



August 15, 2025

Director

Regulations and Ruling Division

Alcohol and Tobacco Tax and Trade Bureau

1310 G Street NW, Box 12

Washington, D.C. 20005

RE: ACSA's Comments on Notice No. 237 Alcohol Facts Statement in the Labeling of Wine, Distilled Spirits, and Malt Beverages

[Submitted electronically on <https://www.regulations.gov>]

Introduction

This is a challenging time for U.S. small businesses, and distilleries are no exception. While new distilled spirits plants (DSPs) continue to open across the country, many others are closing, and those that remain are struggling to stay afloat. In light of this, ACSA is disappointed that, in evaluating the impact of proposed regulations on small business, TTB does not propose different rulemakings for small businesses to ease the impact on their operations. TTB's primary rulemakings include none that ease the burden on small producers. Instead, at least one proposal would disproportionately harm our small business manufacturers without delivering any meaningful public benefit to offset the damage.

If TTB does proceed with an Alcohol Facts labeling rule, it should exempt small DSPs. ACSA strongly urges TTB to reexamine its typical policy of promulgating uniform regulations for entities of all sizes.

Additionally, TTB's proposed rules get consumer information and public health needs backwards. The most important piece of consumer information on an alcohol beverage label is the alcohol content. In labeling and graphic design, the most important info gets the most square inches. Yet TTB's own proposed panels in this rulemaking take up over 50 times the surface area of a compliant alcohol content statement while potentially only adding calorie information that few consumers need or want. Only 4% of our members report that consumers have requested nutritional information.

However, ACSA is not opposed to TTB's proposal to require allergen labeling. Unlike the proposed Alcohol Facts labeling rule, allergen labeling serves a compelling consumer and public health need while adding minimal burden to small businesses.

We recognize that consumers need to be informed about the risk of consuming an ingredient that might cause a dangerous allergic reaction. Unlike calorie counts in non-nutritive products, this could be life-or-death information for certain consumers.

As for the burden, allergen information costs us nothing to obtain as we know what goes in our products. It would take up very little label space, limiting graphic design and printing costs. And TTB's proposed exemptions would mean most products wouldn't need to include any new information on their labels at all.

Exempt Small DSPs from Additional Labeling Requirements.

TTB states that this initiative emerged from the Competitiveness Executive Order that was intended to help small businesses in the alcohol industry. Yet in this NPRM, TTB proposes to follow almost all FDA labeling requirements EXCEPT those exempting small businesses.

ACSA strongly urges TTB to reconsider this position.

We propose that TTB consider those DSPs that removed fewer than 100,000 taxable proof gallons from bond in the past calendar year, and that reasonably expect to remove fewer than 100,000 proof gallon bonds in the coming calendar year, to be small producers for the purposes of these rules. This threshold is in keeping with the intent of Congress' having set that threshold for reduced excise tax payment in the Craft Beverage Modernization Act, and just as in the CBMTRA, distillers should be independent of control groups removing more than that proof gallon threshold.


According to TTB's data, a 100,000 proof gallon threshold for new labeling requirements would remove burdens from small businesses while providing nutritional information on 97% of spirits in the market.

Precedent for Exempting Small Businesses From Nutrition Info Labeling

TTB and its predecessor ATF have followed FDA's lead on nutritional information labeling for decades, and this NPRM proposes to continue and expand that practice. FDA is the nation's leading authority on nutrition labeling. TTB's Alcohol Facts NRPM invokes FDA's name 91 times. TTB is considering how closely its proposed Alcohol Facts requirements and graphic design should mirror FDA's Nutrition Facts labels. What's more, TTB proposes to peg numerous nutritional information rules to FDA's, including the tolerance for calorie labeling accuracy and the ability to round calories to the nearest multiple of ten.

As TTB notes in this NPRM, FDA exempts small businesses from its nutritional information labeling and restaurant menu nutritional information posting requirements.

As TTB well knows, FDA is responsible for labeling regulations for certain alcoholic beverages, such as cider with under 7% alcohol by volume. In general, these ciders must follow FDA's ingredient and nutrition labeling rules. But under FDA's small business exemptions, small cider producers are exempt. See the below slide from TTB's presentation at CiderCon 2023, and its footnote pointing out small business exemptions:

 **FDA Labeling Requirements**
Under 7%

The labels of cider/perry products with under 7% alc. by vol. must comply with applicable [FDA food labeling requirements](#), including ingredient labeling, nutrition labeling*, and allergen labeling requirements

*Certain small businesses can be exempt from FDA Nutrition Facts Labeling (See [Small Business Nutrition Labeling Exemption](#))

CiderCon 2023 ALCOHOL AND TOBACCO TAX AND TRADE BUREAU (TTB) 66

Given that an entire alcoholic beverage category has been on the market for years with a two-tiered nutritional information labeling regulation that exempts small businesses, ACSA encourages TTB to consult with FDA closely on consumer feedback on this issue.

Has there been a groundswell of consumer comment seeking nutritional and ingredient information labeling on sub-7% alcohol by volume ciders made by exempt small businesses?

If not, is it worth imposing similar requirements on thousands of struggling small distilleries who collectively represent just 3% of the spirits market?

TTB Does Have the Latitude to Exempt Small Businesses

TTB suggests in this NPRM that, unlike the FDA, it can't exempt small businesses from these requirements. It makes three primary arguments to support this position, all of which ACSA vigorously opposes.

TTB's First Argument:

"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."

If TTB adopts ACSA's proposed 100,000 proof gallon threshold for nutritional information labeling, the proportion of spirits on the market with nutritional information labeling would jump from roughly 0% to roughly 97%. This represents a massive increase in information available to the consumer in the market.

The increase in consumer information on the market is especially drastic considering the large proportion of small producers' volume sold in their tasting rooms. According to ACSA's annual Craft Spirits Data Project survey, the smallest 2500 distilleries tend to sell nearly 50% of their volume within their own tasting rooms. Consumers buying these products are not lacking information about these products- we're doing our utmost to bombard them with information about our products while they're in our tasting rooms.

Further, if it's very important to a consumer to have calorie counts on their alcohol products, they can choose to buy products from large brands that are required to include that information in their labels. They can vote with their wallet. Small businesses can then choose if they want to include that info on their labels if they find that it's important to their consumers.

ACSA's members report that they've received very few requests for this information from consumers. In a member survey, just 4% of respondents reported that consumers had ever requested the kind of information contemplated by this NPRM. Compared to 29% of survey respondents who reported having received consumer inquiries about allergen information, that's quite a low indication of consumer demand or expectation for this kind of information about distilled spirits made by small producers.

TTB's Second Argument:

"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."

The above argument is inconsistent with TTB's own arguments elsewhere in this NPRM, where TTB establishes its authority to require or not require nutritional information labeling. In NPRM

Section II. D., TTB states that the FAA Act and the federal court system give it “broad discretion” over what constitutes “adequate information” in alcoholic beverage 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.’

...

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.’

...

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.”

So in this NPRM, to establish its authority to require nutritional information labeling, TTB relies on a court decision in favor of its predecessor agency’s decision *not* to require nutritional information labeling. That decision says that the Secretary has broad discretion to promulgate these rules precisely because the FAA Act contains no guidance whatsoever on the issue of nutritional information labeling. Since TTB cites this decision in this very NPRM, it must not view the decision as outdated or incorrect.

And yet elsewhere in this NPRM, in arguing against exempting small businesses from these new rules, TTB says it questions if a small business exemption “would be consistent with the FAA Act mandate to ensure that labels provide consumers with adequate information.” But if TTB not only agrees with, but in part derives its authority to promulgate these rules from, the court’s finding that the FAA Act does not require nutritional information labeling, how can TTB in good faith argue that it must impose new nutritional information labeling requirements on small businesses because the FAA Act requires it to?

TTB can’t have it both ways.

For the past 90 years, TTB and its predecessors have used their broad discretion in this area to exempt 100% of distilled spirits from including nutritional information. ACSA asks that this policy be continued going forward for spirits produced by DSPs whose output today represents just 3% of spirits removed from bond.

TTB's Third Argument

“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.”

Here, TTB suggests that it lacks the authority to differentiate these regulations based on size, because while FDA's authorizing statute requires it to exempt small businesses from nutritional information labeling requirements, TTB's does not.

TTB draws exactly the wrong conclusion from FDA's small business exemptions. The existence of a statutory exemption at another agency does not automatically mean that TTB lacks authority to create a regulatory exemption, especially considering the history.

The small business exemptions in the 1973 Federal Food, Drug, and Cosmetic Act predate the 1980 Regulatory Flexibility Act (RFA). In 1973, agencies needed more specific authority and prompting by Congress to regulate small businesses differently. But since 1980, this has not been the case. In the RFA, Congress not only requires that agencies consider the small businesses impact of new rules. It also states that agencies *must consider exemptions* for small businesses when contemplating new rules. A post-RFA rulemaking should not look to a pre-RFA rulemaking for guidance on the role of Congress vs. the Executive in establishing small business exemptions. Congress did direct TTB to exempt small businesses from rules like this- it did so in the RFA.

In light of the above, ACSA does not consider TTB's analysis of small business exemptions adequate.

Further RFA Analysis Requested

Per the US SBA Office of Advocacy Guide for Government Agencies [“How to Comply with the Regulatory Flexibility Act”](#) agencies must think of regulatory impact in the following terms:

In order to certify a rule under the RFA, an agency should be able to answer the following types of questions:

1. Which small entities will be affected? All distilleries will be affected by the proposed rule, without exemptions. Per the Craft Spirits Data Project, small producers, the most likely to qualify for exemptions under FDA's rules, which we think would be reasonable, number about 2800 of the 5300 licensed distilleries in the US. This is an extremely large number of affected small businesses, considering that 97% of the alcoholic beverages consumed are manufactured by large conglomerates.

2. Have adequate economic data been obtained?

In Section IX, Cost Analysis of Docket No. TTB-2025-0002; Notice No. 237 Alcohol Facts Statements..., TTB gives various estimates of the total cost borne by the industry through the implementation of the new labeling requirements. TTB did not include an analysis of the costs incurred by companies relative to the sales value of such products. We believe that under the RFA, TTB must analyze these differences.

For each individual product, graphic design costs tend to be thousands of dollars. New dies for cutting new labels, depending on size, shape, and additional features such as embossing, debossing, or foil, can cost hundreds to thousands of dollars. For an ACSA member distillery who might incur these costs upfront for a product of which it may sell just hundreds of bottles, and those at a price depressed to compete for shelf space with the economies of scale achieved by larger industry members, these costs represent a significant portion of revenue from that product. For a large conglomerate that incurs those same fees but amortises them over millions of units sold, they're barely a consideration.

The alternative to re-printing labels would be to add a new label for the sole purpose of containing the newly required information. This is hardly a better option, as it requires time and therefore also money. For small distilleries who cannot afford automated packaging equipment, adding a new sticker means adding a new person to the bottling team, or perhaps just means that the existing bottling team's output will be lowered. Both options carry significant costs.

3. What are the economic implications/impacts of the proposal or do the data reveal a significant economic impact on a substantial number of small entities?

Congress also states that "Agencies should not give a narrow reading to what constitutes a "significant economic impact"...a determination of significant economic effect is not limited to easily quantifiable costs." Congress has identified several examples of "significant impact": a rule that provides a strong disincentive to seek capital; 175 staff hours per year for recordkeeping; impacts greater than the \$500 fine (in 1980 dollars) imposed for noncompliance; new capital requirements beyond the reach of the entity; and any impact less cost-efficient than another reasonable regulatory alternative. Note that even below these thresholds, impacts may be significant. Other, more specific examples are contained in the House of Representatives Report on the RFA."

Given the challenges in competition in the spirits industry cited in President Biden's E.O. 14036, Promoting Competition in the American Economy (July 9, 2022), the Executive Order directed the Secretary of the Treasury, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau (TTB), to consider: (i) initiating rulemaking to update TTB's trade practice regulations; (ii) rescinding or revising any regulations of the beer, wine, and spirits industries that may unnecessarily inhibit competition; and (iii) reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.

We posit that the TTB's exclusion of FDA's established practice of providing small business exemptions to nutritional labeling requirements would be inhibiting the ability of small spirits

producers to compete effectively in an industry where 97% of the spirits removed from bond are made by large producers, and the consolidation of companies at the wholesale and retail levels would make it difficult, if not impossible for small companies to recoup any of these costs. In fact, these expenditures will further inhibit the ability of small companies to break through the complete market domination by large conglomerates.

Alternate Proposal: Calorie Statement

In the event that TTB will not consider a small business exemption, ACSA urges TTB to consider less burdensome alternatives to the panels it proposes. We support the various alternatives raised in TTB's NPRM, such as QR codes, as will be discussed later in these comments. But we also offer a new proposal: Where the only net new information not already required on a label would be calories, just require that the calorie count be disclosed on the label in a manner consistent with existing TTB rules about required information.

This has several benefits. First, many of the most common distilled spirits contain nothing more than the distillate and some proofing water, and will therefore have very little added information in either the panel or the linear display proposed by TTB. Even if not required to list that information where the values would be zero, the large formats of these proposed displays present a large burden.

In addition, the existing government warning could be expanded to include a statement to the effect of "this product contains no nutritive value." Dispelling the potential consumer misconception that distilled spirits products contain meaningful nutrition, within the existing display of government health disclaimers about alcohol consumption, would accomplish public health aims without requiring as extensive a cost burden of our small distillers. It would also clarify why no nutritional information beyond calorie count is contained on that product's label.

To support this proposal, ACSA examined the impact of TTB's proposed displays on label surface area. In small formats with geometric limitations, every tiny scrap of label is vital real estate. Below are the example Alcohol Facts panel and linear display provided by TTB in the NPRM for distilled spirits, with ACSA coloring and annotation:

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

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

 **Redundant Information, dead space, or information widely available elsewhere**

 **New Information**

The vast majority of the valuable space occupied by both displays is dedicated to redundant information or takes up valuable space for no reason other than to mirror FDA's nutritional information format. The alcohol by volume and proof are redundant pieces of information already required on labels. Fl oz of alcohol is another way of stating the same information, but in a less usable format for consumers. As shown in the example panel, there will in many if not most cases be zero value associated with carbohydrate, fat, and protein on most common distilled spirits. And the serving size is a piece of information very widely disseminated by the CDC.

The only entirely new piece of information, the calorie count, takes up less than 3% of the panel display's surface area, and slightly more than 4% of the linear display's area. We believe there are better ways to deliver this information that would result in lower costs and burdens. These bulky displays will be difficult to fit into carefully balanced works of graphic design on small packages, all to add relatively little new information.

ACSA's proposal to simply require a calorie statement would take up a tiny fraction of the space that these TTB proposals would, and it would add almost all of the new information.

Any New Regulation Must Reflect Digital Reality

ACSA members are concerned by the difficult-to-understand enforcement of existing regulations about the depiction of distilled spirits labels online. They're concerned that this new set of regulations might increase online compliance risk without meaningful public health benefit. A case study from an ACSA member distillery will illustrate the cause for concern:

An ACSA member was contacted by TTB's Market Compliance Office. They told him that a product photo on his website was too low resolution for the required statement of disclosure of caramel coloring to be legible, and that they were initiating a broader audit of his DSP's practices as a result.

Looking through the DSP's digital presence, the TTB representatives told the DSP operator that if he posts a photo of a product that has the caramel / food color disclosure on the rear label, which is allowed by COLAs, he must also post a photo of the rear label to show the disclosure.

The DSP operator asked if he also had to ensure the Government Warning and alcohol content statement were legible as well. They told him that no, it's just about the coloring disclosures.

The TTB representatives further informed him that if any consumer were to post a photo on social media of his product without the coloring statement being legible, and the DSP's social media account liked the photo, that would constitute a prohibited market practice.

The above story indicates an inexplicable prioritization of the legibility of a label statement that, while required, is orders of magnitude less important to a consumer than, for example, the alcohol content. Yet TTB viewed this as an important enough issue to initiate a broader investigation. In light of stories like this, when ACSA members are confronted with the possibility of a broad new set of labeling requirements, they understandably wonder if they will be enforced in a sensible manner.

ACSA therefore requests that TTB take a hard look at how any new proposed labeling regulation would relate to its rules about online conduct. It is simply not practical or in many cases even possible to show 100% of label information on a three-dimensional object in many forms of online communication or marketing. The rules need to reflect that. And they need to prioritize what information truly matters most.

ANSWERS TO SPECIFIC TTB QUESTIONS

TTB's NPRM asks for input on a number of specific questions. Below we provide answers to those questions not answered elsewhere in these comments.

Alcohol Facts

1. Title of the Alcohol Beverage Information Statement

1.1. 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?

"Serving Facts" more clearly communicates that this applies to the specific product. "Alcohol Facts" sounds like it applies generally to alcohol, not necessarily to the specific product in question, as though the same information might be on every label for every product. The same way we all have the same "Government Warning" label.

The proposed panel already says "serving" and "Serving facts" in multiple locations.

1.2. 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?

Yes. Any change requires paying graphic design fees and additional printing fees.

1.3. Are consumers accustomed to finding nutrient content information in a Serving Facts statement? Would changing the title to "Alcohol Facts" cause confusion?

Yes, "Alcohol Facts" sounds like it's telling consumers facts about alcohol in general. This may be confusing. "Serving Facts" sounds more familiar based on existing FDA Nutritional Facts, and makes more clear that it applies to a single serving of the labeled product.

In a significant number of alcoholic beverages, the majority of the calories, fats, and sugars can come from ingredients in the beverages which have nothing to do with ethanol. Take for example a canned Pina Colada, which would likely contain considerable amounts of added sugar and fat, whose additional calories would not be from alcohol.

1.4. Alternatively, does the title “Alcohol Facts” make it easier for consumers to readily distinguish alcohol beverages from other food items?

We do not consider this a serious concern. Other labeling regulations make it clear what product is what. Whiskey says “whiskey” on it, ketchup says “ketchup” on it. Consumers look at the product name, not the fine print to identify products.

2. Mandatory Calorie and Nutrient Information

2.1. 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 seeks 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.

Yes, only require fat and protein to be disclosed if above a certain threshold. Requiring space for those to be set aside on most labels, where the amount will be zero, will be unnecessarily disruptive and expensive.

Some Standards of Identity allow any number of added ingredients, and many products conform to Standards of Identity which do not allow any additives. TTB should consider allowing minimal information for such Standards of Identity, reserving the full panel for those products with added flavors, fats and sugars.

For example, a bourbon is not permitted to contain any Coloring, Flavoring, or Blending materials. If it meets the standard of identity, it should contain no added sugar, fat, or protein, and should not be required to list their concentrations.

2.2. 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?

Displaying nutritional information in the same exact manner as food labels might mislead consumers. Without a thorough understanding of how an ingredient is to be processed in the fermentation and distillation process, they might think its inclusion on an ingredient list, alongside a nutrition facts panel, means there’s

nutritive value in the product. Alcoholic beverages should not be regarded as a source of nutrition, and should therefore be labeled differently to make that clear.

- 2.3. 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)?**

TTB's required statements, if this rule is adopted, should only require listing of elements that are commonly found in significant amounts in spirits of the standard class and type. Additions of other elements should be allowed but not required.

- 2.4. 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?**

This would not be useful. It would be akin to requiring a statement of alcohol content on cartons of milk. This would be misleading. Consumers would see the contents labeled as zero, but the implication of its inclusion would be that many similar products must have a significant enough concentration of the element in question that a statement of its content be included, when in fact the opposite is true. This would create the question in consumers' minds- have I been unknowingly consuming products containing this element, but I just never noticed?

- 2.5. 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?**

No. This would muddy the waters regarding the prohibition on making health claims on spirits labels. We maintain our stance that alcohol should not be considered to have nutritive value.

- 2.6. 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)?**

In a survey of our members, 3% of respondents said they include this information on their labels.

- 2.7. 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?

In a survey of our members, just 4% of respondents said consumers had ever requested this kind of information from their companies. Compare that to 29% of respondents said consumers had requested allergen info.

Very, very few of our consumers are interested in this information as there is broad understanding that alcohol does not contain nutritive value.

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

Every additional regulatory requirement disproportionately burdens small businesses. This common-sense principle is behind countless federal laws and regulations, including of course the Regulatory Flexibility Act. For us, a dollar spent on graphic design fees or label printing means a dollar not spent on wages, on marketing, or on our many other under-funded needs costs.

For the large producers that dominate the market, a dollar spent on meeting these requirements means a dollar less of their multi-million or -billion dollar profits. As small producers are already burdened disproportionately to their market or tax liability impact in reporting requirements, this will add an extra level of testing to ensure that the labels are accurate, or if they are not, a more serious vulnerability to the costs of any TTB penalties or costs of initiating corrections, if the labels are found during examination to be insufficiently accurate.

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

See above.

2.10. 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?

Alignment to international standards are generally to be desired. Costs of changes to labels for export purposes are again, disproportionately impactful to small businesses.

3. Calculating Panel Elements and Tolerance Levels

- 3.1. 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.**

This is a real concern. For small producers especially, the least expensive methods are those most likely to be used, and without clear guidance from TTB on acceptable calculators, many will use what they find online. TTB should consider the size of the producer when calculating tolerance - small producers making hundreds of units should not be judged like large conglomerates producing millions of units.

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

- 4.1. 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?**

ACSA advocates for parity in alcohol regulations between product categories, and this is no different. Ethanol is ethanol. Beer and wine should have to follow the same alcohol content labeling guidelines that spirits do.

There's no compelling reason that a spirit-based RTD with an alcohol content of 12% should be required to carry an alcohol content statement while a table wine containing 12% alcohol does not. Alcohol is a controlled substance and consumers deserve to know how much of it they are consuming.

This disparity in labeling regulations is part of the increasingly outdated penalization of spirits relative to beer and wine. It is also based on the flawed assumption that products from these different product categories are always consumed in a particular manner- e.g., that wine is consumed thoughtfully with dinner while spirits are downed by the shot at a saloon. Wines may be consumed irresponsibly, while spirits may be slowly sipped and savored. Parity in labeling alcohol content regulations would remove inconsistencies in the information consumers need to make responsible decisions about their alcohol consumption.

- 4.2. 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?

We defer to brewers on the costs and burdens of this issue.

4.3. 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?

TTB suggests in this NPRM that its proposal to increase tolerance for malt beverages is in large part out of consideration for the concern of small brewers. The NPRM notes that the Brewers' Association and independent brewers argued in past rulemaking processes that the cost of accurate compliance is burdensome to small producers and would deter new small businesses from starting.

ACSA completely agrees with the assessment of the Brewers Association and the independent brewers referred to in TTB's NPRM. It is too expensive and too difficult for small beverage alcohol producers to meet a 0.3% percentage point alcohol content labeling tolerance.

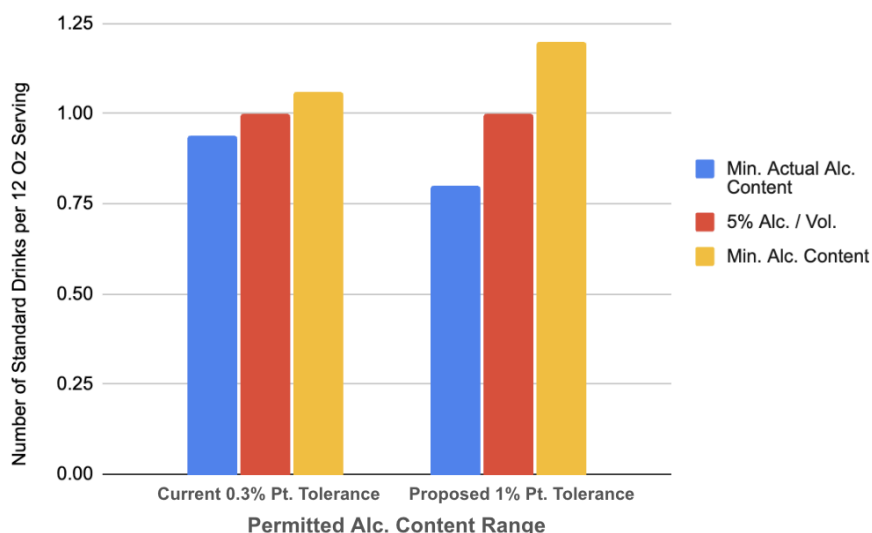
NEW ACSA PROPOSAL: INCREASE ALCOHOL CONTENT TOLERANCES FOR SMALL BREWERIES AND DISTILLERIES

TTB is proceeding with this proposal despite opposition from the Beer Institute, which tends to represent the larger beer brands. We applaud TTB's consideration for the challenges particular to small businesses.

But applying this tolerance to large and small breweries alike is unwise. A 1 percentage point labeling tolerance represents a massive variation in alcohol content for relatively low-alcohol malt beverages of the most popular varieties. This can result in a dangerous discrepancy between the true and expected alcohol content of malt beverages.

Many of the most popular Malt Beverages are Hard Seltzers, the most popular of which tend to contain about 5% Alc. / Vol. A 1 percentage point tolerance on a labeled alcohol content of 5% constitutes a 20% tolerance in alcohol content. The below chart demonstrates that with a 1 percentage point tolerance, a 12-oz can of malt beverage with a labeled alcohol content of 5% might contain anywhere from 11.2 to 16.8 mL of Ethyl Alcohol, or 0.8 to 1.2 standard drinks. Put another way, a can containing .8 standard drinks could have the same labeled alcohol content as a can containing 1.2 standard drinks.

Variation in Number of Standard Drinks per 12 Oz Can Malt Beverage with Labeled 5% Alc. / Vol Content



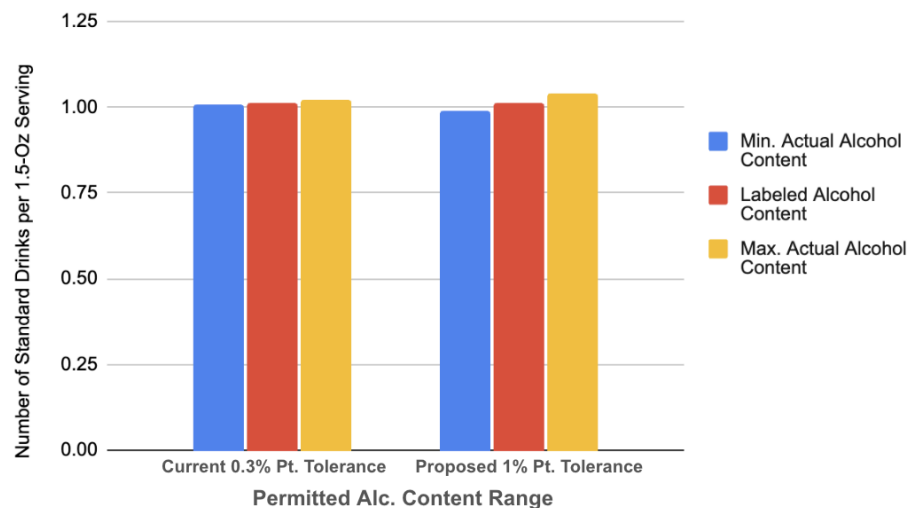
This effect is more dangerously exaggerated when extrapolated to a binge drinking session. Five 12-oz cans of malt beverage with a labeled alcohol content of 5% Alc. / Vol. might contain anywhere from four to six standard drinks with a 1% percentage point tolerance. Imagine a consumer who on one occasion drank five cans of the malt beverage in question, and that batch had an actual alcohol content of 4% by volume. They felt confident they were under the legal limit, then drove home. A couple weeks later, they drink five cans from a different batch. This one has an actual alcohol content of 6%. They consumed fifty percent more alcohol than last time, but the package says the alcohol content is the same. Might they assume that since they were OK to drive last time, they're probably ok this time?

Applying a 1% tolerance to malt beverages produced by small brewers and a .3% tolerance to large brewers would address many of the concerns TTB is juggling here. It would provide consumers of malt beverages from small breweries more information than labels currently require, while acknowledging the reality that small brewers have a difficult time maintaining precision in this arena. And the .3 percentage point tolerance applied to large brewers' malt beverages would apply a rigorous standard to the vast, vast majority of the malt beverage market, addressing the consumer information concerns in most situations.

For the most popular distilled spirits, the math works out very differently. For a standard serving of 1.5 Oz. of 80-proof spirits, the current 0.3 percentage point tolerance results in a permissible range of 17.9 to 18.1 mL of ethyl alcohol, or 1.007 to 1.022 standard drinks. A 1 percentage point tolerance would result in a 1.5-Oz. serving of 80-proof spirits containing 17.6 to 18.5 mL of ethyl alcohol, or

0.99 to 1.04 standard drinks. This represents a variation in ethyl alcohol content of just 2.5% relative to labeled alcohol content. This is less variation than exists under even the current .3 percentage point tolerance for malt beverages on a 5% Alc. / Vol beverage.

Variation in Number of Standard Drinks, 1.5 Oz. Serving of Distilled Spirit with Labeled 40% Alc. / Vol Content



Applying the lens of a five-serving binge drinking session to this tolerance question in distilled spirits, we again find that a 1 percentage point tolerance would result in minimal variation in the number of standard drinks consumed. At a labeled alcohol content of 40%, the proposed 1 percentage point tolerance would result in a range of standard drinks consumed of 4.95 to 5.2. In both cases, essentially five drinks. Compare this to the 50% swing in the range of 4 drinks to 6 drinks resulting in a 1 percentage point tolerance in a 5% Alc. / Vol Malt Beverage.

We need to point out that of course distilled spirits can have low alcohol contents as well, and can therefore also experience the large relative swings from a 1 percentage point tolerance.

But we argue that regulations should be built around market realities. Most spirits on the market are of higher proof than malt beverages, and therefore the same label tolerance results in a tighter range of alcohol content. There's a reason CDC expresses its standard drink guidance for spirits in terms of 80-proof spirits: it's something of an industry standard and a consumer expectation. In the RTD beverage space, where malt beverages and spirits-based RTDs tend to most often have similar alcohol contents, malt beverages account for a much larger portion of the market. They tend to enjoy lower excise tax rates and less

restrictive distribution and retailing regimes than spirit-based RTDs, so large companies often favor them, and they're more widely available to consumers.

The discrepancy in market position between malt beverage- and spirit-based RTDs described above is especially true among smaller craft distilleries to whom we propose that a 1 percentage point tolerance apply. The processing and canning equipment required to produce these is too expensive for most small distilleries to purchase. We believe that only a relatively small portion of distilled spirits produced by small distillers under a 1 percentage point tolerance would have a low enough alcohol content to experience a significant variation in alcohol content.

We also acknowledge that labeled vs. actual alcohol content carries different tax implications for distilled spirits than for malt beverages and wines. Of course distilled spirits are taxed on a proof gallon basis, where other alcohol beverages are taxed by volume, or by volume within alcohol content ranges. There is therefore a potential concern that if distilled spirits have a 1 percentage point tolerance, tax revenue could be impacted. If a spirit labeled at 40% Alc. / Vol and is taxed accordingly, but in fact contains 40.6% Alc. / Vol, that spirit was undertaxed.

But TTB's data shows that the potential revenue impact of a 1 percentage point alcohol content tolerance for distillers removing less than 100,000 Proof Gallons from bond per year would be minimal. According to the most recently released version of TTB's "Statistical Report - Distilled Spirits Permit Counts and Average Removals by Year," distillers of this size accounted for about 94.5% of DSPs and about 3.5% of taxable removals in 2022. Assuming that all of these removals were taxed at the \$2.70 / Proof Gallon rate, the excise tax collected from these small distillers amounted to about \$35 million, or less than 1% of total distilled spirits excise tax collected that year.

Against that \$35 million total the current allowable .3 percentage point tolerance could result in a maximum variation in excise tax income of \$105,177. This would only occur if all of the spirits in this category were the full .3 percentage points off in the same direction. This is a very unlikely outcome as some spirits will be overproof, some under. This improbable \$105,177 variation in tax revenue would account for just 0.0023% of all distilled spirits excise tax collected in 2022.

Against that \$35 million base, a 1 percentage point tolerance for producers with under 100,000 proof gallons of removal could result in a maximum excise tax revenue variation of \$350,590 if every single bottle were fully 1 percentage point off the labeled alcohol content in the same direction. This would account for just 0.0075% of all distilled spirits excise tax collected in 2022.

Put differently, changing the tolerance from .3 percentage points to 1 percentage point for distilleries removing less than 100,000 proof gallons from bond, could

under a highly improbable set of circumstances result in an increase of potential distilled spirits excise tax revenue variation from 0.0023% to 0.0075% of total revenue. ACSA argues that this is not a significant revenue impact.

Additionally, this would align closer with the reality of the marketplace. In 2018's Notice No. 176, which proposed the liberalization of the prior tolerance, TTB stated that the discrepancy between real world results and the regulation drove the rule change. This makes sense- if nearly $\frac{3}{4}$ of spirits sampled can't meet a rule, the rule might be unrealistic. And that was indeed the case at the time- the most recently published TTB Alcohol Beverage Sampling Program results are from 2016, when there was no tolerance for being overproof and a .15% under proof tolerance. Under those tighter tolerances, TTB found 73.5% of distilled spirits sampled in 2016 to have alcohol content out of tolerance. In the absence of more recent data, applying some assumptions to that 2016 data suggests that approximately 33% of distilled spirits were likely out of tolerance with the current .3% tolerance. Given the difficulty and expense required for smaller producers of malt beverages, wine, and spirits to hit tight tolerances, and the growing number of small producers since 2016, it seems likely that a large percentage of spirits on the market today are out of compliance.

4.4. 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?

We defer to brewers on this question.

4.5. What, if any, additional costs or burdens would requiring numerical alcohol content statements for table wines impose on wineries and importers, particularly small businesses?

We defer to wineries and importers on this question.

4.6. 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?

Should a canned Vodka Soda of 14% Alc. / Vol. be allowed to carry the same alcohol content statement as a 7% Alc. / Vol Vodka Soda? How does this allow consumers to make responsible drinking decisions? And how does this make sense in the context of a rulemaking whose primary purpose, according to TTB, is to provide consumers more information?

A 14% Alc. / Vol serving of wine contains twice the alcohol of a 7% Alc. / Vol.

serving. Stated another way, it contains 100% more alcohol. That 7 percentage point tolerance amounts to a 100% tolerance. Yet the two can currently be labeled the same, and in the same rulemaking in which it proposes a 20% tolerance for calorie content labeling TTB is considering extending this regulation into the future. This pair of rules, taken together, say that it's more important to know how many calories you're consuming than to know how much alcohol you're consuming. That is completely backwards.

From spirit producers' point of view, this is especially intolerable when our allowable tolerance is so small, and when a looser tolerance for small distillers would have a negligible impact on revenue and on the number of standard drinks consumed relative to the expected number based on labeled alcohol content.

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

5.1. **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?**

No. Consumers have known where to find the alcohol content statement on bottles for years. We have seen no evidence that consumers have difficulty locating the alcohol content statements on our products, so why reinvent the wheel?

5.2. **Alternatively, should TTB allow alcohol content labeling as an optional element of the Alcohol Facts statement?**

Yes, if an alcohol facts statement is required, it should be allowed to include the alcohol content statement.

5.3. **Does the placement of alcohol content information affect costs of compliance and regulatory burdens? If so, how?**

Yes, any addition of new labeling elements or requirement that existing required elements be relocated will result in additional graphic design and printing fees for our members.

5.4. **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?**

Yes, every additional regulatory cost or burden is felt disproportionately by small businesses.

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

- 6.1. 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?**

Consumers are not familiar with fluid ounces of pure ethyl alcohol as a unit- this is meaningless to consumers.

- 6.2. 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?**

Every regulatory requirement disproportionately burdens small businesses. However, if TTB proceeds by requiring some version of the Alcohol Facts statement, adding this particular piece of info does not add a meaningful burden, as it is just a simple calculation.

- 6.3. 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?**

See above- if TTB does implement a mandatory Alcohol Facts statement, ACSA supports including either a statement of standard drinks content or a statement of ounces of pure ethyl alcohol per serving.

- 6.4. 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.**

“Alcoholic drink equivalent” is unnecessarily garbled. While many consumers understand what a “drink” is, few have ever encountered the phrase “alcoholic drink equivalent.” If the goal is providing consumers information, provide it in simple terms they understand. “Standard Drink” seems to be well understood.

- 6.5. 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.**

No. Dietary Guidelines are revised as frequently as every five years. Five years is TTB's proposed timeline for compliance with a new Alcohol Facts requirement in large part because of the cost and difficulty associated with changing labels. Requiring inclusion of information that can change every five years would not only be costly and burdensome for our small business members to keep up with, but would also be a compliance nightmare. A bottle of our products might live on in the market for months or years after it is produced, producing considerable opportunities for confusion here.

7. Statements of Average Analysis and Serving Facts Statements

7.1. N/A

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

8.1. **Would consumers have trouble locating Alcohol Facts information if that information is presented in a linear display?**

No, they would not have trouble locating this information in a linear display. While smaller than the large proposed panel display, the linear display is nonetheless quite large. Compare it to the required size of the Alcohol Content Statement under current regulations.

ACSA considers Alcohol Content to be the single most important piece of information for consumers on an alcoholic beverage label. The linear display example for a 50-mL container of distilled spirits provided by TTB in the NPRM is many times the size of a standard statement of alcohol content on a 50-mL container under current rules. If consumers have for decades been able to find this most important information at that tiny size, the panel size is surely large enough to communicate calorie content and redundant alcohol content information.

ACSA supports the option to include a linear display, as well as an option to include any additional required information in the existing Government Warning statement.

Containers of distilled spirits are by definition quite a manageable size, since the largest possible container now is 3.75L, and therefore any required information contained on distilled spirits labels in a compliant manner should not be too difficult for a consumer to find. We therefore urge TTB, if it does adopt these rules, not to follow in FDA's footsteps as FDA considers requiring nutritional info to be disclosed on the front of food products. See [Docket No. FDA-2024-N-2910](#).

If in enacting these regulations TTB decides to adhere closely to FDA nutritional labeling rules going forward, and TTB follows FDA on moving nutritional info panels to the front of packaging some years in the future, this change would even further burden small businesses who by this point would already have redesigned and reproduced their labels and associated production tooling. FDA's change will not burden small businesses, as they are exempt from its nutritional information labeling rules, but if TTB continues to refuse to exempt small businesses, this would be a concerning development.

8.2. 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?

Bold-face type and a box are not necessary for a linear display. Alcohol content, the most important piece of information for consumers on an alcoholic beverage label, has for decades been permitted to be displayed in a wide variety of formats as long as it meets legibility and type size requirements. Requiring redundant alcohol content information and calorie counts to be displayed more prominently and with less flexibility does not make sense.

8.3. 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?

If TTB has not received an avalanche of consumer comments suggesting that current type size and legibility rules for statements of alcohol content are insufficient, ACSA does not see a compelling reason for this proposed Alcohol Facts statement to have any additional requirements. The current rules for type size and legibility of alcohol content statements are adequate to communicate vital health and safety information to consumers, while also giving the industry latitude to create attractive and original label designs. We support this flexible yet effective form of display requirements.

8.4. 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?

The more rigid the display requirements, the more costly and burdensome the regulation. A box of specific sizes and proportions is more difficult to fit into existing label artwork than a few lines of text. Graphic design fees are extremely expensive to our small businesses, often running into the thousands of dollars.

If TTB does implement a mandatory Alcohol Facts statement, ACSA strongly

urges it to allow the statement to appear in the widest possible variety of formats, with the most flexibility extended to small producers.

- 8.5. 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?**

We defer to the wine and malt beverage industries on this question.

- 8.6. What alternatives exist to convey Alcohol Facts information to consumers? How, if it 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?**

ACSA strongly urges TTB to consider permitting alcohol facts to be listed online via QR code. Alternatively, ACSA suggests that the information TTB ultimately requires to be included in an Alcohol Facts statement to be added to the existing Government Warning already required on labels.

Without an exemption for small businesses, alternatives for display would provide the best effect on competition for small distillers. Large international corporations that dominate the industry have massive budgets for branding and graphic design. They can afford the six-figure design fees of the world's top packaging designers, who will find attractive ways to fit this new information onto their labels. It will be much more difficult for our members to fit large, unsightly displays onto our packaging.

Our labels are often the only opportunity we have to make an impression on consumers. We can't afford global ad campaigns to promote brand awareness- if we're lucky enough to get on a shelf, that's often the only place a consumer will ever see our product or our name. If new requirements make it more difficult for our products to look attractive, to communicate our story, and to stand out, that will become even harder.

More compact display alternatives not only provide more flexibility within existing labels, they also help remove the unappealing alternative of adding an additional small label. Most small distillers do not have automated labeling machinery- many of us label by hand or with manually operated machinery. This makes packaging labor one of the most expensive parts of our products. Adding a separate sticker just for this information would add considerable additional labor cost and burden over time.

The EU, which generally has stricter requirements than the US for consumer product labeling, such as in its tobacco products regulation, allows nutritional info to be shared by QR code.

- 8.7. 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?**

Yes, if TTB adopts mandatory Alcohol Facts statements, TTB should include the option to make required information available electronically. This would not create a meaningful barrier to access to information.

According to Pew Research, in 2024, 91% of Americans owned a smartphone. This constitutes a ten percentage point increase from five years earlier, in 2019, when 81% of Americans owned a smartphone. Five years from now, when these Alcohol Facts regulations would be implemented, that number will be even closer to 100%. Those who don't own smartphones are disproportionately those not yet of drinking age, who should not be of concern in this rulemaking.

- 8.8. 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?**

Disclosing proposed Alcohol Facts information via electronic means would be much less costly and burdensome to small businesses. QR codes take up very little space on a label and would create very limited additional graphic design, printing, and bottling labor costs. Adding this kind of information to a website costs very little.

- 8.9. 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?**

If any form of labeling is mandated for small business by TTB, a hybrid digital - printed solution would be much less burdensome to our small and even

medium-sized business members.

For example, requiring a statement of calories that follows the same type size and legibility requirements as the current alcohol content statement would be relatively trivial, even for small businesses. To address concerns about other nutritional info, TTB could require a statement to the effect of “alcoholic beverages contain no nutritive value” to be added to the existing Government Warning. Any other required information, such as carbohydrate and protein content, could be made available online.

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

TTB should note that FDA finds compelling interest in small business protection to be balanced with consumer interests. For large producers, uniformity of information, not of display, is what we believe to matter. TTB’s existing rules for the statement of alcohol content should be a guide here. Alcohol content must be stated as a percent by volume, while an additional statement in proof may be stated, but the specifics of how this appears visually are quite flexible. This provides vital information in a consistent format, but gives brands design flexibility and gives consumers credit for being able to understand clearly displayed information.

9. Serving Size Reference Amounts

9.1. 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?

TTB should follow CDC’s definitions of standard drinks in determining allowable serving sizes, but based on the understanding that the definitions of distilled spirits standard drinks assume an alcohol content of 40%.

9.2. 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?

No, serving sizes need to take alcohol content into consideration, especially for distilled spirits. A 1.5 oz serving size for a 5% Alc. / Vol. canned RTD would not be observed by consumers, and might in fact be counterproductive to efforts to promote responsible, informed drinking.

9.3. Should TTB allow greater flexibility in serving sizes?

No. If serving sizes will be a required part of alcoholic beverage labels, they should make clear to consumers how much of a given product constitutes a standard drink. In the case of a non-resealable container like a can, communicating that it contains 1.5 drinks is useful information.

9.4. 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?

If communicated on the label in terms of fluid ounces of alcohol, this would introduce confusion. Consumers do not think about alcohol in this way and would be likely to misinterpret this information.

But if .6 fluid oz of alcohol is just the behind-the-scenes basis for calculating the displayed serving size, that would be very reasonable.

10. Dual-Column Alcohol Facts Panel Display

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

No more so than it does for food products.

10.2. 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?

See our answer to the next question.

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

We see no reason to forbid dual-column displays on any container. If Alcohol Facts panels are intended to give consumers easier access to information, then

permit those producers who wish to provide an easier way to understand that information the right to do so.

11. Implementation Period

11.1. **How frequently do bottlers and importers of alcohol beverages typically change labels?**

The only accurate answer to this is “it depends.” Printing labels is one of the areas of our industry that is most affected by economies of scale. The unit cost of printing the same exact label might go from ten cents apiece for an order of tens of thousands to several dollars apiece for an order of a couple hundred. As such, some of our members order large quantities of labels they intend to use for years to decrease unit costs. But some of our members might print smaller runs more frequently. Some members only make one or two products that stay the same for years. Some members only make limited release products and require new labels many times a year for each new product. Many members pursue a mix of the above strategies.

11.2. **How long do industry members need to comply with the requirements of the proposed rule?**

If the proposed rule goes through and does not exempt small businesses, 5 years is an appropriate implementation timeline.

11.3. **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?**

We urge that TTB exempt small businesses from the proposed rule. Small businesses are less likely to implement changes to their labels significant enough to require new graphic design or even new tooling every 5 years since the expense is significant. Usually a small business will spend a significant amount of money in branding and design once every 10 years for its most popular products.

11.4. **Is 5 years too long a compliance period? Should the compliance period instead be 2 years, 3 years, or another length of time?**

For large companies, every 5 years should be fine. For small companies, there should be an exemption process available as there is with food products.

11.5. **If a final rule is issued, will industry members begin implementation of the labeling changes in advance of the compliance date?**

Some may choose to do so if it aligns with their priorities and needs.

Thank you for consideration of ACSA's comments. We appreciate the ability to respond and are happy to answer any questions you may have upon review.

Respectfully submitted,

Margie A.S. Lehrman, CEO

American Craft Spirits Association