, distilled spirits, and malt beverages, respectively, TTB proposes to require alcohol content as a percentage of alcohol by volume to appear as part of the Alcohol Facts statement. TTB is also proposing to amend §§ 4.32, 5.63, and 7.63 to provide that alcohol content must appear as part of the mandatory Alcohol Facts statement, which may appear on any label affixed to the container. New § 5.211(c) also provides that an Alcohol Facts statement for distilled spirits may also bear an optional statement of alcohol content in degrees of proof. TTB is also proposing to make conforming changes to the alcohol content regulations in §§ 4.36, 5.65, and 7.65. TTB is not proposing to change any requirements related to additional statements of alcohol by volume that may appear outside of an Alcohol Facts statement.

TTB proposes to amend §§ 24.257(a)(3) and 27.59 to provide that alcohol content, expressed as a percentage of alcohol by volume, is required on labels for all wines subject to tax under the IRC. Additionally, TTB proposes to amend §§ 25.141(a), 25.142(a), and 27.60 to require an alcohol content statement on labels of all beer subject to tax under the IRC. TTB is also proposing to make conforming amendments to §§ 27.59 and 27.60 to require that imported wines and beers must be labeled with the same basic information applicable to domestic wines and beers under 27 CFR parts 24 and 25. Finally, the proposed rule also reorganizes §§ 27.59 and 27.60 for purposes of clarity.

3. Alcohol Expressed in Fluid Ounces

In new §§ 4.111(d), 5.211(d), and 7.211(d), TTB proposes to require the display of the number of U.S. fluid ounces of pure ethyl alcohol per serving on the mandatory Alcohol Facts statement.

4. Calories

In new §§ 4.111(e), 5.211(e), and 7.211(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), 5.211(f), and 7.211(f), TTB proposes standards for expressing carbohydrate content per serving for wines, distilled spirits, and malt beverages, respectively. TTB also proposes to allow an optional statement of sugar content to appear in the Alcohol Facts statement.

6. Fat

In new §§ 4.111(g), 5.211(g), and 7.211(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), 5.211(h), and 7.211(h), TTB proposes standards for expressing protein content per serving for wines, distilled spirits, and malt beverages, respectively.

B. Format and Placement of the Alcohol Facts Statement

New §§ 4.112, 5.212, and 7.212 set forth proposed formatting specifications for the Alcohol Facts Statement. TTB proposes to permit listing Alcohol Facts information in a linear fashion for all products. See these proposed sections for examples of linear displays. In addition, new §§ 4.113, 5.213, and

7.213 would permit the Alcohol Facts statement to appear in either a vertical or horizontal presentation.

C. Tolerance Levels

New §§ 4.114, 5.214, and 7.214 set forth proposed tolerance levels for all of the elements required to appear in the Alcohol Facts statement.

IX. Cost Analysis

A. Summary

Executive Order 12866 requires TTB to design regulations in the most cost-effective manner that will achieve the regulatory objective. Accordingly, TTB seeks to tailor its regulations to impose the least burden on individuals, businesses of differing sizes, and other entities, consistent with the regulatory objective.

In Notice No. 73, TTB solicited comments on the expected economic impact of the proposed rule on Serving Facts labeling, especially on small businesses. TTB asked commenters to provide specific cost data and asked the following question: 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?

No final rule was issued in response to Notice No. 73. TTB has concluded that many of the larger issues raised by the comments in response to Notice No. 73 about costs and effects on small businesses are still valid concerns today. However, many of the comments, as well as the data that TTB previously relied upon for analyzing cost issues, are out-of-date.

TTB solicited new comments on the costs of requiring per-serving alcohol and nutritional information on alcohol beverage labels in Notice No. 232. TTB asked if requiring this information on labels would be expected to increase the

cost of products, and if so, by how much; to what extent businesses are already following voluntary guidelines for this information; and how any new mandatory labeling requirements would particularly affect small business and new businesses entering the marketplace.

TTB is now undertaking a new effort to estimate the costs of complying with the current proposed rule. This cost estimate takes into consideration the costs and concerns raised by commenters to Notice No. 73 along with the more recent comments and data received in response to Notice No. 232. TTB invites comments on this estimate.

To estimate the costs associated with this proposal, TTB utilized the 2014 FDA Labeling Cost Model,³² adding its own data inputs, making various assumptions about the alcohol beverage industry, and adjusting costs to reflect inflation through January 2023. While FDA provided TTB with access to its model, TTB would like to emphasize that FDA is not responsible for the assumptions that TTB used in applying that model to the alcohol beverage market; nor is FDA responsible for the estimates set out in this analysis.

As set forth in more detail below, based on the available data, TTB estimates the one-time total labeling costs associated with this proposed rule under a 2-year compliance period to have a present discounted value (PDV)³³ of approximately \$323.4 million (or approximately \$161.7 million per year). If the compliance date is extended to 3 years, the total PDV would be approximately \$258.5 million (or \$86.5 million per year); for 42 months, the total PDV would be

³² FDA has periodically contracted with RTI International to provide a model to estimate the costs of various product labeling changes required by regulation. The most recent version is the “2014 FDA Labeling Cost Model, Final Report, August 2015,” available at <https://downloads.regulations.gov/FDA-2016-N-2527-2681/content.pdf>.

³³ Throughout this section, the present discounted value of monetary values is calculated using a 2 percent discount rate in accordance with OMB *Circular A-4 Chapter 12*, available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

approximately \$204.3 million (or \$58.4 million per year). Finally, if the compliance period is extended to 5 years, the total PDV would be approximately \$201.2 million (or \$40.2 million per year).³⁴

As detailed below, TTB also invites comments on whether analytical testing of product samples should be included as a recurring cost after the initial compliance period, and if so, whether industry members would in fact send product samples to independent laboratories for testing on an annual basis. Assuming that each industry member sends two samples of each unique product formulation to be tested by an independent laboratory each year, TTB estimates the recurring costs of the proposed rule to be \$64 million. However, as explained later in this document, TTB believes that once initial testing of a product is completed, industry members may choose not to (and are not required to) send that same product formulation for testing every year. For some products, initial testing may not even be necessary.

TTB seeks comments on all aspects of its cost estimates. Given that the proposed changes would affect the labeling of virtually all alcohol beverages that fall under the definition of a wine, malt beverage, or distilled spirit under the FAA Act, and are for sale in interstate commerce, TTB believes that a compliance period of 5 years would minimize the regulatory burdens and economic costs associated with the proposal, while still ensuring that consumers receive adequate information about the alcohol beverages they are purchasing within a reasonable period of time. TTB also believes that many industry members, particularly large companies, are likely to start voluntary compliance with any final rule in advance of the compliance date, given that many industry members already include calorie and nutrient statements on their labels.

³⁴ All costs in this proposal are provided in 2023 dollars.

Finally, as noted elsewhere in this document, TTB also plans to seek comments in separate rulemaking projects on other labeling changes that would affect the industry, including mandatory ingredient and major food allergen labeling. TTB seeks comments on whether a single compliance date should be established for any changes resulting from these rulemaking projects.

B. Purpose of Proposed Amendments

As noted earlier in this document, the labeling provisions of the FAA Act, codified at 27 U.S.C. 205(e), provide the Secretary of the Treasury with 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. Consistent with this authority, the proposed rule is intended to provide consumers with more information about the alcohol content, identity, and quality of alcohol beverages, including per-serving information about alcohol content, calories, and nutrient content. This information will in turn enable consumers to follow advice about moderate alcohol consumption, if they so choose, and will provide them with additional information about the calorie and nutrient content of the alcohol beverages they purchase and consume.

Current regulations do not require the labeling of alcohol beverages with calorie, carbohydrate, fat, and protein content, and some alcohol beverages are not even required to be labeled with alcohol content. Offering this basic information to consumers at the point of purchase, on the labels, will provide them with information to make more informed alcohol beverage choices. Providing this information in a consistent format on alcohol beverage containers

will also help consumers understand the information and prevent inconsistent presentations that might be confusing.

Furthermore, the proposal to utilize TTB's authority under the IRC to issue regulations requiring alcohol content statements on all wines and beer would serve an important revenue protection purpose. TTB provided a more detailed discussion of the benefits associated with mandatory alcohol content labeling in the preamble of Notice No. 73 (72 FR 41860), and TTB notes that the new requirement would primarily affect malt beverage and table wine labels that do not already include numerical statements of alcohol content.

C. Costs

In the comments to Notice Nos. 73 and 232, manufacturers, importers, and bottlers were primarily concerned with the costs associated with three main categories: (1) New labeling equipment costs; (2) costs associated with label redesign, printing, and administrative costs; and (3) laboratory analysis/testing costs. As explained below, TTB does not believe that the proposed rule, if adopted, would impose new labeling equipment costs. The second category (label redesign, printing, and administrative costs) is estimated on a per-UPC (Universal Product Code) basis and is dependent on the length of the compliance period. The third category, laboratory analysis costs, could impact both initial costs and recurring annual costs. According to the FDA Labeling Cost Model, the initial laboratory analysis costs are affected by the percentage of labeling changes that cannot be coordinated with previously scheduled label changes. Separate and apart from the costs set forth in the model, TTB is also providing an estimate of laboratory analysis costs that may recur on an annual basis after the end of the compliance period.

1. New Labeling Equipment Costs

In Notice No. 73, TTB proposed a mandatory “Serving Facts” panel, with a linear display option for small containers. TTB solicited comments on whether a linear display option should be allowed for all containers irrespective of size. TTB also sought comments on whether allowing the linear display on all containers would reduce costs associated with compliance while providing consumers with adequate information about the products.

TTB received many comments from industry members and associations in favor of the linear display option. These commenters supported the use of this option for all containers, regardless of size. Some commenters assumed that a panel requirement would force industry members to use a back label and noted that not all bottlers have the necessary equipment to add a back label to their products. These commenters suggested that compliance with a panel requirement could mean that the bottler would have to purchase a new labeling machine, which would impose a significant burden on small producers and bottlers. The commenters indicated that if TTB were to permit a linear display, rather than require a panel display, the need for additional labeling equipment would be eliminated.

This proposed rule allows the mandatory Alcohol Facts information to appear either in a panel or in a linear display, regardless of the size of the container. Therefore, TTB has no reason to believe that the proposed rule would require industry members to purchase new labeling equipment to comply with its labeling requirements. TTB is inviting comments on this conclusion.

2. Costs Associated with Label Redesign, Printing, and Administrative Costs

To estimate the costs associated with label redesign, printing, and administrative costs, TTB utilized the 2014 FDA Labeling Cost Model, adding its

own data inputs and in some cases making assumptions about the alcohol beverage industry.

a. FDA Labeling Cost Model

The FDA Labeling Cost Model estimates labeling costs for a broad range of FDA-regulated consumer products using current data. To utilize the model, the user specifies:

- the categories of products affected;
- the nature of the labeling change;
- the length of the compliance period; and
- additional inputs as specified.

Based on the user specifications, additional collected data, and FDA-provided data, the model generates an estimate of costs per UPC for the labeling change, total costs per product type, and an aggregate cost across all affected products. The model quantifies uncertainty or variability with high and low estimates constructed in a way that facilitates interpretation as bounds on 90 percent probability ranges. Because it is anticipated that labeling regulations would affect numerous products at the same time, the model estimates assume that manufacturers are implementing changes simultaneously across multiple products.³⁵

i. Factors that affect the results of the FDA Labeling Cost Model

The following three factors affect the results of the FDA Labeling Cost Model:

- Whether the type of contemplated labeling change is “minor,” “major,” or “extensive;”

³⁵ As previously noted, if TTB implements other new labeling requirements at the same time as the Alcohol Facts labeling requirements, these changes could be coordinated with use of a single compliance date.

- Data on the number of UPCs and total units that would be affected by the labeling change, including whether the products are “branded” or “private label”; and
 - The length of time the regulated industry will have to comply with the change.

aa. Types of labeling changes: The model allows for the three different types of labeling changes. Section 2.3 (page 2-9) of the model explains “[t]he part of the label that is affected determines the number of plates (colors) that must be changed and thus the complexity of making a change.” The three types of labeling changes are:

- **Minor change**—only one color is affected and the label does not need to be redesigned. Examples of this type of change include changing an ingredient list or adding a toll-free number.
- **Major change**—requires multiple color changes and label redesign. An example of a major change is adding a facts panel or modifying the front of a package.
- **Extensive change**—a major format change requiring a change to the product packaging to accommodate labeling information. An example of an extensive change is adding a peel-back label or otherwise increasing the package surface area.

For purposes of this analysis, TTB is assuming that the proposed rule will require a “major change” for all alcohol beverage containers currently in the marketplace that are subject to the labeling requirements of the FAA Act, i.e., that fall under the definition of a wine, distilled spirit, or malt beverage under 27

U.S.C. 211 and that are sold or otherwise introduced into interstate commerce.³⁶

TTB invites comments on whether these assumptions are valid.

Finally, TTB notes that many alcohol beverages are already labeled with a "Serving Facts" statement or a statement of average analysis. As discussed in section VI.A, this category includes a significant number of malt beverage products.³⁷ For those products already labeled with a Serving Facts statement or statement of average analysis, it is arguable that any changes required by the proposed rule (changing the title of the statement, complying with the proposed formatting rules, and in some cases changing the appropriate serving size of the product) would be minor.³⁸ However, as noted above, TTB is assuming, for purposes of this analysis, that all covered labels will be required to undergo a major change. Under the proposed rule, many labels with Serving Facts statements would also have to be changed to place the alcohol content statement (as a percentage of alcohol by volume) and the statement of fluid ounces of pure ethyl alcohol per serving in the new statement.³⁹ TTB invites comments on this issue, and welcomes any available data on how many industry members are currently including calorie and nutrient content statements on alcohol beverage labels.

³⁶ Because TTB does not have data to quantify the number of beer products reflected in the Nielsen data that would not fall under the FAA Act's definition of a "malt beverage," TTB is not excluding any beer from this estimate. TTB is excluding wines under 7 percent by alcohol, to the extent such data is available.

³⁷ See, e.g., statement by the Beer Institute that more than 95 percent of the beer volume sold by Anheuser-Busch, Molson Coors Beverage Company, Constellation Brands Beer Division, HEINEKEN USA, and FIFCO USA now voluntarily provides nutritional information. Available at <https://www.beerinstitute.org/press-releases/new-report-shows-beer-leads-all-alcohol-categories-in-providing-nutritional-information-to-consumers/>.

³⁸ As previously noted, there is a difference between the serving sizes authorized for statements of average analysis under TTB Ruling 2004-1 and the serving sizes authorized for Serving Facts statements under TTB Ruling 2013-2. This proposed rule would adopt the serving sizes set forth in TTB Ruling 2013-2.

³⁹ TTB Ruling 2013-2 permits alcohol content as a percentage of alcohol by volume, as well as alcohol content on a per-serving basis, to appear as part of a Serving Facts statement. However, many industry members choose to include the alcohol content, as a percentage of alcohol by volume, elsewhere on the label rather than including it as part of an optional Serving Facts statement.

bb. Data on the number of UPCs and total units that would be affected by the labeling change: Based on the FDA Labeling Cost Model, the administrative, redesign, and printing costs associated with making a labeling change are on a per-UPC basis rather than a formulation basis. Each individual product may have several UPCs associated with different sizes or types of packaging. For example, a malt beverage product with the same formulation may have several UPCs associated with that one product because it is sold in a multitude of package combinations (such as individual 12 fl oz and 24 fl oz bottles; or a 6-pack and a 12-pack of 12 fl oz cans), each of which has a separate UPC.

To determine the number of alcohol beverage UPCs in the marketplace, TTB contracted with NielsenIQ⁴⁰ to obtain a report, which consists of data for the period from September 9, 2021, through September 10, 2022,⁴¹ for the following markets: Total U.S. all outlets combined,⁴² liquor, and convenience stores.⁴³ At TTB's request, Nielsen reported the following data:

- Overall number of UPCs for beer, wine, and spirits;

⁴⁰ Based in part on data reported by NielsenIQ through its MarketTrack Service for the Alcohol Beverage Category for the period from September 9, 2021, through September 10, 2022, for the Total US all outlets combined, liquor, and convenience stores market. Copyright © 2022 Nielsen Consumer LLC.

⁴¹ TTB emphasizes that the analyses, calculations and conclusions in this document may have been informed in part by the NielsenIQ RMS data through NielsenIQ's Retail Measurement Service (RMS) for the beverage alcohol product categories for the reported time period for Total US expanded all outlets combined, liquor, and convenience stores. However, any such analyses, calculations and conclusions are those of TTB and do not reflect the views of NielsenIQ. NielsenIQ is not responsible for, had no role in, and was not involved in analyzing and preparing the results reported herein, or in developing, reviewing or confirming the research approaches used in connection with this document.

⁴² NielsenIQ's xAOC market includes retailers in its Food, Drug, Mass, Walmart, Club, Dollar, and Military channels. Nielsen defines those channels as follows:

- Food is inclusive of all grocery stores with greater than \$2MM in annual ACV, including smaller chains and independents, and large players such as Whole Foods.
- Drug is inclusive of all chains and independents with greater than \$1MM in annual ACV.
- Select Mass includes Target, K-Mart, and ShopKo.
- Walmart includes Walmart Division 1 + Supercenter's + Neighborhood Markets.
- Select Club is inclusive of Sam's Club and BJ's. Costco does not participate in market measurement with any data provider.
- Select Dollar is inclusive of Dollar General, Family Dollar, and Fred's Dollar.
- Military is inclusive of military commissary stores.

⁴³ Nielsen states that its Convenience channel includes "major chains as census cooperators, and is projected to represent all chains and independents."

- Overall number of brand extensions for beer, wine, and spirits;
- Number of private labels for beer, wine, and spirits;
- Number of units sold for beer, wine, and spirits for cans, bottles, and other packaging;

- Total dollars sold for beer, wine, and spirits;
- Overall number of UPCs for wine with less than 7 percent ABV; and
- Overall number of UPCs for malt beverage/beer in the flavored malt beverage category (broken down, as appropriate, by subcategories such as hard seltzer).

TTB made some changes to the NielsenIQ categorization of wine,⁴⁴ and beer/malt beverages⁴⁵ based on whether the products fall within the definitions of those terms set forth in the FAA Act, 27 U.S.C. 211.

Based on the data that Nielsen provided (including the changes to the data noted above), TTB estimates that industry members would have to modify labels for approximately 130,410 different alcohol beverage product UPCs to

⁴⁴ While the Nielsen data separated out “wine” based on whether the alcohol content was at least 7 percent, it separated out “cider” products based on whether the alcohol content was over 6 percent alcohol by volume or 6 percent and under. As previously noted, the definition of wine under the FAA Act (but not the IRC) covers only wine that contains at least 7 percent alcohol by volume. Thus, TTB excluded wines with an alcohol content of under 7 percent and excluded ciders with an alcohol content of 6 percent and under. This meant that ciders were included if they contained over 6 percent alcohol by volume. TTB recognizes that this number is overly inclusive, because it includes some wines with an alcohol content of over 6 but under 7 percent alcohol by volume, even though those wines are not subject to the labeling requirements of the FAA Act.

⁴⁵ As previously noted, the FAA Act’s definition of “malt beverages” does not include beer made without both malted barley and hops. Thus, for example, while Nielsen included “cider” products in “Total Beer/FMB/Cider” category, TTB moved the cider products to the “wine” category instead, as cider products (i.e., products predominantly derived from the fermentation of apples) would be classified as wines under TTB regulations implementing both the IRC and the FAA Act. While it is possible that some of these products are in fact beer or malt beverages, TTB regulations do not provide for the labeling of malt beverages as “cider.” Similarly, NielsenIQ also has a subcategory of beer entitled “hard seltzer.” While some of these products may not be malt beverages under the FAA Act, some hard seltzer products are in fact made with both malted barley and hops, and are thus classified as malt beverages within the meaning of the FAA Act. Because TTB did not have a basis to distinguish those hard seltzers that are “malt beverages” under the FAA Act from those that are not, the entire hard seltzer subcategory is included in the overall category of malt beverages. TTB notes that this approach may overstate the number of malt beverages (within the meaning of the FAA Act) in the marketplace.

comply with the proposed Alcohol Facts disclosure. In Table 1, TTB has broken down this estimate into the total UPCs, brand extensions,⁴⁶ and total units for wines, distilled spirits, and malt beverages/beer. TTB invites comments on whether these estimates are valid.

Table 1: Number of UPCs, Brand Extensions, and Total Units

	UPCs	Brand Extensions	Total Units
Wines	64,509	20,963	1,690,698,919
Distilled Spirits	32,775	16,447	1,741,901,217
Malt Beverages/ Beer	33,126	22,364	5,823,640,369
Total	130,410	59,774	9,256,240,505

cc. *Private label products*: Private-label alcohol beverages are traditionally brands created for a company (often a retailer or restaurant), which sell exclusively via one sales channel. At TTB's request, NielsenIQ provided data on the number of private labels in the marketplace, but noted that its methodology meant that individual UPCs for private labels would be masked and displayed as a "pseudo UPC." Nielsen's data reflected that private label UPCs made up less than one percent of each category (wine, distilled spirits, and malt beverages). However, based on Nielsen's explanation of its methodology, as well as the publicly available data on the number of private labels in the alcohol beverage market, TTB views the number of private labels reported in the data as being underinclusive.⁴⁷

The FDA Labeling Cost Model treats "private labels" differently from branded labels and assumes that labeling changes for private labels require

⁴⁶ For purposes of this analysis, TTB used the Nielsen "brand extensions" as a proxy for formulas.

⁴⁷ See, e.g., Catherine Douglas Moran, "Untapped: How grocers are growing their private label alcohol assortment," Grocery Dive, available at www.grocerydive.com/news/untapped-how-grocers-are-growing-their-private-label-alcohol-assortment/592081/; and Hannah Wallace, "Private Label Wines: A Peek Behind the Label," SevenFifty Daily, available at <https://daily.sevenfifty.com/private-label-wines-a-peek-behind-the-label/>.

additional time for coordination with regulatory changes. TTB believes that the model's treatment of private labels makes the private label category a useful proxy for the percentage of UPCs that might require additional time for coordinating regulatory labeling changes with regularly scheduled labeling changes, due to the size of the company.

After reviewing the available data on private labels, as well as the available data on the size of businesses in the wine, distilled spirits, and malt beverage industries, TTB is estimating that 10 percent of the alcohol beverage products requiring labeling changes as a result of this proposed rule may require additional time to coordinate regulatory labeling changes with labeling changes made in the ordinary course of business, in the same way that "private label" products require additional time under the FDA Labeling Cost Model. For the sole purpose of estimating costs under different compliance periods, TTB is treating those products as affecting the costs in a manner that is functionally equivalent to the role that private labels play in the FDA Labeling Cost Model.⁴⁸ Accordingly, TTB estimates that approximately 13,041 UPCs (10 percent of the total 130,410 UPCs) fall into the private label category for the purposes of the model.

dd. Length of compliance period: The FDA Labeling Cost Model assumes that the costs of a new labeling requirement fall significantly as the time allowed for compliance increases because affected industry members can better coordinate new labeling requirements with scheduled labeling changes. Section 3 of the model explains that product manufacturers "often update their labeling

⁴⁸ For example, TTB notes that under data from the North American Industry Classification System (NAICS), as adjusted for inflation, the category of brewers, wineries, and distillers that have fewer than 20 employees account for just under 10 percent of the annual revenues of those businesses. See Section XI.E.2. For wineries, businesses with fewer than 20 employees account for 11.7 percent of the annual revenues; for brewers, the figure is 9.2 percent, and for distillers, the figure is 7.3 percent.

information for marketing purposes, because of a change in packaging, or for other reasons,” and that “when manufacturers update labels for nonregulatory reasons, they can often incorporate a change required by a regulation at minimal additional costs.” Thus, the model accounts for these nonregulatory labeling changes when estimating the costs of regulatory labeling changes to avoid overstating the costs of compliance.

The model further explains that “[i]t is likely that a regulation affecting labeling will cause affected firms to incur some level of costs, regardless of how well coordinated the regulatory labeling change is with nonregulatory labeling changes.” See FDA Labeling Cost Model Section 3.1. The model, therefore, assumes that a regulation affecting labeling will cause affected entities to incur some costs even when a regulatory labeling change is coordinated with nonregulatory labeling changes, and it accounts for the incremental costs associated with the regulation, “such as staff time for reviewing the regulatory requirements, determining options for complying with the regulatory requirements, and coordinating the required change with a scheduled change.”

Id.

The FDA Labeling Cost Model explains that most food manufacturers that provided estimates to FDA indicated that some 20-50 percent of products are relabeled in any given year, indicating a 2-5 year cycle for relabeling all products. Furthermore, interview respondents for the FDA Labeling Cost Model noted that private label products were less likely to be relabeled in any given year. (See Section 3.2.1, page 3-7).

TTB does not have specific data on the frequency of scheduled label changes for the alcohol beverage industry but believes it would be similar in many respects to the FDA-regulated food industry. Table 3-1 of the FDA

Labeling Cost Model presents the FDA's assumptions about the proportion of UPCs that could be changed together with a scheduled label change, based on the length of the compliance period. The model assumes that 100 percent of brand name products can coordinate a regulatory label change with a regularly scheduled label change within two years.⁴⁹

Private label products, however, do not change their labels as often. Accordingly, a longer compliance period is necessary to coordinate a regulatory change with a regularly scheduled change for all private label products. For private label products, the percentage of changes that can be coordinated with a regularly scheduled change is only 26 percent at 2 years (as compared to 100 percent for branded products), and 57 percent at 3 years. A 42-month compliance period is required to coordinate 100 percent of changes to private label products with regularly scheduled label changes.⁵⁰

TTB applied the FDA's assumptions about the proportion of UPCs that could be changed together with a scheduled label change, based on the length of the compliance period, to the approximately 130,410 different alcohol beverage product UPCs. Table 2 shows the number of coordinated changes and uncoordinated changes to the alcohol beverage UPCs for a compliance period of 2, 3, 3.5, and 5 years, broken down by wines, distilled spirits, and malt beverages/beer. Because the FDA model assumes that 100 percent of branded product label changes can be coordinated within a 2-year compliance period, the number of uncoordinated changes is solely driven by private labels. With a 3.5-

⁴⁹ This data point is limited to the products that TTB selected from the FDA Labeling Cost Model to use as analogs for the relevant alcohol products and does not necessarily apply to all food and drink products.

⁵⁰ TTB notes that even if the alcohol beverage industry differs from the food industry with regard to the frequency with which label changes are made for private labels, as discussed previously, the private label category is a useful proxy for the percentage of labels that may not be changed as frequently as other labels are.

year compliance period or longer, the model assumes that all label changes, whether branded or private label, can be coordinated with a regularly-scheduled change, and that, therefore, there are no uncoordinated changes.

Table 2: Number of Uncoordinated/Coordinated Changes by UPC

	Wines	Distilled Spirits	Malt Beverages
24 months			
Uncoordinated	4,774	2,425	2,451
Coordinated	59,735	30,350	30,675
36 months			
Uncoordinated	2,774	1,409	1,424
Coordinated	61,735	31,366	31,702
42 months			
Uncoordinated	0	0	0
Coordinated	64,509	32,775	33,126
60 months			
Uncoordinated	0	0	0
Coordinated	64,509	32,775	33,126

ii. Qualifications to TTB's application of model to alcohol beverages

As previously noted, the data available to TTB did not always match up with the categories reflected in the FDA Labeling Cost Model. Accordingly, TTB had to make some assumptions in applying the model to its data. TTB invites comments on the validity of those assumptions and welcomes data on any of these issues.

- The FDA Labeling Cost Model does not include alcohol beverage product categories. TTB, therefore, had to use proxy categories for wine, spirits, and malt beverages. The categories in the model reflect different packaging types, material costs, and inventory costs that apply to that category. The variability in costs between different food categories in the model is primarily driven by the print labeling costs (material) and inventory-related costs

(discarding of labels or packages) for different packaging and label types.

Accordingly, TTB chose food categories as proxies for the three alcohol beverage categories based on similar packaging types and labels. Nielsen provided estimates of the ratio of packaging types (e.g., cans, bottles) for each alcohol beverage commodity. TTB chose the model category “non-alcoholic wine” as a proxy for all wine and spirits because the costs for the “non-alcoholic wine” category are associated with “paper labels,” such as those attached to glass bottles, and the Nielsen data showed that the vast majority of wine and spirits are packaged in bottles. The Nielsen data showed that approximately 70 percent of malt beverages are packaged in aluminum cans and the remaining 30 percent are primarily in glass bottles. TTB, therefore, chose the food category of “coffee- liquid,” which reflects costs associated with packaging in aluminum cans, as a proxy for 70 percent of the malt beverages and used the “non-alcoholic wine” category as a proxy for malt beverages in glass bottles.⁵¹

- TTB applied FDA Labeling Cost Model input costs for labor, materials, analytical costs, marketing, inventory, and recordkeeping, based on its conclusion that this model is a reasonable proxy given the similarities in packaging foods and alcohol beverages.
- The FDA Labeling Cost Model was developed based on 2014 wage rates and allows for adjustments for inflation. Accordingly, TTB used Bureau of Labor Statistics data to apply an inflation adjustment of 25.5 percent, based on the estimated aggregate Consumer Price Index inflation rate between the start of 2014 and January 2023.⁵²

⁵¹ These costs may not be a perfect proxy for those that would be incurred in the printing of alcohol beverage labels, but it was the best proxy available to TTB.

⁵² Consumer Price Index (January 2023), U.S. Bureau of Labor Statistics, available at <https://www.bls.gov/cpi/>.

- TTB input data that is specific to alcohol beverages. However, the data also reflects some working assumptions:
 - For the reasons explained earlier in this section, TTB assumed that the share of labels where changes could not easily be coordinated with regulatory changes was 10 percent. In the FDA Labeling Cost Model, these calculations are based on the number of “private labels.” However, for the alcohol beverage category, TTB estimated that whether an alcohol beverage product is a “private label” product or not, the 10 percent figure is a reasonable proxy for those businesses that make regularly scheduled labeling changes on a less frequent basis.⁵³ TTB invites comments on this assumption. TTB also notes that with a proposed 5-year compliance period, the exact percentage of private label products, or private label equivalents, is not as important, because the model estimates that 100 percent of private label changes will be “coordinated” labeling changes as of 42 months.

- For purposes of calculating the costs of analytical testing (*i.e.*, laboratory analysis), TTB used Nielsen-provided data on the number of “brand extensions” as a proxy for the number of formulations.
- The data in question does not cover the entire market; however, TTB has tentatively concluded that the data likely included unique products that represent close to 100 percent of all the UPCs that are available throughout the United States. TTB seeks comments on the validity of this conclusion.

b. Costs of proposed labeling changes

i. Cost per UPC

Using the model with the described data inputs and qualifications, the mean labeling cost per UPC for coordinated labeling changes (changes that can

⁵³ See discussion in Section IX.C.2.a.i.cc.

be coordinated with scheduled changes) is unaffected by length of the compliance period. Regardless of whether the compliance period is 2 years, 5 years, or somewhere in between, the costs per UPC for a coordinated labeling change is \$1,636.52 for wines, distilled spirits, and malt beverages.

For changes that cannot be coordinated, the mean labeling cost per UPC varies based on the compliance period, as is illustrated in Table 3. The cost per UPC for uncoordinated changes (changes that cannot be coordinated with scheduled changes) is driven upward by both greater-per-unit labor, material, and recordkeeping costs, and the presence of inventory and analytical costs, which are not applicable to coordinated labeling changes.

Table 3: Mean Cost per UPC for Uncoordinated Change⁵⁴

	Wines	Distilled Spirits	Malt Beverages
24 months	\$11,856.67	\$12,992.46	\$19,352.27
36 months	\$11,264.61	\$11,791.86	\$12,572.01
42 months	\$10,427.36	\$10,427.36	\$9,445.05
60 months	\$10,427.36	\$10,427.36	\$9,445.05

ii. Initial cost of compliance

Table 4 sets out the overall initial cost of compliance with the proposed regulation based on four different compliance periods (2 years, 3 years, 42 months and 5 years), applying a 25.5 percent inflation rate as of January 2023.⁵⁵ TTB estimates the one-time total relabeling costs associated with this proposed rule to be approximately \$333 million assuming a compliance date of 2 years (or approximately \$167 million per year). If the compliance date is extended to 3 years, the total costs would be approximately \$270 million (or \$90 million per

⁵⁴ It should be noted that under the model, there are no uncoordinated labeling changes for compliance periods of at least 42 months. See Table 2.

⁵⁵ The figures in Table 4 were calculated using the FDA Labeling Cost Model, which only includes initial costs. The model does not calculate any recurring costs that may accrue following the initial compliance period.

year); for 3.5 years, the total costs would be approximately \$214 million (or \$61 million per year), and if the compliance date is extended to 5 years, the total costs would be approximately \$214 million (or \$43 million per year).

Table 4: Total Cost Based on Labeling Compliance Period

	Wine	Distilled Spirits	Malt beverages	Total	Average Annual Cost
24 months	\$154 million	\$81 million	\$98 million	\$333 million	\$167 million
36 months	\$132 million	\$68 million	\$70 million	\$270 million	\$90 million
42 months	\$106 million	\$54 million	\$54 million	\$214 million	\$61 million
60 months	\$106 million	\$54 million	\$54 million	\$214 million	\$43 million

Table 5 sets out the same overall estimated cost of compliance based on the four different compliance periods but with a 2 percent discount rate. TTB estimates the one-time total relabeling costs associated with this proposed rule at a 2 percent discount rate to be approximately \$323.4 million assuming a compliance date of 2 years (or approximately \$161.7 million per year). If the compliance date is extended to 3 years, the estimated total costs with a 2 percent discount rate would be approximately \$259.5 million (or \$86.5 million per year); for 3.5 years, the estimated total costs with a 2 percent discount rate would be approximately \$204.3 million (or \$58.4 million per year), and if the compliance date is extended to 5 years, the estimated total costs with a 2 percent discount rate would be approximately \$201.2 million (or \$40.2 million per year).

Table 5: Total Costs with 2 Percent Discount Rate

	Undiscounted	2% Discount Rate	Undiscounted Average Annual Cost	2% Discount Average Annual Cost
24 months	\$333 million	\$323.4 million	\$167 million	\$161.7 million
36 months	\$270 million	\$259.5 million	\$90 million	\$86.5 million

42 months	\$214 million	\$204.3 million	\$61 million	\$58.4 million
60 months	\$214 million	\$201.2 million	\$43 million	\$40.2 million

The overall cost of compliance goes down as the compliance period gets longer due to the higher number of coordinated changes in the longer compliance periods.⁵⁶ Costs for shorter compliance periods are far greater due to the greater number of uncoordinated changes, which drive up per-unit labor and recordkeeping costs and create inventory and analytical costs that do not apply to coordinated labeling changes.

As previously noted, TTB estimates that approximately 13,041 UPCs (10 percent of the total 130,410 UPCs) fall into the category of products for which the label is less likely to be modified on a regular basis, thus making them roughly equivalent to FDA's private label category. While the model assumes that 100 percent of brand labels will be able to coordinate regulatory changes with regularly scheduled labeling changes with a compliance period of at least 2 years, this is not true of private labels until the compliance period reaches 42 months. Thus, the difference in the total labeling costs under the FDA Labeling Cost Model between a 2-year, a 3-year, a 42-month, and a 5-year compliance period is driven by assumptions about private labels.

c. Proposed compliance period

Based on its analysis of the cost data described in this section, TTB proposes to adopt a 5-year implementation period. TTB believes that the proposed compliance period will reduce the costs and burdens associated with the proposed new labeling requirements. According to the FDA Labeling Cost

⁵⁶ The overall cost is the same for the 42-month and 60-month compliance periods because the FDA Model assumes that at 42 months all labeling changes will be coordinated.

Model, 100 percent of industry members will be able to coordinate their labeling changes as a result of the proposed regulatory requirements with their scheduled labeling changes within the proposed 5-year implementation period. This will allow affected industry members to use up existing label stocks and coordinate the redesign of their labels with an already planned label redesign.⁵⁷

TTB is further proposing to reduce the costs associated with new labeling information by permitting linear displays and not requiring industry members to submit new applications for label approval when the only change being made to the label is the inclusion of a new Alcohol Facts statement, or the replacement of an already approved Serving Facts statement or statement of average analysis, with a new Alcohol Facts statement.

TTB invites comments on this data, the proposed compliance period, and any other options available to reduce regulatory burdens and economic costs while still providing the consumer with adequate information about the products in question.

3. Recurring Analytical Testing Costs

In response to Notice No. 73, many commenters raised the issue of the cost of conducting analytical testing of their products. Comments on Notice No. 232 demonstrate that the costs of conducting analytical testing of products continue to be a concern for small producers. But the comments also showed that in the time since Notice No. 73 was published, many industry members have begun testing their products for purposes of listing calorie and nutrient information on labels and websites, or in some cases, so that restaurants may

⁵⁷ While this proposal will allow all industry members five years to implement required changes, TTB believes that many industry members, particularly large companies, are likely to start voluntary compliance with any final rule in advance of the compliance date given that many industry members already include calorie and nutrient statements on their labels.

comply with the menu labeling regulations administered by FDA.⁵⁸ The Beer Institute commented that, as of 2021, 95 percent of the malt beverages produced by Anheuser-Busch, Molson Coors, Constellation Brands, HEINEKEN USA, and FIFCO USA already include nutrient information,⁵⁹ and DISCUS commented that by June 2024, all DISCUS Director Members⁶⁰ will provide per-serving alcohol and nutritional information on the labels of all spirits products they sell in the United States.

The FDA Labeling Cost Model estimates a cost of \$1,060 per product formulation for a laboratory analysis of non-alcoholic wines that includes two samples, as well as the cost of preparing and submitting samples to a laboratory.⁶¹ However, the model applies the cost for laboratory analysis only with regard to changes that cannot be coordinated with regularly scheduled labeling changes.

TTB compared the FDA figures with quotations for calorie and nutrient testing for alcohol beverages on the publicly available websites of three randomly selected laboratories, and determined that the estimates, per sample, ranged from a low of \$160 to a high of \$435. Some testing laboratories charged different amounts depending on the type of alcohol beverage.⁶²

TTB also received comments in response to Notice No. 232 that included data on testing costs. Commenters quoted testing costs ranging from \$170-\$800

⁵⁸ See FDA final rule, “Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments,” which includes alcohol beverages, available at <https://www.federalregister.gov/documents/2014/12/01/2014-27833/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food>.

⁵⁹ Beer Institute statement, *supra* note 8.

⁶⁰ As of May 9, 2024, DISCUS Director Members included Bacardi, Brown-Forman, Constellation Brands, and Remy Cointreau among others. DISCUS lists the Director Members on its website at <https://www.distilledspirits.org/director-members/>.

⁶¹ This estimated laboratory analysis cost includes the adjustments for inflation discussed above.

⁶² These estimates usually covered testing that would provide results for alcohol content, calories, carbohydrates, and protein. The laboratories generally advised that fat was not expected to be found in alcohol beverages, and that analytical testing for fat content would be an extra cost.

per product. The range in testing costs seemed to be related to the number of nutrients the commenter assumed would need to be included in the test. One commenter stated that the testing necessary for all nutrients that appear in the FDA's Nutrition Facts Label would cost \$500, but that the test for calories, carbohydrates, protein, and fat (the nutrients proposed for Alcohol Facts panels) would cost only \$170.

For purposes of this analysis, TTB is including an estimate of the recurring costs of analytical testing for calorie and nutrient content for alcohol beverages. Using an estimate of approximately 60,000 brand extensions, or different formulations, per year, with a cost of \$1,060 for testing two samples of each formulation, the ongoing annualized cost of the proposed rule would be approximately \$64 million. TTB invites comments on whether industry members would in fact plan to conduct analytical testing of their products if the proposed rule is adopted, and if so, how frequently such testing would occur. In particular, TTB seeks comments on whether the reasons outlined below might result in a lower cost for, and frequency of, testing:

- *Differences between TTB's proposed rule and FDA's nutrient labeling regulations.* The FDA Nutrition Facts label includes many more nutrients than the proposed TTB Alcohol Facts label, which may impact the cost of testing.⁶³
- *The proposed rule allows industry members to rely on databases rather than analytical testing.* The proposed rule would not require industry members to send each batch of a product to a laboratory for analysis prior to labeling the product; nor would it require any testing at all. Industry members may choose to rely on analytical testing, published databases, mathematical

⁶³ TTB notes that while the proposed rule would require disclosure of the calorie content and three macronutrients (carbohydrates, fat, and protein), FDA Nutrition Facts labels also require the disclosure of sodium, fiber, and certain vitamins and minerals.

calculations based on alcohol content (for certain products), or an appropriate blend of these methods to accurately label their products. The frequency with which producers will conduct analytical testing on products will vary from product to product. It is up to the bottler or importer to accurately label the product; however, the proposed regulations do not prescribe a particular methodology.

- *Proposed tolerances facilitate the use of typical values charts and other methodologies to determine calorie and nutrient content.* As previously noted, in 2020, TTB issued public guidance to broaden the tolerance levels for calorie statements on labels and in advertisements. See TTB Ruling 2020–1 and TTB Procedure 2020–1. In this proposed rule, TTB has included this expanded tolerance level for calories, and is adopting an objective standard for the three nutrients required to be disclosed, allowing a tolerance of 20 percent above or below the labeled amount. TTB believes that these proposed changes will facilitate the use of “typical values” charts and other methodologies to calculate the calories, carbohydrates, fat, and protein content of an alcohol beverage product. TTB is also proposing to expand the alcohol content tolerance for malt beverage labeling statements. This means bottlers would be less likely to have to change labels due to minor variations in alcohol content among different batches.

- *Availability of calculations based on alcohol content.* For many products, there will be no need to test at all. For example, a company producing an 80-proof vodka will know from standard databases what the calorie content of the product is. The product will not have any carbohydrate, fat, or protein content. Furthermore, the tolerances adopted by the proposed rule facilitate the use of non-analytical methods to determine calories and carbohydrates for many alcohol beverages after the alcohol content of the product is determined.

- *Industry members are already testing their products in the absence of a regulatory requirement.* TTB seeks comments on the extent to which industry members are already conducting analytical testing in the absence of regulations that mandate this type of disclosure on labels.

TTB tentatively concludes it is likely that a significant number of products will either not need to be tested on an annual basis or are already being tested. TTB is nonetheless including these products in the estimates, and believes it is reasonable to estimate costs based on the assumption that, on average, each company will conduct one analytical test per year, consisting of two samples, of each formulation.⁶⁴ If a 5-year compliance period is adopted, TTB has estimated that the initial compliance costs of the proposed rule would amount to approximately \$201.2 million in 2023 dollars (or \$40.2 million per year). If TTB assumes that industry members will continue to send each product formulation for analytical testing each year, the ongoing annualized cost of the proposed rule would be approximately \$64 million.⁶⁵

TTB invites comments from the public and the industry with regard to this estimate. In particular, we are interested in receiving comments on how many industry members, particularly small businesses, would send their products for

⁶⁴ See FDA Labeling Cost Model, Section 3.1.2 “Analytical Testing.” (“To conduct analytical testing, a manufacturer will usually prepare a composite sample made up of several samples of the product. Based on information provided by the manufacturers we contacted, they usually test one composite sample but may test up to three samples. Many manufacturers already have some idea of the levels of the particular substance in their product from their routine quality control checks. In particular, some manufacturers told us they test products approximately every 2 years to verify initial test results. However, even if the manufacturer has data on a particular substance, if a regulation involves that substance, the manufacturer would generally retest to confirm their data.”)

⁶⁵ The FDA Model assumes that there are no analytical testing costs for coordinated labeling changes; therefore, the initial compliance cost of \$201.2 million in 2023 dollars (or \$40.2 million per year) does not include analytical testing because the model assumes there will be no need for analytical testing for coordinated labeling changes. If, instead, the initial compliance cost included the recurring cost of analytical testing, an additional \$64 million would be added to those implementation costs, which, if prorated over 5 years, would amount to an additional \$13 million per year during the implementation period, for a total cost of \$53.2 million per year.

analytical testing on an annual basis as a result of the proposed rule, as well as the number that would have no need to do this because:

- They already know the calorie and nutrient values of their products;
- They would conduct analytical testing even in the absence of a regulatory requirement;

- They feel comfortable relying upon databases for this information, or
- The nature of their product is such that the relevant information can be accurately calculated based simply on the alcohol content of the product.

X. Public Participation

A. Comments Sought

TTB requests comments from the public and all interested parties on the regulatory proposals contained in this document. TTB requests general comments from anyone interested in the regulatory proposals outlined in this document. TTB seeks comments on the proposed rule as well as other approaches also discussed in this document. TTB has posed specific questions on various issues throughout this preamble, and it seeks comments in response to those questions. In developing the final rule, TTB will carefully evaluate the proposed regulations in light of all comments and suggested alternative approaches, and it will adopt the most appropriate approach. Where TTB has specifically solicited comments on alternatives to proposed amendments, it may consider adopting such alternatives in lieu of the proposed amendments based on its review of the comments.

TTB is particularly interested in comments that address whether the proposed revisions to the labeling regulations will provide the consumer with adequate information about the identity, quality, and alcohol content of the

product. Where TTB proposes substantive changes, TTB seeks comments on the proposals for further appropriate changes.

TTB also seeks comments on the impact that the proposed changes will have on industry members and any suggestions as to how to minimize any costs or regulatory burdens associated with the proposed regulations, including the following issues:

1. Does the proposed compliance date suffice to limit the negative impact on small businesses and reduce overall costs of compliance while ensuring that consumers receive adequate information about the identity, quality, and alcohol content of the alcohol beverage products they are purchasing and consuming?
2. Is there a shorter compliance period that would provide more benefits to consumers while still limiting costs and potential negative impacts on small businesses? Specifically, would a 2-, 3-, or 3.5-year compliance period suffice?
3. 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? How, if at all, does the length of the compliance period affect the impact on small businesses? Please explain in detail and provide specific cost data.
4. Are the tolerances for nutrient labeling sufficiently broad to facilitate reliance on typical value charts and databases but still specific enough to provide accurate information to consumers? How, if at all, would the use of typical value charts and databases reduce the costs of the proposed rule, particularly for small businesses? Please explain in detail and provide specific cost data.

We welcome comments on all other issues presented in this notice of proposed rulemaking.

B. Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 237 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

C. Confidentiality and Disclosure of Comments

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

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

XI. Regulatory Analyses and Notices

The impacts of this proposed rule have been examined in accordance with Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and the Regulatory Flexibility Act (5 U.S.C. 601–612).

A. Purpose of the Rule

The overall purpose of the proposed rule is to provide consumers with more information about the identity, quality, and alcohol content of alcohol beverages. Since the effective date of the Nutrition Labeling and Education Act of 1990, nutrition labeling has been required for foods subject to the labeling regulations of the FDA (subject to certain exceptions), and the Department of Agriculture has similarly adopted regulations for foods subject to its labeling regulations. This leaves alcohol beverages subject to the labeling regulations of the FAA Act as the only type of packaged beverage category without any requirement for calorie or nutrient labeling.

Current TTB policy is that claims about reduced calorie and carbohydrate levels are misleading in the absence of a more complete statement regarding the per-serving levels of calories, carbohydrates, protein, and fat. These statements may be presented in the form of a Serving Facts statement or a statement of average analysis, each of which has different serving sizes. TTB is inviting comments on whether the current lack of uniformity with regard to calorie and nutrient labeling is confusing to consumers, and whether consumers would benefit from readily accessible information in the form of an easily understood labeling statement in a consistent format on alcohol beverage containers.

Accordingly, TTB proposes to require the disclosure of alcohol content expressed as a percentage of alcohol by volume on all alcohol beverage labels and to require the disclosure of calories, certain nutrients, and fluid ounces of

pure ethyl alcohol per serving in an Alcohol Facts statement on all alcohol beverage labels subject to the FAA Act.⁶⁶ TTB believes this proposal would provide consumers with the information they need to follow advice from the U.S. Government, public health organizations, and their own doctors about alcohol consumption, if they so choose.

Additionally, TTB has determined that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in protection of the revenue.

⁶⁶ Further information on the specifics of TTB's proposal and its authority to implement the proposal are in Section VII.

B. Benefits

TTB does not have data to quantify the monetary benefits of the proposed rule, but as stated previously, the overall purpose of the proposed rule is to provide consumers with more information about the identity, quality, and alcohol content of alcohol beverages. This information will in turn enable consumers to follow advice about moderate alcohol consumption and will provide them with additional information about the calorie and macronutrient content of alcohol beverages. Currently, alcohol beverage products are the only beverage products on the market that are not required to provide labeling information concerning calorie, carbohydrate, fat, and protein content. Additionally, most malt beverage products and some wines are not required to disclose the alcohol content on their labels. TTB believes offering this information to consumers on product labels at the point of purchase will provide consumers with adequate information to make more informed alcohol beverage choices.

The health risks associated with alcohol consumption and alcohol abuse remain clear. According to *Alcohol Facts and Statistics*, a publication of the National Institute on Alcohol Abuse and Alcoholism (NIAAA), an estimated 178,000 people in the United States died from alcohol-related causes from 2020-2021.⁶⁷ The Centers for Disease Control estimates that excessive alcohol consumption costs \$249 billion annually in the United States, approximately \$807 per person annually, or \$2.05 per drink sold. These costs are based on lost workplace productivity, healthcare expenses, law enforcement and criminal justice expenses, and losses from motor vehicle crashes.⁶⁸

⁶⁷ See *Alcohol Facts and Statistics*, available at <http://pubs.niaaa.nih.gov/publications/AlcoholFacts&Stats/AlcoholFacts&Stats.htm>.

⁶⁸ See *Data on Excessive Alcohol Use*, available at <https://www.cdc.gov/alcohol/excessive-drinking-data/index.html>.

The 2023 National Survey on Drug Use and Health, conducted annually by the Substance Abuse and Mental Health Services Administration, states that 28.1 million adults ages 18 and older had Alcohol Use Disorder (AUD).⁶⁹ According to NIAAA, “[AUD] is a medical condition that doctors diagnose when a patient’s drinking causes distress or harm” and includes both alcohol abuse and alcohol dependence.⁷⁰ Furthermore, “NIAAA defines binge drinking as a pattern of drinking that brings blood alcohol concentration (BAC) levels to 0.08g/dl. This typically occurs after 4 drinks for women and 5 drinks for men—in about 2 hours.”⁷¹

The *Scientific Report of the 2020 Dietary Guidelines Advisory Committee* states that “[b]inge drinking itself has increased, including among middle- and older-aged adults, as has mortality from fully alcohol-attributable causes of death, including alcoholic liver disease.”⁷² The Scientific Report notes that excessive drinking accounted for 1 in 10 deaths among working age adults, with each death representing an average of 30 years of potential life lost. The report states that approximately 20 percent of people who begin drinking will develop AUD at some point during their lives. However, only a minority of people who drink excessively or who binge drink have an alcohol use disorder. As such, excessive drinking and alcohol-related problems are prevalent, and are not restricted to those with an alcohol use disorder. At all levels, and particularly for high per occasion

⁶⁹ *Alcohol Facts and Statistics*, supra note 67.

⁷⁰ *Treatment for Alcohol Problems: Finding and Getting Help*, available at <https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/treatment-alcohol-problems-finding-and-getting-help>.

⁷¹ *NIAAA Spectrum: NIAAA Scientists Provide More Evidence that Binge Drinking May Indicate Vulnerability to Alcohol Use Disorder*, available at <https://www.niaaa.nih.gov/research/niaaa-research-highlights/niaaa-spectrum-niaaa-scientists-provide-more-evidence-binge-drinking-may-indicate-vulnerability>.

⁷² Chapter 11, Part D, *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services*, Department of Agriculture, Agricultural Research Service, Washington, DC, available at <https://www.dietaryguidelines.gov/2020-advisory-committee-report>.

alcohol consumption and resulting blood alcohol concentrations, alcohol is associated with an increase in intentional injuries, such as suicide and homicide, and unintentional injuries, such as motor vehicle accidents and drownings.⁷³

With regard to health effects, the *Dietary Guidelines for Americans* note that “among those who drink, higher average alcohol consumption is associated with an increased risk of death from all causes compared with lower average alcohol consumption.”⁷⁴ NIAAA and other authorities state that alcohol is also associated with increased risk of certain types of cancer (head and neck, esophageal, liver, colorectal, and breast cancer in women).⁷⁵ The Scientific Report states that high average alcohol consumption and binge drinking are associated with an increased risk of coronary heart disease, stroke, congestive heart failure, atrial fibrillation, and hypertension.⁷⁶ The report also identifies alcohol as a risk factor for several gastrointestinal health outcomes, including chronic liver disease.

The Scientific Report also notes that alcohol is an important risk factor or contributor to many social and mental health problems, including depression, child abuse and neglect, fetal alcohol spectrum disorder, domestic violence, and sexual assault.⁷⁷ Additionally, according to the Centers for Disease Control (CDC), nearly 4,000 alcohol-attributable deaths occur annually among persons under 21 years of age, either due to underage drinking or to effects from others’ drinking.⁷⁸ Finally, the *Dietary Guidelines for Americans* note that alcohol

⁷³ Id.

⁷⁴ *Dietary Guidelines for Americans, 2020–2025*, 9th Edition, published December 2020, available at https://www.DietaryGuidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.

⁷⁵ See NIAAA, *Alcohol’s Effects on Health*, available at <https://www.niaaa.nih.gov/alcohols-effects-health/alcohols-effects-body>.

⁷⁶ *Scientific Report of the 2020 Dietary Guidelines Advisory Committee*, supra note 72.

⁷⁷ Id.

⁷⁸ See Centers for Disease Control and Prevention, *Facts About U.S. Deaths from Excessive Alcohol Use*, available at <https://www.cdc.gov/alcohol/facts-stats/index.html>.

beverages provide calories but few nutrients.⁷⁹ The guidelines state that among U.S. adults who drink, alcohol accounts for approximately 9 percent of energy intake, making it more difficult to meet dietary recommendations.⁸⁰ For those who consume excessively, the number of calories from alcohol may be considerably higher, and binge drinking is associated with obesity.⁸¹

Given these risks, it is clearly important that alcohol beverage consumers can easily access information about the most important factors associated with these products. Consumers cannot follow governmental and medical advice about moderate consumption without knowing, at a minimum, the alcohol content of the product. Labels that provide basic information about the calories of the product, on a per-serving basis, provide consumers with the knowledge needed to understand how many discretionary calories may come from alcohol consumption. Finally, information about carbohydrate, fat, and protein content provides a basic overview of the macronutrients in an alcohol beverage.

In response to Notice No. 232, the CDC commented that per-serving alcohol and nutritional information would provide consumers with "the necessary information to manage their caloric intake and to make better informed decisions about alcoholic beverages consumption." The CDC said that "[p]roviding nutrition labels that include carbohydrate, fat, and protein per serving is especially crucial for certain groups of people, such as people who have diabetes, who need to closely monitor their carbohydrate intake." The CDC further stated that calorie content was important to consumers because it "could remind consumers that alcoholic drinks contain calories, and potentially influence

⁷⁹ *Dietary Guidelines for Americans*, supra note 74.

⁸⁰ *Id.*

⁸¹ *Scientific Report of the 2020 Dietary Guidelines Advisory Committee*, supra note 72.

their decisions to not purchase or consume as much alcohol to meet existing goals or intentions (i.e., weight loss, diabetes management)."

Thus, this proposed regulation could, if implemented, result in a range of benefits stemming from providing additional information to consumers. Being able to view the alcohol content and amount of alcohol per serving in an easily understood labeling statement will help consumers better understand the amount of alcohol they are consuming. This information, along with the macronutrient disclosures in an Alcohol Facts statement, will help consumers follow advice from the U.S. Government, public health organizations, and their own doctors regarding calorie and alcohol consumption levels. While TTB is unable to quantify these potential benefits, we welcome public comments with relevant information on this issue.

C. Costs of Compliance

As set forth in Section IX of this preamble, based on its use of the FDA Labeling Cost Model, and assuming a 5-year compliance period, TTB estimates initial implementation costs of approximately \$201.2 million in 2023 dollars (or \$40.2 million per year). Assuming that laboratory analysis is conducted for two samples of each brand extension per year (which may be an overestimate), and using the FDA estimates for the cost of such a laboratory analysis, the recurring annual costs would be approximately \$64 million.

D. Executive Orders 12866, 13563, and 14094

This proposed rule is a "significant regulatory action" for purposes of Executive Order 12866, as supplemented by Executive Order 13563 and amended by Executive Order 14094, and has been reviewed by the Office of Management and Budget.

E. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

TTB certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. 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 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of the proposed regulations on small businesses.

The following analysis provides the factual basis for TTB's certification under section 605.

1. Overview of the Alcohol Beverage Industry

In FY 2022, TTB collected \$8.3 billion in taxes from the alcohol industry.⁸² With regard to the total number of authorized producers of alcohol beverages, there are 17,649 wineries and bonded wine cellars; 14,185 brewers; and 4,494 distillers.⁸³

⁸² Alcohol and Tobacco Tax and Trade Bureau Annual Report Fiscal Year 2022 (FY 2022 TTB Annual Report), available at <https://www.ttb.gov/images/pdfs/ttbar2022.pdf>, page 5.

⁸³ Id. at page 10.

However, the number of authorized producers and importers who obtain certificates of label approval (COLAs) in any given year is much lower. In FY 2022, TTB received 192,954 label applications and 26,922 formula applications for alcohol beverages.⁸⁴ Internal data from TTB’s COLAs Online system shows that fewer than 12,000 permittees or brewers applied for label approval in each of Fiscal Years 2020–2022, and that for that overall 3-year time period, fewer than 18,000 permittees or brewers applied for label approval.

The value of the U.S. import trade in alcohol beverages in 2021 totaled \$23.9 billion.⁸⁵ According to data published on the website of the Distilled Spirits Council of the United States,⁸⁶ the total economic contribution of the alcohol beverage industry to the U.S. economy in 2019 included 2,514,000 “direct” jobs and 5,630,000 “total” jobs; \$67.9 billion in direct wages and \$160.3 billion in total wages; and \$242.6 billion in direct economic activity and \$572.3 billion in total economic activity.

2. Small Businesses in the Alcohol Beverage Industry

TTB recognizes that the vast majority of producers, bottlers, and importers of alcohol beverages are small entities. The SBA sets out size standards based on the North American Industry Classification System (NAICS), under which an

⁸⁴ Id. at page 16. It should be noted that the number of label applications does not necessarily correlate to the number of brands and UPCs in the marketplace, for several reasons. TTB cannot determine whether approved labels actually appear in the marketplace, or how long those labels may remain in use. For example, there may be malt beverage labels authorized for a particular sporting event that are no longer found in the marketplace a few months after the event has taken place. On the other hand, some labels may be revised to reflect different net contents or alcohol content statements without submission of a new label to TTB. Industry members may decide not to use labels for which they have obtained approval. Thus, TTB does not use the number of COLA applications as an estimate of how many brands or UPCs are in the marketplace at any given time.

⁸⁵ Id. at page 30.

⁸⁶ Economic Contributions of Alcohol Beverage Industry 2019, Distilled Spirits Council of the United States, available at <https://www.distilledspirits.org/wp-content/uploads/2021/10/Economic-Contributions-2019.pdf>. See Annual Economic Briefing (February 9, 2023), Distilled Spirits Council of the United States, available at <https://www.distilledspirits.org/wp-content/uploads/2023/02/FINAL-2022-AEB-Slide-Deck-2.9.23-941am.pdf>.

entity can be considered small for the purposes of Regulatory Flexibility Act analysis.⁸⁷ Breweries are considered small if they have fewer than 1,250 employees; wineries are considered small if they have fewer than 1,000 employees; and distilleries are considered small if they have fewer than 1,100 employees.⁸⁸

The U.S. Census Bureau's Statistics of U.S. Businesses (SUSB) data include information on employment among establishments within NAICS codes. The most recent data are from 2019.⁸⁹ The SUSB data did not include employment at the 1,000, 1,100, or 1,250 employee threshold; however, it does include the number of firms within each NAICS code that have at least 500 employees. Based on those numbers, approximately 99 percent of the firms in these three NAICS codes are small entities. The percentage may be greater, depending on how many firms have at least 500 employees and fewer than 1,000 employees (for wineries), 1,100 employees (for distilleries), or 1,250 employees (for breweries). There is no NAICS code for importers of alcohol beverages.

Table 6: Number of Firms with at Least 500 Employees

Small-entity Size Standards for Potentially Affected Industries and Number of Firms with at least 500 Employees				
<i>Industry (NAICS code)</i>	<i>Small-entity size standard</i>	<i>Total number of firms</i>	<i>Number of firms with at least 500 Employees)</i>	<i>Total Employment</i>
Breweries (NAICS 312120)	Fewer than 1,250 employees	4,217	23 (approximately 0.5 percent)	84,503

⁸⁷ See Size Standards, U.S. Small Business Administration, available at <http://www.sba.gov/content/small-business-size-standards>.

⁸⁸ 13 CFR 121.201.

⁸⁹ 2019 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at <https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html>.

Wineries (NAICS 312130)	Fewer than 1,000 employees	3,944	19 (approximately 0.48 percent)	59,587
Distilleries (NAICS 312140)	Fewer than 1,100 employees	1,004	10 (approximately 1%)	16,828

Data on revenues by firm size and industry are also available in the SUSB but are published less frequently. The most recent data available is from 2017.⁹⁰ Based on this data, with the revenues adjusted for inflation, 2,609 of the total number of firms (3,214) listed as breweries under NAICS Code 312120 have fewer than 20 employees.⁹¹ This category accounts for \$3,314,362,000 of the total inflation-adjusted receipts of \$36,032,713,000, or roughly 9.2 percent of the total receipts. With regard to wineries, 2,975 of the 3,576 firms under NAICS Code 31230 have fewer than 20 employees. This category accounts for \$2,907,606,000 of the total inflation-adjusted receipts of \$24,891,833,000, or roughly 12 percent of the total receipts. With regard to distilleries, 659 of the 760 firms under NAICS Code 31240 have fewer than 20 employees. This category accounts for \$1,060,898,000 of the total inflation-adjusted receipts of \$14,590,615,000 or roughly 7 percent of the total receipts.

3. Effect of the Proposed Rule

The vast majority of businesses subject to the proposed rule are small businesses, but the changes proposed in this document will not have a significant impact on those small entities. The production, bottling, importation,

⁹⁰ This data is only available from Economic Census years (years ending in 2 and 7). See 2017 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, available at <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>.

⁹¹ A recent study estimates that 28.3 percent of brewing facilities are brewpubs, with 66.7 percent of brewing facilities categorized as “micro” breweries. The study explains that brewpubs and small micro-brewers “produce beer for a limited market—sometimes only for their own restaurant or retail establishment.” See Beer Serves America—A Study of the U.S. Beer Industry’s Economic Contribution in 2022,” prepared for the Beer Institute and National Beer Wholesalers Association, which is available at <https://beerservesamerica.org/wp-content/uploads/2023/05/2022-Beer-Serves-America-Report.pdf>.

and distribution of alcohol beverages is an industry subject to extensive Federal, State, and local regulation. The labeling and advertising regulations under the FAA Act have been in place since 1936. Adding more elements of mandatory information to the label will not have a significant impact on the regulated industry.

TTB cannot estimate the exact cost per small entity because we do not know how many product brands (covered by different UPCs) on average are owned by small entities as defined by the SBA. However, TTB estimates that the initial costs of complying with a final rule resulting from this proposal would be roughly \$1,636 per UPC. Therefore, a small entity owning one to ten UPCs would incur a cost of between roughly \$1,636 to \$16,636 over the proposed 5-year implementation period.

In response to its 2007 proposed rule on mandatory Serving Facts information, TTB received many comments from small businesses who were concerned that the new labeling requirements would negatively affect their market share, and who pointed out that larger competitors could more easily absorb the costs associated with the new labeling requirements. Many of the small businesses assumed that they would be required to run laboratory analyses for every batch they produced. These concerns were repeated in comments on Notice No. 232. Small businesses commented that laboratory analysis would be costly, extend the time to bring a product to market, and affect small producers' ability to compete in the marketplace.

As described in the next section, TTB has tailored this proposal to avoid many costs associated with labeling changes, including providing for an extended compliance period, allowing smaller linear displays, increasing

tolerances to avoid the need for analytical testing in many cases, and not requiring new COLA submissions.

4. Alternative Options Considered by TTB

TTB has considered several options to reduce the regulatory burdens and economic costs imposed by the proposed rule on small businesses, as described below:

a. Exemption for Small Businesses

TTB received over a dozen comments proposing a small business exemption to any new labeling requirements, mostly from small producers or their trade associations. Many commenters specifically proposed that TTB provide an exemption similar to the small business exemptions to FDA's nutrition labeling requirements provided for in section 403(q) of the Federal Food, Drug, and Cosmetic Act. Not all commenters, however, favored a small business exemption. The American Beverage Licensees and the Beer Institute commented against exemptions for small producers.

TTB considered the comments requesting a small business exemption from the requirements of the proposed rule; however, this proposal does not include this option. One of the primary purposes of this proposed rule is to provide additional information to consumers. This purpose would be weakened 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, TTB questions whether a permanent exemption from mandatory labeling requirements would be consistent with the FAA Act mandate to ensure that labels provide consumers with adequate information about the identity, quality, and alcohol content of the product. TTB

notes that there is no specific statutory authority for exempting small businesses from the requirements of the FAA Act as there is under the Federal Food, Drug, and Cosmetic Act for nutritional labeling regulated by the FDA.

b. Extended Compliance Period for Small Businesses

TTB considered the option of proposing an extended compliance period only for small businesses. However, this would present significant logistical difficulties for TTB and impose a new information reporting burden on industry members. When reviewing applications for label approval, TTB employees do not have access to the number of people employed by each company, and thus it would not be practical to base compliance status on the SBA standards for small businesses. Additionally, reporting such information to TTB with each label application would impose a new burden on all industry members that would be subject to this proposed rule. Instead, TTB is proposing a compliance period of 5 years for all industry members, and is assuming that many industry members, particularly large businesses who are already likely to be using this information in their labeling and marketing, will start using Alcohol Facts labels after publication of a final rule, in advance of the compliance date.

As previously noted, the label redesign, printing, and administrative costs associated with making a labeling change are on a per-UPC basis. Under the FDA Labeling Cost Model, the longer the compliance period, the more likely it is that affected industry members can coordinate new labeling requirements with scheduled labeling changes, so cost estimates fall significantly as the time allowed for the new labeling requirements increases. In other words, the longer the period of time industry is given to comply with the new labeling requirements, the lower the costs. According to the FDA Labeling Cost Model, with a compliance period of 5 years, 100 percent of the labeling changes resulting from

a regulatory change can be coordinated with a regularly scheduled labeling change, thus significantly reducing the estimated costs and burdens for small businesses that are subject to the proposed rule. Five years is also the longest implementation date recommended by a commenter to Notice No. 232.

c. Linear Display

In response to Notice No. 73, many small businesses objected to TTB's proposal to require a Serving Facts panel with a linear format option available only for small containers. Many commenters suggested that small businesses would have no choice but to place the panel on a back label, and noted that some small businesses lacked the equipment necessary to place a back label on their container.

Taking into account the points made by those commenters, the current proposed rule will allow the option of a linear display for all products, regardless of the size of the container. TTB believes that this will significantly reduce the costs of compliance with the new regulations, while still providing consumers with a clear statement of alcohol content and calorie and nutrient content. TTB believes that the potential benefits of having a larger and more readily noticeable display would not outweigh the costs of compliance with such a requirement. The linear display will provide additional flexibility to small businesses, while still ensuring that labels provide consumers with the required information. Industry members may still opt to use the panel display.

d. Electronic Disclosure

TTB considered, but is not proposing, the option to allow disclosure of the proposed Alcohol Facts information via electronic means. Several commenters to Notice No. 232 stated that this option would reduce the burden of this proposed rulemaking because small businesses would not need to change label

designs as frequently as they would if the Alcohol Facts information appeared on the physical label. For the reasons previously discussed in Section VII.B.8.c, TTB believes electronic disclosure would create undue barriers to access the information by consumers so is not proposing it in this rulemaking.

e. Broadened Tolerance Levels

As previously noted in Section VII.B.3, TTB is proposing broader tolerance levels to facilitate the use of “typical values” charts, formulas, and other methodologies to calculate the alcohol, calories, carbohydrate, fat, and protein content of an alcohol beverage product without the need to conduct laboratory analyses for each batch. In response to Notice No. 232, many commenters expressed concern that laboratory analysis would place undue burden on small businesses and affect their competitiveness in the market. The commenters stated, and TTB agrees, that the ability to use charts and methodologies that do not require third-party testing should reduce costs and regulatory burdens on small businesses.

f. Allowing Labeling Changes Without a New COLA

TTB is proposing to further reduce the costs associated with the label redesign by not requiring industry members to submit new applications for label approval when the only change being made to the label is the inclusion of a new Alcohol Facts statement, or the replacement of an already approved Serving Facts statement or statement of average analysis with a new Alcohol Facts statement.

g. Solicitation of Comments

TTB solicits comments on all of the options discussed in this section, on any costs, burdens, and benefits associated with the proposed rule, and on any impact on small businesses. TTB welcomes data on all of these issues.

F. Paperwork Reduction Act

Fourteen of the regulatory sections addressed in this notice of proposed rulemaking contain collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Those regulatory sections are 27 CFR 4.32, 4.36, 4.38, 5.52, 5.63, 5.65, 7.52, 7.63, 7.65, 24.257, 25.141, 25.142, 27.59, and 27.60, and they contain existing information collections assigned OMB control numbers 1513–0086, 1513–0087, and 1513–0092. OMB No. 1513–0086 concerns marks and labels on beer containers required under the authority of the Internal Revenue Code (IRC), OMB No. 1513–0087 concerns alcohol beverage labeling requirements under the Federal Alcohol Administration Act (FAA Act), and 1513–0092 concerns marks and labels on wine containers required under the authority of the IRC.

In this proposed rule, under its IRC authorities, TTB is revising the information collections approved under OMB Nos. 1513–0086 and 1513–0092 by requiring alcohol content statements on all domestic and imported consumer containers of beer and wine. In addition, under its FAA authority, TTB is revising the information collection currently approved under OMB No. 1513–0087 to add a new information collection that generally requires an Alcohol Facts statement to appear on alcohol beverage labels for domestic and imported products subject to the jurisdictional requirements of the FAA Act. 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.

The regulatory sections in this proposed rule that contain new information collection requirements for an Alcohol Facts statement are in proposed regulatory sections §§ 4.111–4.114 for wine labels, §§ 5.211–5.214 for distilled

spirits labels, and §§ 7.211–7.214 for malt beverage labels. In addition, references to the new requirements for an Alcohol Facts statement will appear in §§ 4.32, 4.36, 4.38, 5.52, 5.63, 5.65, 7.52, 7.63, and 7.65. This new collection of information will be mandatory, and the likely respondents are for-profit businesses, including corporations, partnerships, and small businesses.

Specifically, the new information collection would require alcohol beverage bottlers and importers to disclose per-serving alcohol, calorie, and nutrient content information in an Alcohol Facts statement as the proposed regulations will require that statement on all domestic and imported alcohol beverage labels subject to the FAA Act. The Alcohol Facts statement would include information about the alcohol content of the product expressed as a percentage of alcohol by volume and in fluid ounces of pure ethyl alcohol per serving, as well as information about the number of calories and the amount, in grams, of carbohydrates, fat, and protein per serving. Bottlers and importers could present the Alcohol Facts statement in either a panel or a linear format.

The FDA Labeling Cost Model projects a “mean” internal recordkeeping burden of 1 hour per UPC for labeling changes that are coordinated, and 2 hours per UPC for labeling changes that are not coordinated. TTB is proposing a 5-year compliance date, which means that 100 percent of the labeling changes will be “coordinated.” Furthermore, TTB does not propose to require industry members to submit new COLA applications for the sole purpose of adding, or revising, an Alcohol Facts label statement. Thus, the proposed rule would not increase recordkeeping requirements under the COLA requirement, which is covered by OMB Control Number 1513–0020.

TTB believes that a significant proportion of the alcohol beverage industry already collects and maintains information regarding the nutrient content of their

products, and that they do so in the usual course of business. Furthermore, domestic producers of wines, distilled spirits, and malt beverages are already required to determine and keep records of the alcohol content of their products pursuant to existing regulations under the IRC.

Accordingly, TTB is estimating an annual burden of one hour per respondent for the new Alcohol Facts proposal under the FAA Act labeling regulations. TTB estimates its annual burden as follows:

- *Number of Respondents:* 13,000.
- *Number of Responses:* 13,000 (1 response per respondent).
- *Average Per-response Burden:* 1 hour per respondent.
- *Total Annual Burden:* 13,000 hours.

In addition, under its IRC authorities in 26 U.S.C. Chapter 51, TTB is proposing to expand existing requirements for alcohol content statements as a percentage of alcohol by volume to beers and wines that were not subject to mandatory alcohol content labeling under the FAA Act. TTB has determined that mandatory alcohol content statements on labels for all beer and wines subject to tax under the IRC will assist in protection of the revenue. TTB will account for these new IRC-based information collection requirements under the existing information collections approved under OMB No. 1513–0086 for beer labels and OMB No. 1513–0092 for wine labels. The specific proposed regulatory sections that include those expanded IRC-based alcohol content labeling requirements are §§ 24.257(a)(3), 25.141, 25.142, 27.59, and 27.60.

Currently, TTB considers the IRC-based labeling requirements for beer and wine, approved under OMB Nos. 1513–0086 and 1513–0092, respectively, to require only the display of usual and customary label information, which, under OMB regulations, imposes no additional burden on respondents under the

Paperwork Reduction Act. TTB believes that responses to the expanded requirements to display alcohol content on labels of beer and wine that were not previously subject to such a requirement will not require more than 1 hour annually per respondent. TTB believes that the great majority of beer and wine bottlers and importers either already label their products with an alcohol content statement or have ready access to such information for quality control purposes (or under IRC regulations, for domestic products) even if they do not display that information on their product labels. In addition, given the proposed compliance period of 5 years, TTB believes that all alcohol beverage bottlers and importers will be able to coordinate any required labeling changes with their usual and customary scheduled labeling changes.

For the revised IRC-based beer labeling information collection, approved under OMB No. 1513–0086, TTB estimates the revised annual burden for that collection as follows:

- *Number of Respondents:* 10,000.
- *Number of Responses:* 10,000 (1 per respondent).
- *Average Per-response Burden:* 1 hour.
- *Total Annual Burden:* 10,000 hours.

For the revised IRC-based wine labeling information collection, approved under OMB No. 1513–0092, TTB estimates the revised annual burden for that collection as follows:

- *Number of Respondents:* 14,300.
- *Number of Responses:* 14,300 (1 per respondent).
- *Average Per-response Burden:* 1 hour.
- *Total Annual Burden:* 14,300 hours.

TTB has submitted the new Alcohol Facts statement information collection requirements and the revised collection requirements under the FAA Act and the IRC to the OMB for review. Please send any comments on these new and revised collection requirements to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to *OIRA_submissions@omb.eop.gov*. Please also send a copy of any such comments to TTB by any of the comment submission methods described in the **ADDRESSES** section of this document. Comments should be submitted no later than [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

TTB specifically requests comments concerning:

- The accuracy of the estimated burden associated with the proposed collections of information (see below);
- Whether a unified compliance date for labeling changes that may arise from this rulemaking, along with separate rulemakings on ingredient labeling and allergen labeling, would result in lowering the combined burden hours for the three rulemakings;
- Whether the proposed labeling requirements are necessary in order to provide consumers with adequate information as to the identity, quality, and alcohol content of alcohol beverage products, including whether the information will have practical utility;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the collections of information; and;

- Estimates of capital and start-up costs and costs of operation, maintenance, and purchase of services to maintain records and substantiate label claim.

XII. Severability

For the reasons described in Section II, *TTB's Authority to Regulate Alcohol Beverage Labeling*, TTB believes that its authority to implement all provisions of the proposed regulation is well-supported in law and should be upheld in any legal challenge. TTB also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the proposed rule is declared invalid, TTB intends that the labeling provisions proposed under TTB's FAA Act authority be severable from those proposed under TTB's IRC authority. For example, if a provision of the rule promulgated under TTB's FAA Act authority is invalidated, the provisions of this rule promulgated under TTB's IRC authority should remain valid. TTB intends these provisions to be severable because TTB is of the view that the set of provisions proposed under the FAA Act and the set of provisions proposed under the IRC would each still function sensibly even if the other, as finalized, was found unlawful.

List of Subjects

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Trade practices, Treaties, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Distilled spirits, Food additives, Grains, Imports, International

agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Malt Beverages, Packaging and containers, 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.

27 CFR Part 25

Administrative practice and procedure, Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Freight, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB is proposing to amend 27 CFR parts 4, 5, 7, 24, 25, and 27, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

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

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

2. In § 4.32, revise paragraph (b)(3) and add paragraph (b)(4) to read as follows:

§ 4.32 Mandatory label information.

* * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36 and subpart L of this part.

(4) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * *

3. Revise § 4.36 to read as follows:

§ 4.36 Alcohol content.

(a) *Wines containing more than 14 percent alcohol by volume.* An alcohol content statement, expressed in terms of a percentage of alcohol by volume, is required under this section for any wine containing more than 14 percent of alcohol by volume. Such a statement must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part.

(b) *Wines containing not more than 14 percent alcohol by volume.* Part 24 of this chapter (setting forth the requirements under the Internal Revenue Code for domestic wines) and part 27 of this chapter (setting forth the requirements under the Internal Revenue Code for imported wines) require alcohol content statements, expressed in terms of a percentage of alcohol by volume, for all wines, including wines not exceeding 14 percent of alcohol by volume, if those wines are subject to the tax imposed by 26 U.S.C. 5041. Where such a statement appears on a wine label subject to the requirements of this part, it must conform to the requirements of this section, and it must appear in an

Alcohol Facts statement in accordance with the requirements of subpart L of this part.

(c) Additional alcohol content statements elsewhere on the label—

(1) General. Any additional statement of alcohol content must be expressed in terms of a percentage of alcohol by volume, and may appear on any label affixed to the container, in one of the following formats:

- (i) "Alcohol __ percent by volume";
- (ii) "__ percent alcohol by volume"; or
- (iii) "Alcohol by volume: __ percent".

(2) Formatting rules. Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period.

The alcohol content statement does not have to appear with quotation marks.

(3) Optional abbreviations. The statements listed in paragraph (c)(1) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as "alc"; percent may be represented by the percent symbol "%"; alcohol and volume may be separated by a slash "/" in lieu of the word "by"; and volume may be abbreviated as "vol".

(d) Tolerance levels for optional or mandatory alcohol content statements.

Except as otherwise provided in paragraph (e) of this section, a tolerance of 1 percentage point in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percentage points in the case of wines containing not more than 14 percent alcohol by volume, will be permitted either above or below the stated percentage.

(e) Exceptions to the tolerance provisions. Regardless of the tolerances specified in paragraph (d) of this section, any optional or mandatory alcohol content statement shall definitively 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 limitation on the alcohol content of any class, type, or taxable grade of wine, when in fact it is not.

4. In § 4.38, revise paragraph (b)(3) and add paragraph (i) to read as follows:

§ 4.38 General requirements.

* * * *

(b) * * *

(3) Alcohol content statements (other than those appearing in an Alcohol Facts statement required by subpart L of this part) may not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

* * * *

(i) *Alcohol Facts statements.* See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

5. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement

Sec.

- 4.111 Alcohol Facts statement.
- 4.112 Format for the Alcohol Facts statement.
- 4.113 Placement of the Alcohol Facts statement.
- 4.114 Tolerance levels.

Subpart L—Alcohol Facts statement

§ 4.111 Alcohol Facts statement.

(a) *General.* The Alcohol Facts statement required under § 4.32(b)(4) must include the following information, and may not include additional information, except as provided in this section:

- (1) The single serving size, as defined in paragraph (b) of this section;
- (2) The number of servings per container;
- (3) Alcohol content as a percentage of alcohol by volume;
- (4) The number of fluid ounces of pure ethyl alcohol per serving;
- (5) The number of calories per serving; and
- (6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container—(1) Definition.* The term “single serving size” 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 (mL) to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for wines are:

Table 1 to Paragraph (b)(1)

For products containing:	a single serving size is:
At least 7% and not more than 16% alc/vol	5 fluid ounces (148 mL)
Over 16% and not more than 24% alc/vol	2.5 fluid ounces (74 mL)

(2) *Single-serving containers.* Wines packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers.* Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Percentage of alcohol by volume.* The Alcohol Facts statement must express the alcohol content as a percentage of alcohol by volume to the nearest tenth of a percent, subject to the tolerances set forth in § 4.36.

(d) *Alcohol expressed in fluid ounces.* The Alcohol Facts statement must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories.* Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 4.114. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate.* (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement “less than 1 gram” may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement "less than 1 gram" may be used as an alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat*. The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein*. The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement "Contains less than 1 gram" or "less than 1 gram" may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 4.112 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For wine containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 4.111, as an option, the Alcohol Facts statement may be presented in a dual-column panel format, which sets forth the required information per serving and per container, as illustrated by paragraph (j) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The box must be separate and apart from any additional information and the information must be readily legible to potential consumers under ordinary conditions. The type or printing must be at least 1 millimeter in height for containers of 187 mL or less and at least 2 millimeters in height for containers of more than 187 mL.

(c) Bold face is required for the title "Alcohol Facts" and for the heading "Amount Per Serving" and is optional for the headings "Alcohol by volume," "Calories," "Carbohydrate," "Sugar" (if used), "Fat," and "Protein."

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;
(2) Servings per container;
(3) Percentage of alcohol by volume;
(4) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) Calories;
(6) Carbohydrate;
(7) Sugar (if used);
(7) Fat; and
(8) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol “%”, “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.”.

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

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 750 mL bottle of wine containing 14 percent alcohol by volume.

Figure 1 to Paragraph (g)

Alcohol 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

(h) The following Alcohol Facts statement illustrates an acceptable linear display for a 750 mL bottle of wine containing 14 percent alcohol by volume.

Figure 2 to Paragraph (h)

Alcohol 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

(i) The following Alcohol Facts statement illustrates an acceptable panel display for a 100 mL bottle of wine containing 17 percent alcohol by volume. The

container has a net content of less than 200 percent of a single serving size reference amount and thus is labeled as containing a single serving.

Figure 3 to Paragraph (i)

Alcohol Facts	
Serving Size	3.4 fl oz (100 mL)
Servings Per Container	1
Amount Per Serving	
Alcohol by volume	17%
fl oz of alcohol	0.6
Calories	100
Carbohydrate	2g
Fat	0g
Protein	0g

(j) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 375 mL bottle of wine containing 14 percent alcohol by volume.

Figure 4 to Paragraph (j)

Alcohol Facts	
Serving Size	5 fl oz (148 mL)
Servings Per Container	2 ½
Amt Per Serv. Amt Per Bottle	
Alcohol by volume	14%
fl oz of alcohol	0.7
Calories	120
Carbohydrate	3g
Fat	0g
Protein	0g

§ 4.113 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 4.114 Tolerance levels.

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

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 4.36 apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (<https://www.ttb.gov>) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

7. In § 5.52, add paragraph (e) to read as follows:

§ 5.52 Legibility and other requirements for mandatory information on labels.

(e) *Alcohol Facts statements*. See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

8. In § 5.63, revise paragraphs (a)(1) and (2), remove paragraph (a)(3), revise paragraphs (b)(1) and (2), and add paragraphs (b)(3) and (4) to read as follows:

§ 5.63 Mandatory label information.

(a) * * *

(1) Brand name, in accordance with § 5.64; and

(2) Class, type, or other designation, in accordance with subpart I of this part.

(b) * * *

(1) Name and address of the bottler or distiller, in accordance with § 5.66, or the importer, in accordance with § 5.67 or § 5.68, as applicable;

(2) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 5.70;

(3) Alcohol content, in accordance with § 5.65 and subpart L of this part; and

(4) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * *

9. In § 5.65, revise paragraph (a) and paragraph (b) introductory text to read as follows:

§ 5.65 Alcohol content

(a) *General*. The alcohol content for distilled spirits must be stated as a percentage of alcohol by volume and must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part. Products that

contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: "Bottled at __ percent alcohol by volume." An additional statement of alcohol content as a percentage of alcohol by volume may appear on any label affixed to the container.

(b) *How the alcohol content must be expressed.* The following rules apply to additional statements of alcohol content that appear on the label, other than the required statement in an Alcohol Facts statement:

* * * *

10. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement.

Sec.

- 5.211 Alcohol Facts statement.
- 5.212 Format for the Alcohol Facts statement.
- 5.213 Placement of the Alcohol Facts statement.
- 5.214 Tolerance levels.

Subpart L—Alcohol Facts Statement

§ 5.211 Alcohol Facts statement.

(a) *General.* The Alcohol Facts statement required under § 5.63(b)(4) must include the following information, and may not include additional information, except as provided in this section:

- (1) The single serving size, as defined in paragraph (b) of this section;
- (2) The number of servings per container;
- (3) Alcohol content as a percentage of alcohol by volume;
- (4) The number of fluid ounces of pure ethyl alcohol per serving;
- (5) The number of calories per serving; and
- (6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container*—(1) *Definition*. The term “single serving size” 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 (mL), to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for distilled spirits are:

Table 1 to Paragraph (b)(1)

For products containing:	a single serving size is:
Not more than 7% alc/vol	12 fluid ounces (355 mL)
Over 7% and not more than 16% alc/vol	5 fluid ounces (148 mL)
Over 16% and not more than 24% alc/vol	2.5 fluid ounces (74 mL)
Over 24% alc/vol	1.5 fluid ounces (44 mL) or 50 mL for a 50 mL container

(2) *Single-serving containers*. Distilled spirits packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers*. Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Percentage of alcohol by volume*. The Alcohol Facts statement must express the alcohol content as a percentage of alcohol by volume to the nearest tenth of a percent, subject to the tolerances set forth in § 5.65(c). Products that

contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: "Bottled at __ percent alcohol by volume." An optional statement of proof may also be included, as set forth in § 5.212(d)(4), but only if it is immediately adjacent to the percent-by-volume alcohol content declaration.

(d) *Alcohol expressed in fluid ounces.* The Alcohol Facts statement must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories.* Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 5.214. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate.* (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement "less than 1 gram" may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement "less than 1 gram" may be used as an

alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat*. The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein*. The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement “Contains less than 1 gram” or “less than 1 gram” may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 5.212 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For distilled spirits containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 5.211, as an option, the Alcohol Facts statement may be presented in a dual-column panel which sets forth the required information per serving and per container, as illustrated by paragraph (i) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The type or printing must be at least 1 millimeter in height for containers of 200 mL or less and at least 2 millimeters in height for containers of more than 200 mL.

(c) Bold face is required for the title “Alcohol Facts” and for the heading “Amount Per Serving,” and is optional for the headings “Alcohol by volume,” “Calories,” “Carbohydrate,” “Sugar” (if used), “Fat,” and “Protein.”

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume;

(4) Optional statement of alcohol content in degrees of proof, which may only be presented in parentheses following the percentage of alcohol by volume declaration in the Alcohol Facts statement when displayed in a linear format. If a panel format is used, the statement of proof must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration, or under the optional proof statement if that is used (see the example in paragraph (g) of this section);

(6) Calories;

(7) Carbohydrate;

(8) Sugar (if used);

(9) Fat; and

(10) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol “%”, “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.”.

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

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 750 mL bottle of distilled spirits containing 40 percent alcohol by volume, and includes the optional statement of proof.

Figure 1 to Paragraph (g)

Alcohol Facts	
Serving Size	1.5 fl oz (44 mL)
Servings Per Container	17
Amount Per Serving	
Alcohol by volume	40%
Proof	80
fl oz of alcohol	0.6
Calories	116
Carbohydrate	0g
Fat	0g
Protein	0g

(h) The following Alcohol Facts statement illustrates an acceptable linear display for a 50 mL bottle of distilled spirits containing 40 percent alcohol by volume and includes the optional statement of proof.

Figure 2 to Paragraph (h)

Alcohol Facts: Serving size: 1.7 fl oz (50 mL); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 40%; (80 proof); Fl oz of alcohol: 0.7; Calories: 131; Carbohydrate: 0g; Fat: 0g; Protein: 0g

(i) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 100 mL bottle of distilled spirits containing 40 percent alcohol by volume.

Figure 3 to Paragraph (i)

Alcohol Facts			
Serving Size	1.5 fl oz (44 mL)		
Servings Per Container	2 1/4		
		Amt Per Serv.	Amt Per Bottle
Alcohol by volume	40%	40%	
fl oz of alcohol	0.6	1.4	
Calories	116	261	
Carbohydrate	0g	0g	
Fat	0g	0g	
Protein	0g	0g	

§ 5.213 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 5.214 Tolerance levels.

(a) *General.* The following tolerance levels apply to labeling statements of calorie, carbohydrate (including sugar), protein, fat, and alcohol content for distilled spirits:

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per

serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 5.65(c) apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (<https://www.ttb.gov>) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

11. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205 and 207.

12. In § 7.52, add paragraph (e) to read as follows:

§ 7.52 Legibility and other requirements for mandatory information on labels.

* * * * *

(e) *Alcohol Facts statements.* See subpart L of this part for more specific requirements that apply to Alcohol Facts statements.

13. In § 7.53, revise paragraph (b) to read as follows:

§ 7.53 Type size of mandatory information and alcohol content statements.

* * * * *

(b) *Maximum type size optional alcohol content statements.* (1) Containers of more than 40 fluid ounces. An alcohol content statement (other than one

required to appear in an Alcohol Facts statement under subpart L of this part) may not appear in script, type, or printing that is more than four millimeters in height on containers of malt beverages of more than 40 fluid ounces.

(2) Containers of 40 fluid ounces or less. An alcohol content statement (other than one required to appear in an Alcohol Facts statement under subpart L of this part) may not appear in script, type, or printing that is more than three millimeters in height on containers of malt beverages of 40 fluid ounces or less.

14. In § 7.63, revise paragraphs (a)(3) through (5) and add paragraph (a)(6) to read as follows:

§ 7.63 Mandatory label information.

(a) * * *

(3) Alcohol content, in accordance with § 7.65 and subpart L of this part;

(4) Name and address of the bottler or importer (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.66, § 7.67, or § 7.68, as applicable;

(5) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.70; and

(6) An Alcohol Facts statement, in accordance with subpart L of this part.

* * * *

15. Revise § 7.65 to read as follows:

§ 7.65 Alcohol content

(a) *Alcohol content in Alcohol Facts statement.* An alcohol content statement must appear in an Alcohol Facts statement in accordance with the requirements of subpart L of this part, unless prohibited by State law.

(b) *Additional alcohol content statements elsewhere on the label.* The following rules apply to additional statements of alcohol content that appear on the label, other than the required statement in an Alcohol Facts statement.

(1) *General.* An additional statement of alcohol content must be expressed as a percentage of alcohol by volume and may appear on any label affixed to the container. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may also be made, as long as they appear together with, and as part of, a statement of alcohol content as a percentage of alcohol by volume.

(i) The alcohol content statement must be expressed in one of the following formats:

- (A) "Alcohol __ percent by volume";
- (B) "__ percent alcohol by volume"; or
- (C) "Alcohol by volume: __ percent."

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(2) *Optional abbreviations.* The statements listed in paragraph (b)(1) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as "alc"; percent may be represented by the percent symbol "%"; alcohol and volume may be separated by a slash "/" in lieu of the word "by"; and volume may be abbreviated as "vol".

(3) *Examples.* The following are examples of alcohol content statements that comply with the requirements of paragraph (b) of this part:

- (i) "4.2% alc/vol";
- (ii) "Alc. 4.0 percent by vol.>";

(iii) "Alc 4% by vol"; and

(iv) "5.9% Alcohol by Volume."

(c) *Tolerance levels.* A tolerance of one percentage point is permitted, either above or below the stated alcohol content, for malt beverages containing 0.5 percent or more alcohol by volume. However, any malt beverage that is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance. The tolerance provided by this paragraph does not apply in determining compliance with the provisions of § 7.5 regarding the percentage of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol. For malt beverages containing less than 0.5 percent alcohol by volume, the actual alcohol content may be less than, but may not exceed, the labeled alcohol content.

(d) *Low alcohol and reduced alcohol.* The terms "low alcohol" and "reduced alcohol" may be used only on malt beverages containing less than 2.5 percent alcohol by volume.

(e) *Non-alcoholic.* The term "non-alcoholic" may be used on malt beverages, provided the statement "contains less than 0.5 percent (or .5%) alcohol by volume" appears immediately adjacent to it, in readily legible printing and on a completely contrasting background.

(f) *Alcohol free.* A malt beverage may not be labeled with an alcohol content of 0.0 percent alcohol by volume, unless it is also labeled as "alcohol free" and contains no alcohol. The term "alcohol free" may be used only on malt beverages containing no alcohol. No tolerances are permitted for "alcohol free" malt beverages.

16. Add subpart L to read as follows:

Subpart L—Alcohol Facts Statement

Sec.

- 7.211 Alcohol Facts statement.
- 7.212 Format for the Alcohol Facts statement.
- 7.213 Placement of the Alcohol Facts statement.
- 7.214 Tolerance levels.

Subpart L—Alcohol Facts Statement

§ 7.211 Alcohol Facts statement.

- (a) *General.* The Alcohol Facts statement required under § 7.63(b)(6) must include the following information, and may not include additional information, except as provided in this section:
 - (1) The single serving size, as defined in paragraph (b) of this section;
 - (2) The number of servings per container;
 - (3) The alcohol content, under the conditions of paragraph (c) of this section;
 - (4) The number of fluid ounces of pure ethyl alcohol per serving, when required by paragraph (d) of this section;
 - (5) The number of calories per serving; and
 - (6) The number, in grams per serving, of carbohydrates, fat, and protein.

(b) *Single serving size and servings per container—(1) Definition.* The term “single serving size” 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 (mL), to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help consumers determine nutrient, alcohol, and calorie intake. The single serving size reference amounts for malt beverages are:

Table 1 to Paragraph (b)(1)

For products containing:	a single serving size is:
Not more than 7% alc/vol	12 fluid ounces (355 mL)
Over 7% and not more than 16% alc/vol	5 fluid ounces (148 mL)
Over 16% and not more than 24% alc/vol	2.5 fluid ounces (74 mL)
Over 24% alc/vol	1.5 fluid ounces (44 mL)

(2) *Single-serving containers.* Malt beverages packaged and sold in containers with a net content of less than 200 percent of a single serving size reference amount described in this section must be labeled as containing a single serving, and a single serving size is the net content of the container.

(3) *Multi-serving containers.* Products packaged and sold in containers with a net content of 200 percent or more of the applicable single serving size reference amount described in this section will be considered to be in multi-serving containers, and the number of servings per container must be labeled to the nearest one-quarter serving.

(c) *Alcohol content.* For malt beverages with an alcohol content of at least 0.5 percent alcohol by volume, the Alcohol Facts statement must include the alcohol content as a percentage of alcohol by volume rounded to the nearest tenth of a percent, subject to the tolerances set forth in § 7.65(c). For malt beverages containing less than 0.5 percent alcohol by volume, alcohol content may be expressed in the Alcohol Facts statement either as a percentage of alcohol by volume, or by use of the designation “non-alcoholic” or “alcohol free” in accordance with the tolerances and other conditions set forth in § 7.65(c), (e), and (f).

(d) *Alcohol expressed in fluid ounces.* For malt beverages with an alcohol content of at least 0.5 percent alcohol by volume, the Alcohol Facts statement

must express the number of U.S. fluid ounces of pure ethyl alcohol per serving to the nearest tenth of an ounce. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration. For example, 5 fl oz of a beverage with 12 percent alcohol by volume would have 0.6 fl oz of pure ethyl alcohol, while 5 fl oz of a beverage with 14 percent alcohol by volume would have 0.7 fl oz of pure ethyl alcohol.

(e) *Calories*. Calorie statements may be expressed to the nearest calorie, or may be rounded to the nearest 10-calorie increment (for per-serving amounts above 50 calories) or the nearest 5-calorie increment (for per-serving amounts up to 50 calories), subject to the tolerances set forth in § 7.214. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrate*. (1) The Alcohol Facts statement must express the number of grams of total carbohydrates in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement “less than 1 gram” may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero.

(2) The Alcohol Facts statement may optionally express the number of grams of total sugars in a serving to the nearest gram, except that if a serving contains less than 1 gram, the statement “less than 1 gram” may be used as an alternative, and if the serving contains less than 0.5 g of sugar, the content may be expressed as zero.

(g) *Fat*. The Alcohol Facts statement must express the number of grams of total fat in a serving (with total fat defined as total lipid fatty acids and expressed as triglycerides) to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment at or above 5 grams. If the serving contains less than 0.5 gram, the content may be expressed as zero.

(h) *Protein*. The Alcohol Facts statement must express protein content in grams per serving to the nearest gram, except that if a serving contains less than 1 gram, the statement “Contains less than 1 gram” or “less than 1 gram” may be used as an alternative, and if the serving contains less than 0.5 gram, the protein content may be expressed as zero.

§ 7.212 Format for the Alcohol Facts statement.

The Alcohol Facts statement must be presented in either a panel or a linear format, and the presentation must conform to the formatting specifications in this section. For malt beverage containers with a net content of at least 200 percent and less than 500 percent of the applicable single serving size reference amount described in § 7.211, as an option, the Alcohol Facts statement may be presented in a dual-column panel which sets forth the required information per serving and per container, as illustrated by paragraph (k) of this section.

(a) The panel or linear display must be set off within a box by use of hairlines with all black or one color type, printed on a contrasting background.

(b) All information within the box must appear in a single, easy-to-read type style using both upper case and lower case letters. The type or printing must be at least 1 millimeter in height for containers of $\frac{1}{2}$ pint (8 U.S. fluid ounces or 237 mL) or less and no smaller than 2 millimeters in height for containers of more than $\frac{1}{2}$ pint (8 U.S. fluid ounces or 237 mL).

(c) Bold face is required for the title “Alcohol Facts” and for the heading “Amount Per Serving” and is optional for the headings “Alcohol by volume,” “Calories,” “Carbohydrate,” “Sugar” (if used), “Fat,” and “Protein.”

(d) The Alcohol Facts statement must appear in the panel or linear format in the following order:

(1) Serving size;

(2) Servings per container;

(3) Percentage of alcohol by volume;

(4) U.S. fluid ounces of pure ethyl alcohol per serving. If a panel format is used, the U.S. fluid ounces of pure ethyl alcohol per serving must be indented directly under the percent-by-volume alcohol content declaration (see the example in paragraph (g) of this section);

(5) Calories;

(6) Carbohydrate;

(7) Sugar (if used);

(8) Fat; and

(9) Protein.

(e) The following abbreviations or shortened expressions may be used, with or without a period:

(1) For percentage of alcohol by volume, the percent symbol "%", "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.".

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

(g) The following Alcohol Facts statement illustrates an acceptable panel display for a 24 fluid ounce bottle of a malt beverage containing 5 percent alcohol by volume.

Figure 1 to Paragraph (g)

Alcohol Facts	
Serving Size	12 fl oz (355 mL)
Servings Per Container	2
Amount Per Serving	
Alcohol by volume	5%
fl oz of alcohol	0.6
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(h) The following Alcohol Facts statement illustrates an acceptable panel display for a 12 fluid ounce bottle of a non-alcoholic malt beverage containing less than 0.5 percent alcohol by volume.

Figure 2 to Paragraph (h)

Alcohol Facts	
Serving Size	12 fl oz (355 mL)
Servings Per Container	1
Amount Per Serving	
Alcohol by volume	Non-alcoholic (contains less than 0.5% alc/vol)
Calories	90
Carbohydrate	2g
Fat	0g
Protein	1g

(i) The following Alcohol Facts statement illustrates an acceptable panel display for an 18 fluid ounce bottle of a malt beverage containing 5 percent alcohol by volume. The container has a net content of less than 200 percent of a single serving size reference amount and thus is labeled as containing a single serving.

Figure 3 to Paragraph (i)

Alcohol Facts	
Serving Size	18 fl oz (532mL)
Servings Per Container	1
Amount Per Serving	

Alcohol by volume	5%
fl oz of alcohol	0.9
Calories	135
Carbohydrate	3g
Fat	0g
Protein	1g

(j) The following Alcohol Facts statement illustrates an acceptable linear display for a 12 fluid ounce can of a malt beverage containing 4 percent alcohol by volume.

Figure 4 to Paragraph (j)

Alcohol 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

(k) The following Alcohol Facts statement illustrates an acceptable dual-column panel display for a 24 fluid ounce can of a malt beverage containing 12 percent alcohol by volume.

Figure 5 to Paragraph (k)

Alcohol Facts		
Serving Size	5 fl oz (355 mL)	
Servings Per Container	4 $\frac{3}{4}$	
	Amt Per Serv.	Amt Per Bottle
Alcohol by volume	12%	12%
fl oz of alcohol	0.6	2.9
Calories	139	660
Carbohydrate	14g	67g
Fat	0g	0g
Protein	0g	0g

§ 7.213 Placement of the Alcohol Facts statement.

The Alcohol Facts statement may be presented in either a horizontal or vertical orientation.

§ 7.214 Tolerance levels.

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

(1) *Calorie content.* A tolerance of 20 percent either above or below the stated calorie content is permitted. For example, a label showing 100 calories per serving is acceptable if the product has a calorie content of between 80 and 120 calories per serving.

(2) *Carbohydrate (including sugar) and protein content.* A tolerance of 20 percent either above or below the stated carbohydrate, sugar, and protein content is permitted. For example, a label showing 7 grams of carbohydrates per serving is acceptable if the product has a carbohydrate content of between 5.6 and 8.4 grams per serving.

(3) *Fat content.* A tolerance of 20 percent either above or below the stated fat content is permitted. For example, a label showing 7 grams of fat per serving is acceptable if the product has a fat content of between 5.6 and 8.4 grams per serving.

(4) *Alcohol content.* The tolerances for alcohol content specified in § 7.65 apply. The declaration of alcohol in fluid ounces per serving is calculated from the percent-by-volume alcohol content declaration.

(b) *Publication of analytical methods.* TTB will maintain on its website (<https://www.ttb.gov>) information regarding the methods it uses to validate calorie, carbohydrate, protein, fat, and alcohol content statements.

PART 24—WINE

17. The authority citation for 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, 5121, 5122-5124, 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, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

18. In § 24.257, revise paragraph (a)(3) to read as follows:

§ 24.257 Labeling wine containers.

(a) * * *

(3) The alcohol content as a percentage of alcohol by volume. For wines with 7 percent or more alcohol by volume, the tolerance levels set forth in § 4.36 of this chapter apply. For wines with less than 7 percent alcohol by volume stated on the label, an alcohol content tolerance of plus or minus 0.75 percentage points is allowed; and

* * * *

PART 25—BEER

19. The authority citation for part 25 continues to read as follows:

Authority: Authority:19 U.S.C. 81c; 26 U.S.C. 5002, 5051-5054, 5056, 5061, 5121, 5122-5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

20. In § 25.141, amend paragraph (a) by adding two sentences prior to the last sentence to read as follows:

§ 25.141 Barrels and kegs.

(a) * * * The barrel or keg must also show by label the alcohol content expressed as a percentage of alcohol by volume, rounded to the nearest tenth of a percentage point. A tolerance of one percentage point is permitted, either above or below the stated percentage of alcohol by volume, except that neither

the labeled or actual alcohol content may be less than 0.5 percent alcohol by volume, regardless of any tolerance. * * *

* * * * *

21. In § 25.142, amend paragraph (a) by adding two sentences prior to the last sentence to read as follows:

§ 25.142 Bottles.

(a) * * * The bottle must also show by label the alcohol content expressed as a percentage of alcohol by volume, rounded to the nearest tenth of a percentage point. A tolerance of one percentage point is permitted, either above or below the stated percentage of alcohol by volume; except that neither the labeled or actual alcohol content may be less than 0.5 percent alcohol by volume, regardless of any tolerance. * * *

* * * * *

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

22. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122-5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6038E, 6065, 6109, 6302, 7805.

23. In § 27.59, remove paragraph (a), redesignate paragraph (b) as paragraph (d), add new paragraphs (a) and (b), and add paragraph (c) to read as follows:

§ 27.59 Wines.

(a) *Label requirements.* Each container of imported wine shall be marked or labeled with the following information:

- (1) The name and address of the importer;
- (2) The brand name, if different from above;

(3) The alcohol content expressed as a percentage of alcohol by volume.

For wines with 7 percent or more alcohol by volume, the tolerance levels set forth in § 4.36 of this chapter apply. For imported wines with less than 7 percent alcohol by volume, an alcohol content tolerance of plus or minus 0.75 percentage points is allowed;

(4) The kind of wine, in accordance with the standards set forth in § 24.257 of this chapter; and

(5) The net contents of the container, unless the net content is permanently marked on the container as provided in 27 CFR part 4.

(b) *Federal Alcohol Administration Act requirements.* All imported wines containing not less than 7 percent and not more than 24 percent of alcohol by volume are required to be packaged, marked, branded, and labeled in conformity with the Federal Alcohol Administration Act (FAA Act) and regulations promulgated thereunder (27 CFR part 4), prior to their removal from customs custody. Containers of imported wine bottled or packaged after tax payment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval on TTB Form 5100.31 issued pursuant to the FAA Act and regulations promulgated thereunder (27 CFR part 4).

(c) *Customs requirements.* Imported containers of wine are required also to be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

* * * *

24. Revise § 27.60 to read as follows:

§ 27.60 Beer.

(a) *Label requirements.* Each container of beer shall be marked or labeled with the following information: the name and address of the importer, the net contents of the container, the nature of the product (such as beer, ale, porter, or stout), and the alcohol content, expressed as a percentage of alcohol by volume.

(b) *Federal Alcohol Administration Act requirements.* All imported malt beverages are required to be released from customs custody in conformity with the Federal Alcohol Administration Act (FAA Act) and regulations thereunder. The regulations under the FAA Act on the labeling and advertising of malt beverages may be found in 27 CFR part 7.

(c) *Customs requirements.* Imported containers of beer are required to be marked and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

Signed: January 10, 2025.

Mary G. Ryan,

Administrator.

Approved: January 10, 2025.

Aviva Aron-Dine,

Deputy Assistant Secretary (Tax Policy).

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