



Brewers Association Comments on Front-of-Package Nutrition Information
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Dockets Management Staff (HFA-305)
Food and Drug Administration
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We write on behalf of the Brewers Association to provide comments on FDA's proposed labeling rule mandating front-of-package (FOP) disclosure of certain nutrition information for most foods.¹ For the reasons set forth below, the Brewers Association urges FDA to exempt alcohol beverages from any FOP labeling rule. Should FDA decline to adopt an exemption, we recommend that a final rule clearly exempt kegged product from the proposed rule on products sold in bulk and ask that FDA coordinate a final compliance date with the compliance date of new labeling regulations currently under consideration by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

The Brewers Association is a 501(c)(6) not-for-profit national trade association of brewers, for brewers and by brewers. We have more than 5,000 U.S. professional brewery members and over 1,200 supplier members from throughout the beer supply chain. Our mission is to promote and protect American craft brewers and their beers.

1. Interest of the Brewers Association

The Brewers Association and its members have a direct interest in the outcome of FDA's FOP labeling project. The majority of the beverages brewed by our members fall within the primary labeling jurisdiction of TTB, jurisdiction conferred by the Federal Alcohol Administration Act (FAA Act).² Two categories of alcohol beverage produced by some of our members, however, fall outside the TTB's FAA Act jurisdiction and accordingly fall under the primary labeling jurisdiction of FDA.³ These are: (a) fermented grain products made without malted barley or without

¹ See 90 Fed. Reg. 5426 (Jan. 16, 2025).

² See 27 U.S.C. § 205(e).

³ For an explanation of the interaction of the FAA Act and the Federal Food, Drug, & Cosmetic Act when it comes to beer products, see *TTB Ruling* 2008-3 (July 7, 2008).

hops, a category that includes most “hard seltzer” products; and (b) wines containing less than 7% alcohol by volume (ABV), a category that includes most “hard cider” products.

While we do not have an exact figure for how many small breweries produce one or both of these categories of products, the number is large. Based data gleaned from our annual Beer Industry Production Survey, in 2024 there were 9,796 breweries in the United States.⁴ All but a handful of those breweries qualify as small businesses under federal law. We estimate that 25% of all small breweries produce hard seltzer and/or hard cider. We believe hard seltzer-type products represent the bulk of affected beverages produced by small breweries. In addition, according to other industry sources,⁵ there are just over 1,200 producers of hard cider in the United States. We believe that many of these companies do not produce beer and accordingly are not included in the 25% estimate above.

In short, the proposed rule, as written, will affect a great many small and independent brewers, along with small cider makers, if finalized as written. For the reasons outlined below, FDA should not proceed with imposing the FOP labelling mandate on alcohol beverage producers.

2. FDA Should Exempt Alcohol Beverages from Any FOP Labeling Mandate

While the proposed FOP labeling mandate includes several exemptions, the current draft contains no exclusion for alcohol beverages. Federal law generally sets the threshold for a product to be considered “alcoholic” at 0.5% ABV.⁶ FDA should adopt that 0.5% ABV threshold for purposes of an exemption to the proposed FOP labeling rule.

Given the split jurisdiction between most alcohol beverage products and the relatively small subset of alcohol beverages subject to FDA’s primary labeling jurisdiction, imposing FOP labeling on products like hard seltzers and hard ciders would only serve to confuse the public about the nature of these products. Should FDA mandate FOP labeling for most foods, consumers will strongly associate the mandated FOP disclosures with non-alcoholic products. Most alcohol beverages, in contrast, will not bear an FOP disclosure as products regulated by TTB under the FAA Act. These would include all “malt beverages” (the vast majority of beer), all wines containing 7% ABV or more (the vast majority of wine), and all distilled spirits. Alcohol beverages are age-restricted products and should not be consumed by minors and some adults, such as those who are recovering from alcohol addiction. In addition, many consumers avoid alcohol beverages for religious reasons. Avoiding consumer confusion between alcohol beverages and non-alcohol beverages is of paramount importance.

⁴ See Brewers Association 2024 Annual Craft Brewery Industry Production Report, *available at* <https://www.brewersassociation.org/association-news/brewers-association-reports-2024-u-s-craft-brewing-industry-figures/> (last visited July 2, 2025).

⁵ See Ciderguide, *available at* <https://completingthemap.com/ciderguide/> (last visited July 2, 2025).

⁶ See, e.g., 26 U.S.C. § 5052(b); 27 U.S.C. § 214(1).

The risks of confusion are manifest and are particularly acute with respect to relatively emergent categories like hard seltzer and hard cider. These products typically come in ready-to-drink packaging (e.g., twelve-ounce cans) that is also widely used for packaging soft drinks and other non-alcohol products. Moreover, because these categories have only recently become well-established in the U.S. marketplace, consumers may be less likely to recognize brands of hard seltzer and hard cider as containing alcohol.

Given these risks, an exemption of alcohol beverages from a final FOP labeling mandate would serve important public health and policy objectives. The Brewers Association proposes adding a new exemption to proposed Section 101.6(c), along the following lines:

(5) Foods that contain 0.5 percent of alcohol by volume or greater.

While we perceive the risk of confusion as sufficient, standing alone, to justify an exemption for alcohol beverages, several other considerations counsel in favor of such an exemption. For starters, we are not aware of any alcohol beverage potentially covered by the FOP labeling mandate that would contain appreciable amounts of fat or sodium. Hard seltzer products also have very little added sugar. Only in the case of hard cider would the presence of added sugar to some brands (often in the form of un-fermented juice) lead to a disclosed amount on the front label other than “low”.

As the proposed FOP labeling rule aims to incentivize consumers to seek out products with lower amounts of these ingredients to address America’s ongoing obesity problems, it would have little impact on consumers seeking a hard seltzer or hard cider product. All such products would have identical “low” values listed for fat and sodium. Many would also indicate “low” for added sugar, with the limited exception of certain hard cider brands.

Moreover, consumers choose alcohol beverages for reasons other than nutrition. A drink is a customary way to wind down after a long day, relax with friends at a social gathering, or toast milestones and special occasions. Consumers will not likely see such occasions as a time to focus on the relative nutritional value of the drink in their hand. Should they do so, the entirely or at least mostly “low” (*i.e.*, “good”) messaging on the front-of-package will not likely impact the consumer’s decision making.

In summary, imposing an FOP labeling mandate on the small subset of alcohol beverages falling under FDA’s primary labeling jurisdiction would only risk confusing consumers about the alcoholic nature of such products. No readily apparent countervailing benefit would be gained by informing consumers about the amounts of fat, sodium, and added sugar in hard seltzer and hard cider products. Indeed, given the primarily “low” profile of most of these products, the FOP mandate’s hoped-for benefit of prompting product reformulations⁷ will almost

⁷ See 90 Fed. Reg. at 5455.

certainly not occur in connection with alcohol beverages. For these reasons, FDA should exempt alcohol beverages from any final FOP labeling mandate.

3. In the Absence of an Alcohol Beverage Exemption, FDA Should Exempt Kegged Products from any FOP Labeling Mandate

As explained above, the Brewers Association believes that FDA should exempt alcohol beverages from any FOP labeling mandate. Should FDA decline to do so, the Brewers Association urges the FDA to exempt alcohol beverages sold on draught from kegs and other bulk containers from any final FOP labeling mandate. The current draft FOP labeling rule proposes that foods “sold from bulk containers” display the required FOP labeling back in a manner that is plainly visible to consumers at the point of purchase.⁸ In the case of alcohol beverages dispensed from kegs, this seems to contemplate a nutrition box at the place of dispense, *i.e.*, on the tap handle.

While not explicitly stated in the proposed rule, we believe the proposed bulk labeling rule aims to inform consumers who purchase in bulk at grocery stores, superstores, and similar venues where food is not consumed on site. Today a great many foods, including cereals, candies, snacks, and nuts, are sold in bulk for later consumption at the consumer’s home. For such product sales, the proposed bulk labeling rule provides information to consumers in a manner equivalent to the information that the consumer would receive had they purchased the same food in a package.

In the case of kegged alcohol beverages, in contrast, virtually all such purchases in bulk are for immediate consumption at the restaurant, bar, hotel, or other on-premises venue where purchased. As such, these bulk purchases are analogous to restaurant sales, which the proposed FOP mandate would not apply to.⁹ Moreover, sales at restaurants already must comply with existing FDA regulations mandating calorie and other nutritional disclosures.¹⁰

Applying the FOP labeling rule to kegged products would be duplicative and contrary to the general spirit of the regulation, which exempts restaurants and other sales of food for immediate consumption at the place of purchase. Any final FOP labeling rule should explicitly exempt the sale of kegged alcohol beverages.

4. In the Absence of an Alcohol Beverage Exemption, FDA Should Coordinate the Effective Date of a Final Rule with Any New Labeling Changes Mandated by TTB

As explained above, most alcohol beverages fall under the primary labeling jurisdiction of TTB under the FAA Act. Moreover, TTB imposes labeling requirements on alcohol beverages under its Internal Revenue Code authority over beer, wine, and distilled spirits. TTB has proposed new regulations mandating “alcohol facts”

⁸ See 90 Fed. Reg. at 5452, 5462 (proposed Section 101.6(b)(6)).

⁹ See 90 Fed. Reg. at 5461 (proposed Section 101.6(c)(1), incorporating by reference 21 C.F.R. § 101.9(j)(2)).

¹⁰ See 21 C.F.R. § 101.11.

disclosures on alcohol beverages.¹¹ While most of the proposed regulations arise from TTB's FAA Act authority, the rule also proposes to mandate alcohol content disclosure on all beer, including beer that falls under FDA's primary labeling authority.¹²

Brewers of beer falling under FDA's primary labeling authority (e.g., most hard seltzer products) should not face two label re-designs in the span of a few months or years, depending on the timing decisions of two separate federal agencies. TTB's proposed alcohol facts rulemaking proposes an effective date for any new labeling mandate that is five years after the publication of a final rule in the Federal Register.¹³

Should FDA not exempt alcohol beverages from a final FOP labeling mandate, it should follow TTB's lead and provide at least a five-year compliance window. In addition, we urge FDA to coordinate the effective date of any mandate with the compliance date for any final alcohol content disclosure mandate imposed under TTB's pending alcohol facts rulemaking.

Small businesses like America's small and independent brewers already are struggling with a myriad of headwinds. Requiring multiple labeling changes in a relatively short period of time would only compound those challenges. Any final rule should provide at least five years in which brewers can implement required changes, and the effective date should be coordinated with any new rules mandated by TTB.

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In summary, the Brewers Association urges FDA to exempt alcohol beverages from any FOP labeling mandate. Should FDA not adopt such an exemption, it should clearly exempt kegged alcohol beverages from its FOP rule for products sold in bulk, and it should coordinate the compliance date of any new rule with the compliance date of any new labeling rules adopted by TTB.

Thank you for your time and consideration of these comments.

Sincerely,



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Brewers Association

¹¹ See 90 Fed. Reg. 6654 (Jan. 17, 2025).

¹² See *id.* at 6705-06 (proposed 27 C.F.R. §§ 25.141, 25.142, and 27.60).

¹³ See *id.* at 6681-82.